

(2007) 04 PAT CK 0165
In the Patna High Court
Case No : CWJC No. 6806 of 2005

Ritu Raj

APPELLANT

Vs

The Central Bank of India and Others

RESPONDENT

Date of Decision : 03-04-2007

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2007) 3 PLJR 644

Hon'ble Judges : Navin Sinha, J

Bench : Single Bench

Advocate : S.P. Mukherjee and Awadhesh Kumar, for the Appellant; U.P. Singh and R.R. Prasad, for the Respondent

Final Decision : Dismissed

Judgement

Navin Sinha, J.—Heard Learned Counsel for the petitioner and the Learned Counsel appearing on behalf of the respondent Central Bank of India. The petitioner is aggrieved by the letter dated 16.12.2004 and the consequential communication dated 22.4.2005 by which his claim for compassionate appointment has been rejected considering his financial condition as not "indigent" in nature.

2. The father of the petitioner was deceased in service on 28.4.2003, the mother of the petitioner applied in time for compassionate appointment for the petitioner. The bank by aforesaid order rejected the claim for compassionate appointment.

3. Learned Counsel for the petitioner urged that the grant of retrial benefits and claim for compassionate appointment are separate issues which do not have a bearing on each other. The fact that certain retrial benefits or pension may have been paid to the dependents of the deceased employee, cannot defeat the claim for compassionate appointment which will have to be considered on its own merits. He relied upon a judgment of the Supreme Court reported in (2005)10

SCC 289 (Govind Prakash Verma vs. Life Insurance Corporation of India & Ors). Reliance was next placed on another judgment of the Supreme Court reported in Union Bank of India and Others Vs. M.T. Latheesh, to submit that under the scheme framed by the All India Banks Association of guidelines for compassionate appointment all the eight factors enumerated were required to be considered and only in the event that the Bank was satisfied on all scores that the candidate was not eligible for compassionate appointment, could the claim be rejected. In the present case, the claim has been rejected only on the ground of grant of family pension and other retiral dues. Other factors enumerated in the scheme framed by the Bank including size of the family have not been taken into consideration thus vitiating the order.

4. Learned Counsel appearing on behalf of the Bank submitted that the mother of the petitioner had received death cum terminal benefits of Rs. 5,47,745.39. She was receiving monthly pension of Rs. 5179/- per month. The family was having its own house in the town of Muzaffarpur in which they were residing. The rejoinder to the counter affidavit filed on behalf of the petitioner did not dispute the same. AN these were factors which were per se evidence that the Bank had carefully applied its mind to the case of the petitioner for compassionate appointment and had arrived at an objective finding that the family was not suffering from "destitute" or "penury" of a nature to make compassionate appointment an unavoidable necessity. Learned Counsel also relied upon Union Bank of India and Others Vs. M.T. Latheesh, .

5. The Court has considered the submissions on behalf of the parties. The law with regard to appointment on compassionate grounds has been the subject matter of much interpretation by the Courts. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , the Apex Court held that a claim for compassionate appointment brooks no delay. In absence of a post a supernumerary post should be created. In. Umesh Kumar Nagpal Vs. State of Haryana and Others, , it has been observed that the judgment in Sushma Gosain case (supra) "has been interpreted to the point of distortion", and that it does not justify compassionate appointment as a matter of course. It has further been held therein as follows:--

"The whole object of granting employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government of the public authority has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment the family will not be able to meet the crisis that a job is offered to the eligible member of the family. The posts in classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate ground, the object being to relieve the family of the financial destitution and to help it to get over the emergency."

6. This view has been followed in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, and Punjab National Bank and Others Vs. Ashwini Kumar Taneja, .

7. Appointment on compassionate ground is considered as an exception to appointment by open competitive merit by equal opportunity to ail as enshrined under Article 14 of the Constitution of India. It is only in exceptional cases covered by schemes framed in respect thereof where the family is in dire stress that the Courts have accepted compassionate appointment to a limited extent so as to make an inroad to Article 14 of the Constitution. Each case will therefore have to be judged on its own merits. The writ Court cannot sit in judgment over the objective findings arrived at by the authorities in a particular case. It will be only in cases where the findings are perverse, arbitrary, irrational, not supported by any material or based on extraneous factor, ignoring relevant materials that there may be occasion for the courts to interfere.

8. In a case like the present, where the authorities have carefully applied their mind and arrived at a determination, not controverted by the petitioner, there will hardly be any occasion for this Court to sit in judgment over the objective findings to arrive at a fresh determination by reassessment of the materials on which the authorities have acted. It is settled law that what this Court will examine is the decision making process and not the decision itself to appraise its sufficiency.

