(2008) 08 SHI CK 0027

In the High Court Of Himachal Pradesh

Sanjeev Kumar Verma APPELLANT

Vs

State Bank of India and Others RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:
Constitution of India, 1950 — Article 14, 16

Citation : (2008) 3 ShimLC 328

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.B. Misra, J.—In the present petition, the order dated 31.1.2004 (Annexure PC) issued by Chief Manager, State Bank of India has been challenged, whereby rejection of the representation of the petitioner regarding appointment on compassionate ground in the State Bank of India has been communicated. The another prayer has also been made by the petitioner for quashing the order dated 3.6.2004 (Annexure PE) issued by the Chief Manager, declining the petitioner the appointment on compassionate ground in the State Bank of India.

2. As submitted for and on behalf of the petitioner that his father late Shri Gandi Ram Verma while working as Clerk in the State Bank of India died in harness on 2.12.2002 leaving behind his widow, i.e. the mother of petitioner and two children, including petitioner and Shri Rajeev Verma. Petitioner aged about 28 years at relevant time by virtue of his possessing qualification of 10 + 2 from H.P. Board of School Education fulfilling all the requisite criteria for appointment in the clerical cadre in the Bank, has submitted an application for being appointed on compassionate ground as an dependent of deceased-employee in view of the "Scheme for appointment on compassionate grounds for dependents of deceased employees/employees retired on medical grounds" updated upto 1.1.1998 by the State Bank of India.

3. According to the petitioner, such a scheme enclosed as Annexure PA, was

prevalent till modified on 16th September, 1999. The object of the scheme for appointment on compassionate ground prevailing in the State Bank of India, is indicated as below:

OBJECT:

The object of granting compassionate appointment is to enable the family to tide over the sudden crisis due to the death of the bread-winner. The mere death of an employee in harness does not entitle his family to such a livelihood. The object is to offer compassionate appointment only when 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. This will apply mutatis mutandis to the scheme for appointment of dependents of employees who retire on medical grounds. The Government of India guidelines in a judgment by the Hon''ble Supreme Court on the subject are given Annexures ''A'' and ''B'' respectively.

4. According to the petitioner, his representation dated 2nd June, 2003 was considered and rejected vide order dated 30.1.2004 (Annexure PC) of Chief Manager, conveyed to the petitioner indicating below:

We have to advise that competent authority has declined your request for appointment in the Bank on compassionate grounds, keeping in view the overall position of the Assets and Liabilities/Income and Financial position of the family. In this connection, please refer to the observation of Supreme Court judgment as mentioned in Annexure A. Govt. of India, Deptt. Of PER & TRG. O.M. No. 14014/22/94-Estt.(D) dated 28.11.1994.

The petitioner still aggrieved, by the non consideration of his representation to his satisfaction, had submitted another representation dated 3rd March, 2004 to the Manager, State Bank of India which was again considered and the petitioner was declined to be given appointment on compassionate ground which accordingly was conveyed vide order dated 3.6.2004 (Annexure PE) to the petitioner. Both these orders have been challenged as impugned orders in the present writ petition by contending that the impugned orders are illegal, arbitrary and discriminatory and violative of Articles 14 and 16 of the Constitution of India. According to the petitioner, earlier scheme of compassionate appointment promulgated by the State Bank of India was effect from 1.1.1998 which was subsequently modified on 16th September, 1999 and since father of the petitioner died on 2.12.2002 when these schemes were prevalent, then taking into consideration the norms and guidelines of these schemes, the petitioner''s family was living in penurious condition.

5. According to the petitioner, though in first representation the health condition and the treatment being received by the widow mother was not highlighted, however, in the second representation dated 3.3.2004 it was specifically indicated that the mother of the petitioner is taken every month from Mandi to PGI for medical check up and for the treatment of cancer for which lot of money

is being spent and since his younger brother was school going child and at the prevailing circumstances, family was in great financial hardship, therefore, prayer was made for compassionate appointment.

