

(2015) 05 JH CK 0064
In the Jharkhand High Court
Case No : Writ Petition (S) No. 4151 of 2010

Saraswati Devi

APPELLANT

Vs

The Assistant General Manager, State Bank of India and
Others

RESPONDENT

Date of Decision : 22-05-2015

Acts Referred:

Citation : (2015) 4 AJR 436 : (2015) 3 JLJR 376

Hon'ble Judges : Rongon Mukhopadhyay, J

Bench : Single Bench

Advocate : Siddhartha Ranjan, for the Appellant; Rajesh Kumar, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Rongon Mukhopadhyay, J.—In this application, the petitioner has prayed for quashing the Letter dated 08.02.2005 issued under the signature of General Manager (II) State Bank of India in which it was communicated to the Deputy General Manager, State Bank of India, Zonal Office, Ranchi that the proposal for compassionate appointment to the petitioner has been rejected on the ground that during the service period of husband of the petitioner a departmental proceeding was initiated against him which resulted in inflicting the punishment of withholding two annual increments. Further prayer has been made by the petitioner for quashing the Letter dated 14.02.2005 issued by the respondent No. 1 intimating the respondent No. 3 that the claim for compassionate appointment of the petitioner has been rejected by the competent authority.

2. The petitioner is the widow of Late Kishore Kumar Gope who was working as a Messenger in the State Bank of India, AG Complex, Branch, Ranchi and who died in harness on 01.05.2003. On the death of her husband, the petitioner made an application on 08.12.2003 to the respondent No. 3 for appointing her on compassionate ground due to the death of her husband and the subsequent financial hardships she is facing. Inaction on the part of the respondents in

considering the representation submitted by the petitioner made her submit another representation on 02.08.2004 and ultimately in terms of the Letter dated 08.02.2005 addressed by the General Manager (II) State Bank of India to the respondent No. 2 the claim of the petitioner was rejected on the ground that no compassionate appointment can be granted in a case where the deceased employee has been proceeded against in a departmental proceeding and has been inflicted with an order of punishment. Based on the rejection of recommendation of the petitioner for compassionate appointment the petitioner was directed to be informed in terms of the Letter dated 14.02.2005 issued by the respondent No. 1.

3. Heard Mr. Siddhartha Ranjan, learned counsel appearing for the petitioner and Mr. Rejesh Kumar, learned counsel appearing on behalf of the State Bank of India.

4. The learned counsel for the petitioner has submitted that the scheme for compassionate appointment which was in vogue at the time of death of the husband of the petitioner did not contemplate that initiation of a departmental proceeding and infliction of subsequent punishment would debar the claimant from being granted compassionate appointment. In this context, he has referred to clause 10.6.4 while submitting that the same is not a mandatory requirement and the appointment of a dependent on compassionate ground can be considered after obtaining prior government concurrence. It has also been submitted by the learned counsel for the petitioner that there is no stipulation mentioned in the Letter dated 07.04.2003 as has been referred to in the impugned letter. It has also been submitted that since the bank has not amended the revised scheme dated 13.06.2002 by incorporating any condition relating to debarring the dependents of an employee from getting compassionate appointment in case of imposition of any punishment the letter dated 07.04.2003 referred to the impugned letter cannot be treated to be under the revised scheme. It has further been submitted that the respondents are trying to create a new story which is contrary to the impugned letters and the respondents cannot improve the contentions made in the letter under reference. In this context, the learned counsel for the petitioner has referred to the case of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 .

5. Mr. Rajesh Kumar, learned counsel appearing for the respondents, on the other hand, has submitted that in terms of clause 11(C) the competent authority had decided the claim of the petitioner and has thereafter rejected the said claim. It has also been submitted that the death of the husband of the petitioner took place on 01.05.2003 and the petitioner has challenged the rejection of her claim for compassionate appointment after more than five years and since the basic object of compassionate appointment has been frustrated on account of such delay the petitioner does not deserve any sympathy and hence this writ petition is liable to be dismissed.

6. It has also been submitted that although the petitioner has annexed a copy of

the representation which is alleged to have been sent to the bank but the same cannot be relied upon as there is no endorsement in the said representation from which it could be deciphered that the petitioner had indeed represented the authorities. It has also been submitted by the learned counsel for the respondents that vide circular dated 04.08.2005 a scheme was introduced which was approved by the Executive Committee of the Central Board for payment of ex-gratia lump sum amount in lieu of appointment on compassionate ground and which was named as "State Bank of India Scheme for Payment of ex-gratia lump sum amount". It has also indicated in the said circular dated 04.08.2005 that the existing compassionate appointment scheme shall be replaced by the scheme for payment of lump sum amount and that no request for compassionate appointment shall be entertained or considered by the bank w.e.f. 04.08.2005.