9. In the case of Govind Prakash Verma (supra) relied upon by the petitioner, the facts were substantially different. A claim for compassionate appointment having been made a Bench of this Court considered it proper to direct fresh enquiry by the Life Insurance Corporation of India, the respondent therein. While the report submitted by the Corporation covered only one aspect of the direction of the Court, this Court nonetheless accepted the incomplete report and rejected the claim for compassionate appointment which came to be confirmed by the Division Bench. At para 6 of the judgment, the Apex Court found fault with the enquiry report which was inconclusive in its nature and when it did not deal with other aspect of the enquiry directed by the High Court. It was essentially on this reasoning that the judgment of this Court was set aside and direction to grant compassionate appointment were given. The reference therein to the observations that the scheme for compassionate appointment of respondent is over and above whatsoever is admissible to legal representatives of deceased employee as benefits of service which they get on death of the employee, and therefore compassionate appointment cannot be refused on ground that any member of the family had received the amounts admissible under the Rules, were more in the nature of obiter dicta and not the ratio of the Court. It is settled law that each case would be decided on its own facts. A judgment will be an authority for what it actually decides and observations therein cannot be called out in a line or two out of context to contend that it is what the judgment decides, or what can logically be deduced from the same.

10. In the case of Union Bank of India & Ors. (supra) relied upon by the petitioner the Apex Court has considered the entire gamut and change in the concept of compassionate appointment. It has been observed therein that compassionate appointment has to be granted in very rare necessitous and fortuitous circumstances. The guidelines for compassionate appointment have been framed by All Indian Bank Association of which the respondent Bank is a member. The scheme provides inter alia at para A as follows:--

"4. Sanction for appointment.--Appointment under the Scheme will be made by the competent authority. The object of granting compassionate appointment to the dependants of the deceased employee is to enable the family to tide over the sudden crisis. Com-compassionate appointment will be offered by the Bank only in the case where the Bank is satisfied that the financial condition of the family is such that, but for the provision of employment, the family will not be able to meet the crisis While considering such appointment the competent authority will take into account the following to determine the financial condition of the family:

- (a) Family pension.
- (b) Gratuity.
- (c) Employee"s/employer"s contribution to the Provident Fund.
- (d) Any compensation paid by the Bank or its welfare fund.
- (e) Proceeds of LIC policy and other investments of the deceased employees.
- (f) Income for family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc."

11. It has also been observed by the Apex Court that employment with the Bank has reduced considerable and the grant of employment on compassionate ground shall shut the door for employment to the ever growing population of unemployed youth more particularly when the Industry is being asked to reduce the employees by offering retirement schemes.

12. The judgment also considers that the object of compassionate appointment is not to provide employment to the heirs of the deceased but only a source of livelihood where it be imperative necessity. This necessarily entails examination of the family condition and other earnings of the family of the deceased. Only if the authorities be satisfied that but for the provisions of such employment the family shall be in dire stress, then appointment is made to Class III and IV posts only..

13. It is note worthy that even in that case terminal benefits of Rs. 7,18,751/- were given from which after adjustment of the pending housing loan and personal loan a sum of Rs. 5,47,495/- was actually paid. A family pension of Rs. 4468 /- was being paid. The Court noticed that lump sum payment made would

also generate monthly interest which could also be considered by the competent authority in computing income of the family.

14. The judgment of their Lordships concludes at para 37 as follows:--

"37. It also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme."

15. In view of the aforesaid discussions and the factual situation obtaining in the present case all the retrial benefits and pension, combined with the petitioner having his own house in which he be residing, this Court finds no infirmity with the objective finding arrived at by the respondents of his ineligibility for compassionate appointment. The submission on behalf of the petitioner that each of the eight items as enumerated by the Bank to consider cases for compassionate appointment need be dealt with and considered separately and individually, does not find favour with this Court. Learned Counsel for the respondents has rightly submitted that those are broad guidelines, the applicability of which will have to be considered in each case. Moreover, this Court would further opine that in the event that the authorities arrive at an objective finding that the family of the deceased was not in "destitute" or in "penury" on any or some of the indices, the question of their considering the remaining items simply does not arise. The Court therefore does not uphold the contention on behalf of the petitioner that in absence of consideration of the case of the petitioner under all the eight heads enumerated in the Bank guidelines the order impugned is bad. There is no merit in this application. It is accordingly dismissed.