6. A reply affidavit has been submitted on behalf of the respondents indicating that the scheme for appointment on compassionate ground was promulgated with an object for granting compassionate employment to enable the family to tide over the sudden crisis due to the death of the sole bread winner. The mere death of an employee in harness does not entitle his family to such a source of livelihood. The object is to offer compassionate appointment only when 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.

7. According to the respondents, the scheme for appointment of dependents/ deceased employee on compassionate ground was introduced in the State Bank of India originally from 1.11.1979, which, however, was modified from time to time. According to Mr. Sanjeev Sood, learned Counsel for the respondents, the first scheme (updated to 1.1.1998), financial condition of the family indicated as below:

Financial condition of the family:

Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood. Determining the financial condition of the family is, therefore, an important criterion for deciding the proposals for compassionate appointment. The following factors should be taken into account for determining the financial condition of the family:

(i) family pension

(ii) gratuity amount received

(iii) employee''s/employer''s contribution to Provident fund.

(iv) Any compensation paid by the Bank or its Welfare Fund.

(v) Proceeds of LIC policies and other investments of the deceased employee.

(vi) Income of family from other sources.

(vii) Income of other family members from employment, or otherwise

(viii) Size of the family and liabilities, if any.

8. The relevant paragraph 3 of the subsequent scheme promulgated on 16th September, 1999 (Annexure PB) is extracted below:

3. In view of the above, we are left with no alternative but to decline the request if the financial condition of the family cannot be termed as penurious. We may

add here that while declining proposals for compassionate appointment, the above reasons viz. the condition not being penurious in terms of the directives of the Government of India based on the Supreme Court judgment should be explained in a suitable manner to the dependent(s)/employees(s) concerned.

9. As asserted by Mr. Sanjeev Sood, learned Counsel for the respondents that taking into consideration the claim and representation of the petitioner and financial condition of the family and in reference to the records pertaining to the deceased, respondents have carefully considered all the aspects which are extracted in the reply affidavit and are reproduced as under:

-- ASSETS LIABILITIES (Rs. Lakh) -- A. Terminal benefits A. To Bank Nil Provident Fund 5,48,182 Gratuity 2,79,735 Leave 1,21,501 Encashment MWS Sub Total 9,49,418 C. To Outsiders Nil

B. Investments Deposit (Fixed) 9,50,000 NSCs LIC Policies PPF 3,00,000 Overdraft Nil Demand Nil Loan

LIC Policies Other SB 1,08,140 Sub Total 13,58,140 Nil

C. Movable property Description of TV Set Property and 2000/- Market value Gold income Derived 14,000/- Total 16,000/-

D. Immovable Property House/Flat/Value . House No. 56/3, Vijay Rs. 3,00,000/- Park, Mandi Agriculture Land Nil Income derived.

Note: Terminal benefits have been invested by way of fixed deposits.

MONTHLY INCOME OF FAMILY FROM ALL SOURCES:

(i) Pension/Family Pension :

Basic Rs. 3,280.00

DA Rs. 3,231.00

(ii) Assumed interest on 80% of net corpus of terminal benefits Rs. 3,433.00

(iii) MWS monthly relief

(iv) Income from investments Rs. 2,250.00

(v) Income from movable and immovable property Nil.

(vi) Income of employed family members

Total 12,194.00

10. It has been argued on behalf of the respondents, that the financial condition of the family of the petitioner cannot be said that the family is living in penury or without means of livelihood. The resources of income of the family are adequate

to meet their basic needs and it certainly could not be said that the petitioner was living hand to mouth. Therefore, the competent authority has rightly declined the request of the petitioner for his appointment on compassionate ground.

