
(2004) 01 AHC CK 0020
In the Allahabad High Court

Siddharth Arya

APPELLANT

Vs

Union Bank of India and Others

RESPONDENT

Date of Decision : 07-01-2004

Acts Referred:

Citation : (2005) 104 FLR 1146

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—The writ petition has been restored to its original number. I have heard Counsel for petitioner and Sri V.R. Agarwal for respondents.

2. Petitioner is seeking compassionate appointment in Bank on the death of his father late Sri Himmat Ram Arya, who died in harness on 27.9.1998. From the pleadings I find that petitioner's mother had received Rs. 1,48,097/- as retiral dues. A loan of Rs. 1,37,426/- was taken for construction of house. It is contended that the land was purchased but the house could not be constructed. Three daughters of the deceased employee have since married and that now the family has three member including petitioner, his mother and an unmarried sister. Alongwith counter-affidavit the respondents have annexed a letter received by the Records Officer, Mahar Regiment Abhilekh Karyalaya Records, Mahar Regiment Saugor (MP) dated 10.7.2002 sent to Union Bank of India, Adarsh Mandi Sthal Branch Pilibhit Road, Bareilly, by which the Army authority have informed the bank that petitioner's mother is also entitled to family pension from the Army. Her husband had rendered service in the Army. A family pension claim form was sent to the petitioner's mother on 17.5.1999 but she did not pursue the matter. This document shows that petitioner's mother has an addition and subsisting right to receive family pension from the Army.

3. I have considered the submissions carefully. Counsel for respondents has relief upon the Division Bench decisions of this Court in Om Prakash Ram and Anr. v.

Central Administrative Tribunal, Allahabad and Ors. in Writ Petition No. 23351 of 2003 decided on 23.5.2003, Jadwati Devi and Ors. v. State Bank of India in Special Appeal No. 447 of 1999 decided on 27.7.1999 and Anand Kumar Vs. Union of India (UOI) and Others, , as was well as decisions of learned Single Judge in Anurag Yadav v. Chief General Manager, State Bank of India, Lucknow and Ors. in Writ Petition No. 5659 of 2000 decided on 1.4.2002. and Kishore Singh Vs. State Bank of India, Kanpur and another, . In these decisions the Division Benches have denied compassionate appointment where the financial condition of the dependents, did not justify any such appointments.

4. There is series of decisions of Apex Court which gives ample guidelines in these matter. An extract from the decision given in Om Praksh Ram and Anr. v. Central Administrative Tribunal, Allahabad and Ors. is quoted as below:

In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , the Apex Court held as under:

It can be stated unequivocally that in all claims for appointment on compassionate ground, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

5. The aforesaid judgment was approved and the principle laid down therein was reiterated by the Hon''ble Supreme Court in Smt. Phoolwati Vs. Union of India and Others, .

In Umesh Kumar Nagpal Vs. State of Haryana and Others, , the Hon''ble Apex Court has considered the nature of the right which a dependent can claim while seeking employment on compassionate ground. The Court has observed as under:

It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in-harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the

dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate 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 or the public authority concerned 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 to be offered to the eligible member of the family....

...The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose, it must be remembered in this connection that as against the destitute family of the deceased, there are millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.... Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased.... The decision does not justify compassionate employment either as a matter of course.... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.... The consideration for such employment is not a vested right.... The object being to enable the family to get over the financial crisis.

(Emphasis added).

6. The same view has been reiterated in *Jagdish Prasad Vs. State of Bihar and Another*, *State of Bihar and others etc. Vs. Samsuz Zoha etc.*, *Himachal Road Transport Corporation Vs. Dinesh Kumar*, and *Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai* 1997 (76) FLR 933 (SC). It has categorically been held that compassionate employment cannot be claimed as a matter of course not being a vested right.

7. In *Haryana State Electricity Board and Anr. v. Hakim Singh* 1997 (77) FLR 768 (SC), the Hon'ble Apex Court placed reliance upon the judgments referred to above and observed that the object of providing for compassionate employment is only to relieve, the family from financial hardship, therefore, an "ameliorating relief should not be taken as opening alternative mode of recruitment to public employment.

Similarly, in *Haryana State Electricity Board v. Naresh Tanwar and Anr.* 1996 (72) FLR 819 (SC), the Hon'ble Court reiterated and followed the law laid down in *Umesh Nagpal's case* (supra) and directed the applicants involved therein to

apply for employment on compassionate ground "by giving full details of the family circumstances and the economic condition."