7. The learned counsel for the respondents thus adds that in view of the revised scheme the claim of the petitioner is also not entertainable. The claim of the petitioner for compassionate appointment was rejected by the letters dated 08.02.2005 and 14.02.2005. In the letter dated 08.02.2005 reference has been made to letter dated 07.04.2003 relating to compassionate appointment wherein it has been specified that no case of compassionate appointment shall be considered if an employee concerned has been proceeded against departmentally resulting in infliction of punishment. The husband of the petitioner was given minor punishment in the departmental proceeding and considering the said fact and in view of the circulars/guidelines of the State Bank of India the claim of the petitioner was rejected.

8. Clause 10.6.4 of the Rules governing the service condition of an employee of the bank reads as follows:-

"10.6.4 Disciplinary Proceedings

In cases where disciplinary action had been taken against the employee or disciplinary proceedings were pending or contemplated against him/her, appointment of a dependent on compassionate grounds may be considered only after obtaining prior Government concurrence."

9. The aforesaid clause does not mandate that in case where the disciplinary proceeding is pending or contemplated or disciplinary action has been taken against the employee the claim for compassionate appointment has to be rejected outright. The financial condition of the family on the death of the only bread earner of the family has also to be considered and which has been enumerated on clause 10.6.12 of the scheme. It has been categorically laid down in clause 10.6.12 that determining the financial condition of the family is an important criteria for deciding the proposal of compassionate appointment. In case of relaxation of the criteria a ryder has been provided in clause 10.6.13 which mentions that deviations from the provisions of the scheme may be considered by the Managing Director and Group Executive or by prior approval of the Government.

10. The husband of the petitioner had died in harness on 01.05.2003 during which period the scheme dated 13.06.2002 was prevalent and the said scheme which has been marked as Annexure - 4 to the main writ application does not disclose that in case where an employee has been proceeded against departmentally or has been inflicted with an order of punishment pursuant to a disciplinary proceeding, on his death his dependents will be debarred from claiming compassionate appointment.

11. The learned counsel for the respondents has placed much reliance on the circular dated 04.08.2005 which stipulated that in lieu of compassionate appointment ex-gratia lump sum amount shall be paid to the dependent. It was indicated in the said circular that the applications which are pending under the compassionate appointment scheme as on the date i.e. on 04.08.2005 will be dealt with in accordance with the new scheme for payment of ex-gratia lump sum amount. The petitioner's case cannot be considered in view of the revised scheme as enumerated in circular dated 04.08.2005 in view of the fact that the claim of the petitioner for compassionate appointment was already rejected on 08.02.2005 and on the date of issuance of circular dated 04.08.2005 the claim of the petitioner for compassionate appointment was not pending before the authorities.

12. The learned counsel for the respondents have stressed much on the delay and laches on the part of the petitioner in approaching the court as also the fact as to whether after expiry of more than a decade the claim for compassionate appointment can be entertained considering the basic principles for grant of compassionate appointment. In this context, the learned counsel for the respondents has relied upon the following judgments.

13. In the case of Municipal Corporation of Greater Bombay Vs. Bombay Tyres International Ltd. and Others, (1998) 3 AD 234 : AIR 1998 SC 1629 : (1998) 2 JT 689 : (1998) 2 SCALE 493 : (1998) 4 SCC 100 : (1998) AIRSCW 1373 : (1998) 3 Supreme 435 while considering a case relating to refund of water charges it was held that the standard adopted by the High Court is the same in ascertaining whether there has been laches on the part of the appellant in seeking relief in due time or not. The Hon'ble Supreme Court upheld the view of the High Court which had held that long after the charge have been paid and law had been declared by the Court the writ petition has been filed and, therefore, such a refund should not be allowed.

14. In the case of Scooters India and Others Vs. Vijai E.V. Eldred, (1999) 81 FLR 87 : (1998) 8 JT 204 : (1998) 6 SCC 549 : (1998) SCC(L&S) 1611 while considering the delay and laches on the part of the petitioner it was held that the writ petition was filed more than six years after the date on which cause of action is said to have arisen and there being no cogent explanation for the delay and the writ petition was accordingly dismissed.

15. In the case of Union of India (UOI) and Another Vs. S.S. Kothiyal and Others,

(1998) 8 SCC 682 : (1999) SCC(L&S) 251 it was held that filing of the writ petition after eight years was highly belated and deserved to be rejected on the ground of laches alone in view of the settled principle relating to interference in service matters of this kind in exercise of the power of judicial review.

16. In the case of Union Bank of India and Others Vs. M.T. Latheesh, (2006) 111 FLR 77 : (2006) 3 LLJ 791 : (2006) 8 SCALE 145 : (2006) 7 SCC 350 : (2006) SCC(L&S) 1646 : (2006) 5 SCR 696 Supp it was held as follows:-

"It is 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."