11. According to the learned Counsel for the respondents, the family of the petitioner has received retiral benefits at the time of his death amounting to Rs. 9,49,418/-, besides this, Gandhi Ram Verma had Rs. 3 lakhs in his PPF account, Rs. 1,08,140/- in his saving Bank account. In all, the family of the deceased had Rs. 13,58,140/- at the time of his death. Besides this, the family of the petitioner is having residential house in Vijay Park, Mandi being House No. 56/3, the market value of which is around Rs. 3 lakhs. In addition to this, family pension of Rs. 6511/- was sanctioned to the family and family of the petitioner gets interest on terminal benefits income from investments. Thus, in all, Rs. 12,194/- per month is the income of the family.

12. According to the learned Counsel for the respondents, the subjective as well as objective assessment of the petitioner''s financial condition in reference to the parameters provided in the scheme is indicating that the petitioner is not fulfilling the required yardstick of meeting the requirement of giving compassionate appointment, as such decision of respondents cannot be said to be discriminatory or violative of Articles 14 and 16 of the Constitution of India. According to Mr. Sanjeev Sood, while considering the grievance/representation of the petitioner, the said Bank and its authorities have carefully analysed all the aspects in detail, which has been very categorically highlighted in Annexure R-1 to the reply affidavit, which, however, has not been denied by way of rejoinder affidavit as the analysis has been made on the basis of factual details pertaining to the deceased, i.e. father of the petitioner.

13. To strengthen the stand, learned Counsel for the respondents has placed reliance on the following decisions of Umesh Kumar Nagpal Vs. State of Haryana and Others, , General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, , Devender Singh Vs. State Bank of India and Another, , State of Haryana and Others Vs. Rani Devi and Another, , State Bank of India and Another Vs. Somvir Singh, , Punjab National Bank and Others Vs. Ashwini Kumar Taneja,

14. In Umesh Kumar Nagpal (supra), it has been held that the object of granting compassionate employment is to enable the family to tide over the sudden crisis and not to give a member of such family a post much less a post held by the deceased. It has also been held that mere death of an employee does not entitle his family to compassionate appointment, but the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee''s death. Even the consideration of the claim of dependents for compassionate appointment after a lapse of reasonable period was held impermissible. In Umesh Kumar Nagpal supra, Hon''ble Supreme Court has occasion to distinguish its earlier decision of (1989)

4 SLR 327 Sushma Gosain v. Union of India.

15. In Ashwani Kumar Taneja (supra), the father of claimant expired on 3.12.1999 while working as Class IV employee in the Bank leaving behind him, his mother, the widow, two sons and one daughter and the widow''s representation dated 5.1.2000 for employment of his elder brother on compassionate ground was turned down on the ground that there was no financial hardship to the family of the deceased as the family had received substantial amount after the death of employee. The writ petition preferred in the Rajasthan High Court was allowed with directions to consider the case of the widow forthwith for giving appointment on compassionate ground and the LPA too was dismissed. It was held that retiral benefits received by the heir of the deceased employee cannot be made a ground for rejecting application for compassionate appointment. Hon''ble Supreme Court has held the view of the High Court as erroneous and while considering its earlier decisions has held that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointment on open invitation of applications on merits. Basic intention should be that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.

16. In Ashwini Kumar Taneja case, Hon''ble Supreme Court has very categorically observed that the decision of High Court that retiral benefits were not be taken into consideration while dealing with the request for compassionate appointment was contrary to the decision in Kunti Tiwary case (supra).

17. In Kunti Tiwary case (supra), heavily relying on its earlier decision in Umesh Kumar Nagpal, Hon''ble Supreme Court has categorically observed that compassionate appointment could only be given where the deceased employee has left his family in penury and without any means of livelihood. The terminal benefits received, and other movable and immovable property possessed, by the family of the deceased employee showing that its financial condition was not penurious could be a ground for denying compassionate appointment to the deceased son and the view of the High Court in diluting the criterion of penury to one of "not very well to do" thereby directing the bank to appoint deceased son, was held to be illegal and unjustified.

18. In Rani Devi case (supra), the Hon''ble Supreme Court has very categorically elaborated about the non-applicability of Articles 14 and 16 of the Constitution in respect of compassionate appointment as below:

6. It need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the ground that he was a dependent of the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution. But this Court has upheld this claim as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in

service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16.