In *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, , the Apex Court has observed as under:

The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both the ends meet, a provision is made for giving faithful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provision, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds for the dependant of a deceased employee.

(Emphasis added).

In *Chairman, Bihar Rajya Vidyaut Board v. Chhathu Ram* (1999) 5 SCC 678, the Hon"ble Supreme Court held that in absence of the statutory provisions, an adopted son cannot claim appointment on compassionate ground. Similarly, in *General Secretary, American Express Bank Union v. American Express Bank Ltd.* (1999) SCC 1235, the Hon"ble Supreme Court held that mere adoption of recruitment policy in pursuance of a Settlement between the union and the employer for compassionate employment of the specified categories of relations of employees on their retirement, death or incapacitation, cannot be enforced unless adopted by the employer by bringing the Standing Order/Statutory Rule. Similarly, in *West Bengal State Electricity Board v. Sameer Kumar Sarkar* 1999 (83) FLR 506 (SC), the Hon"ble Apex Court held that embargo on compassionate employment in case of death of employee within two years prior to reaching the age of superannuation, was not invalid.

In *Sanjay Kumar Vs. The State of Bihar and Others*, , the Hon"ble Supreme Court again reiterated that the purpose of the rules providing for compassionate employment is only to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood, of but such an appointment

cannot be held as if a reservation for the dependents of the deceased Government servant who died in harness. In *Regional Manager, A.P.S.R.T., Nellor v. C.M. Pawana Kumari* AIR 2001 SC 4779, the Apex Court held that direction cannot be issued to appoint a person on compassionate ground de hors the scheme framed by the employer not the Court has a power to modify the scheme or rules framed in this regard. Similar view has been reiterated in the *Divisional Manager, A.P.S.R.T.C. v. K. Radha Krishna* AIR 2001 SC 5190, while deciding a case of appointment on compassionate ground under "Children Quota provided under the circular issued by the Corporation.

In *Surya Kant Kadam Vs. State of Karnataka and Others*, , the Apex Court held that in absence of any statutory rules, appointment on compassionate ground can be governed by the executive instructions and in spite of the fact that the said instructions may not have a statutory force, the same are bound to be observed by the employer.

In *State of Haryana and Others Vs. Vipin Kumar*, , the Apex Court held that compassionate employment is not given to offer a status on a family and no person can claim to have the same post and if rules/executive instructions provide that appointment shall be made on one stage below, it can be made not only next below post but to any other lower post as the rules provide only that the appointment may be offered at least one step below the post the deceased Government was holding and there can be no bar in offering still a lower post for the reason that the purpose of appointment on compassionate ground is to redeem the family from financial constraints and not to confer any other benefit or status.

In *Steel Authority of India Ltd. v. Awadesh Singh (sic)*, the Hon"ble Supreme Court held that if rule prohibits an appointment on compassionate ground if any other member of the family is already in service, the said rule is valid and no direction can be issued against such a scheme.

8. While reiterating the purpose of making appointment on compassionate ground, the Hon"ble Supreme Court, in *Haryana State Electricity Board v. Krishna Devi (sic)*, held that the main object behind giving such employment is to provide immediate financial, help to the family of the deceased employee. Such appointment cannot be made in absence of Rules or Instructions. Application for such employment must be made within the period prescribed by the Rules/Instructions. Application made at belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The object and purpose of compassionate appointment as stated in the aforesaid Apex Court's decision is to tide over immediate financial crises faced by the dependent of the deceased. The appointment is not given as a matter of right of employment. It is an exception to the general rule to provide immediate relief to the family and to take care of financial hardships suffered by the family.

10. Although in Dhiraj Kumar, the judgment of Umesh Kumar Nagpal and Balvir Kaur, has been referred to but the said judgment does not take into account the long chain of established principles of law of compassionate appointments laid down by judgments of Supreme Court, as well as the four Division Bench decision which were rendered earlier to the judgment in Dhiraj Kumar Dixist's case.

11. I have also considered the financial means of the family. On the facts in the case, I find that the petitioner has obtained loan for residential plot and has recurring income of Rs. 4,195/- as pension and additional income of family pension from me Army which can be granted to the petitioner's mother if she pursues the matter, The family, therefore, is riot under the financial distress and cannot be said to be in such a condition that a compassionate appointment must be given to the petitioner. A compassionate appointment is not a hereditary right. In the present case the facts do not support petitioner's claim.

The writ petition is dismissed.