17. Reference has also been made in the case of State Bank of India and Another Vs. Somvir Singh, (2007) 113 FLR 225 : (2007) 3 JT 398 : (2007) 2 LLJ 230 : (2007) 3 SCALE 42 : (2007) 4 SCC 778 : (2007) 2 SCC(L&S) 92 : (2007) 2 SCR 509 wherein the Hon"ble Supreme Court had taken into consideration the judgment rendered in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, (1994) 68 FLR 1191 : (1994) 3 JT 525 : (1994) 2 SCALE 834 : (1994) 4 SCC 138 : (1994) 3 SCR 893 : (1995) 1 SLJ 229 : (1994) 2 UJ 322 which emphasized that the whole object of granting compassionate appointment is 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 held by the deceased.

18. In the case of State Bank of India and Others Vs. Jaspal Kaur, (2007) 112 FLR 1037 : (2007) 3 JT 35 : (2007) 2 LLJ 385 : (2007) 146 PLR 754 : (2007) 2 SCALE 397 : (2007) 9 SCC 571 : (2007) 2 SCC(L&S) 578 : (2007) 2 SCR 101 : (2007) 3 SLJ 1 : (2007) 1 UJ 247 : (2007) AIRSCW 6861 : (2007) 7 Supreme 274 it was held as follows:-

"24. The competent authority of the Bank had to consider the case of the respondent as per the parameters laid down in the scheme. Accordingly, while deciding on the financial condition of the respondent factors like:

- (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 employee
- (f) Income of family from other sources
- (g) Employment of other family members
- (h) Size of the family and liabilities, if any, etc. were taken into consideration by the competent authority and based on these details appointment was declined to the respondent on compassionate ground."

19. The judgment which have been referred by the learned counsel for the respondents tends to reflect on the fact that delay and latches on the part of the petitioner in approaching the court shall be a prime factor in consideration/non-consideration of the claim for compassionate appointment of the petitioner. However, the same has also to be seen in context to the fact as to whether the impugned letters issued by the respondents are in conformity with the scheme floated by the respondents for grant of compassionate appointment. In the case of State Bank of India And Others v. Jaspal Kaur (Supra) the Hon"ble Supreme Court had held that the matter should be decided within the parameters of the scheme prevailing when an application for compassionate appointment was filed and not as prevailing on the date of decision of the Court. It was also held therein that a major criteria while appointing a person on compassionate ground should be the financial condition of the family of the deceased left behind and unless the financial condition is entirely penurious such appointments cannot be made.

20. In the case of State Bank of India And Another v. Somvir Singh (Supra) the Hon"ble Supreme Court was considering as to whether the financial aspects for making the financial assessment of the family of the deceased in conformity with the scheme was considered by the competent authority and it was held therein that financial hardship of the dependent does not entitle him to seek compassionate appointment dehors the scheme for compassionate appointment. The income of the family from all sources is required to be taken into consideration according to the scheme.

21. The counter affidavit which has been filed by the respondents has mostly tried to improve/justify the impugned letter dated 08.02.2005 by adding certain reasonings to the fact that the death of the husband of the family resulted in sufficient monetary benefits to the dependents and as such it cannot be said that the dependents of the deceased employee were in a precarious financial condition. As has been indicated above the letter dated 08.02.2005 only revolves around the fact that since a departmental proceeding was initiated against the

husband of the petitioner which resulted in infliction of punishment, in such circumstances, the claim of the petitioner for compassionate appointment cannot be considered. As has further been indicated above the scheme which was in existence at the time of death of the husband of the petitioner and which has been appended to the main writ application as Annexure - 4 nowhere speaks that initiation/contemplation/finalization of a departmental proceeding resulting in punishment shall debar the dependents of the deceased employee from seeking compassionate appointment. Moreover while considering the claim for compassionate appointment as per the scheme itself in terms of clause 10 various factors have to be taken into consideration for determining the financial condition of the dependent family but the impugned letter dated 08.02.2005 does not reflect that clause 10 of the scheme has been taken into consideration and that clause 11A has also been properly considered in refusing the plea of the petitioner for compassionate appointment. Since the letter dated 08.02.2005 and the subsequent letter dated 14.02.2005 is arbitrary and is shorn of detailed reasoning in terms of the scheme which was in existence at the time the husband of the petitioner died in harness, in such circumstances the letter dated 08.02.2005 issued by the General Manager (II) State Bank of India and the subsequent letter dated 14.02.2005 issued by the respondent No. 1 is not in accordance with law and, accordingly, both the letters under reference are hereby quashed and set aside. The matter is remitted back to the respondent No. 1 to take a fresh decision in accordance with law and in accordance with the scheme which was in existence at the time of the death of the husband of the petitioner.

22. This writ petition is disposed of.