19. In Devender Singh case (supra) of H.P. High Court (learned Single Judge) has very categorically observed that looking into the payment of amount towards the provident fund, gratuity and compensation of Rs. 3,88,545/, and Rs. 1690/- as basic pension plus dearness relief i.e. Rs. 3151/- and keeping in view that the claimant was having a spacious house and 1.5 bighas of agriculture land, therefore, the family of the deceased was said to be not in penury condition for the purpose of giving employment on compassionate ground under the scheme of "Compassionate appointment" promulgated by the State Bank of India.

20. In Somvir Singh case (supra), Hon''ble Supreme Court has analyzed the scheme of compassionate appointment, promulgated by the State Bank of India and after careful consideration of its earlier decision of Umesh Kumar Nagpal (supra). M.T. Latheesh (supra) and Kunti Tiwary case (supra) has very categorically held and observed as below:

Appointment on compassionate grounds is an exception, carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependants of employees who died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. The claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

Thus the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme.

The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into, consideration for the purposes of deciding as to whether the family of the deceased employee had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agriculture land.

The High Court itself could not have undertaken any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its revival and whether it had been left in penury or without any means of livelihood. The only question the High Court could have adverted itself to is whether the decision making process rejecting the claim of the respondent for compassionate appointment is vitiated? Whether the order is not in conformity with the scheme framed by the appellant Bank? It is not even urged that the order passed by the competent authority is not in accordance with the scheme. The hardship of the dependant does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant Bank. It is not a case where the dependants of the deceased employee are left "without any means of livelihood" and unable to make both ends meet. The High Court ought not to have disturbed the finding and the conclusion arrived at by the appellant Bank that the respondent was not living hand-to-mouth. The High Court cannot dilute the criterion of penury to one of "not very well-to-do". The view taken by the Division Bench of the High Court may amount to varying the existing scheme framed by the appellant Bank. Such a course is impermissible in law.

21. Relying heavily on the decision of Somvir Singh (supra) and Umesh Kumar Nagpal (supra), the H.P. High Court (DB) in Sachin Sharma case (supra) has observed that after the death of deceased, the payment of terminal benefits of Rs. 5,87,654/- and family pension of Rs. 3400/- PM paid to the family, indicate that the petitioner does not fall within the criteria of penurious condition and taking into consideration the income of the family from all sources, the claimant was not held entitled to get appointment on compassionate ground.

22. I have heard learned Counsel for the parties I have carefully perused the documents and enclosures appended with the writ petition. I find that the terminal benefits payable to the family of the deceased is Rs. 5,48,182/- as Provident Fund, Rs. 2,79,735/- as Gratuity, Rs. 1,21,501/- as leave encashment overall an aggregate amount of Rs. 9,49,418/- as well as Rs. 3.00 lakhs towards payment of PPF, and Rs. 1,08,140/- as LIC policies and keeping in view the other Saving Bank (terminal benefits invested by way of Fixed Deposits), Pension/ Family pension of Rs. 3280/- and DA of Rs. 3231/-, it is apparent that the overall income of the family of the deceased was Rs. 12,194/- PM, which reveals that family is not in financial hardship.

23. The Deputy General Manager of State Bank of India, Zonal Office, Shimla vide its letter dated 15.12.2003 (Annexure R-4) has indicated that keeping in view the overall position of assets and liabilities and the income and financial position of the family with monthly income of Rs. 12,194/- with residential house, providing employment to one of the family of the deceased is not justified. Therefore appointment of the petitioner to the clerical cadre in the State Bank of India on compassionate ground was declined.

24. In my respectful consideration, I do not find any impropriety and illegality in the impugned order which have been passed in consonance to the decisions of the Supreme Court indicated above. I do not find any merit in the writ petition, accordingly the writ petition is dismissed.

In view of the dismissal of the main petition, pending applications, if any, are also dismissed.