

(2013) 07 MP CK 0351
In the Madhya Pradesh High Court
Case No : Writ Appeal No. 515 of 2011

Smt. Nirmal Dubey

APPELLANT

Vs

Punjab National Bank and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2(1)

Citation : (2014) 3 MPLJ 709

Hon'ble Judges : Shantanu Kemkar, J; Mool Chand Garg, J

Bench : Division Bench

Advocate : V.P. Saraf, for the Appellant; H.Y. Mehta, Learned Counsel for Bank, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—This intra court appeal u/s 2(1) of the Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 is directed against the order dated 09.08.2011 passed by the learned Single Judge of this Court in Writ Petition No. 364/2009 (s). Dilip Dubey, husband of appellant No. 1 and father of appellant No. 2, was working with the respondent-Punjab National Bank on the post of Cashier. He died in harness on 18.04.2000. An application was submitted by appellant No. 1 before the Bank for making appointment of appellant No. 2, on compassionate basis. The application was rejected on 14.08.2001. The said order passed by the Bank rejecting the prayer for compassionate appointment was set aside by this Court vide order dated 06.05.2008 passed in Writ Petition No. 19/2001 and directed the Bank to reconsider the appellant's/writ petitioner's prayer for compassionate appointment and pass a speaking order.

2. In terms of the said directions issued by this Court, the Bank reconsidered the application for compassionate appointment and rejected the same vide order dated 04.08.2008. Feeling aggrieved, the appellants filed the aforesaid writ

petition. Learned Single Judge, after considering the contentions made by the parties, placing reliance on a judgment passed by this Court in the case of Sushma Yadav Vs. State Bank of Indore and another, dismissed the writ petition. Aggrieved, the appellants have filed this intra court appeal.

3. It has been contended by Shri V.P. Saraf, learned counsel for the appellants that the order dated 04.08.2008 passed by the Bank is discriminatory in nature. According to him, various other applicants for compassionate appointment namely Manjula Pandya, Rajesh Mishra, Geetali Tanksali and Renu Thawani have been offered compassionate appointment, though their financial condition was better than that of the appellants.

4. Shri H.Y. Mehta, learned counsel appearing for the Bank has supported the order passed by the Bank, as also the order passed by the writ Court, dismissing the writ petition. He submitted that keeping in view the loan liabilities on the other applicants, as detailed in the reply submitted before this Court in terms of the order dated 18.07.2012; they were found to be financially weak as compared to the appellants. According to him, the criteria fixed for grant of compassionate appointment, which includes family pension, gratuity amount received, employee's/employer's contribution to provident fund, any compensation paid by the Bank or its welfare fund, proceeds of LIC Policy and other investments of the deceased employee, income for family from other sources, employment of other family members and size of the family and liabilities, if any, has to be considered, while deciding such application. He submitted that there cannot be two similar cases where there appear exactly similar features, financial data and family backgrounds.

5. It has now been well settled and there cannot be any dispute that compassionate appointment is exception to the general rule of making appointment in public services on the basis of open invitation of application and merit. Exception has been carved out to support the dependents of the employee died in harness and living his/her family in penury, without any means of livelihood. In the case of State Bank of India and Others Vs. Jaspal Kaur, the Supreme Court has held that the main criteria for appointment on compassionate basis should be the financial condition of the family of the deceased person. Unless the financial condition is entirely penury, such appointment cannot be made. The scheme of the Bank (Annexure P/8) regarding compassionate appointment also provides that compassionate appointment is to be made, keeping in view the financial condition of the family left behind by the deceased employee.

6. Taking into consideration the legal position and the scheme framed by the Bank, we have examined the order dated 04.08.2008 passed by the General Manager of the Bank rejecting the application of the appellants for compassionate appointment. The relevant portion of which reads thus:

5. I have carefully examined the aforesaid submissions made by Smt. Nirmal

Dubey and Shri Gaurav Dubey in their representation dated Nil. I find from the records that the family had received a sum of Rs. 2,16,463/- by way of terminal dues etc. after the unfortunate death of Shri Dilip Dubey. As Shri Dubey had opted for pension, the family was also in receipt of family pension of Rs. 3606/- p.m. I also observe that the gross salary of Late Shri Dilip Dubey was Rs. 10927.70 p.m. and the net carry home salary was Rs. 7698.70 p.m. at the time of death. Having regard to these facts and also having regard to the fact that the family was living in its ancestral home, I am of the view that the condition of the family was not indigent warranting appointment of Shri Gaurav Dubey in the Bank on compassionate grounds in terms of the then prevailing scheme in the Bank. It is also important to note that the object of the then prevailing scheme was to consider compassionate appointment to the dependent of an employee dying in harness leaving his family without any means of livelihood. It cannot be said that the family of the deceased employee in the present case, had no means of livelihood.

As regards the submission of Smt. Nirmal Dubey and Shri Gaurav Dubey that their financial condition is not such as to lead a convenient life according to the status to which they were accustomed, I may state that as per the object of the prevailing scheme under PD Cir. letter No. 6/97, compassionate employment to the dependent of an employee dying in harness, is to be considered where the family is without any means of livelihood. Mere death of an employee in harness does not entitle his dependents to such employment.

7. In the case of Sushma (supra) after taking into consideration the law laid down by the Supreme Court in the case of State Bank of India and others v. Jaspal Kaur (supra), this Court has held that the Court should not normally interfere with the decision of the Competent Authority in regard to the fact as to whether the deceased employee left his family in penury and without any means of livelihood. It is the job of the specially constituted authorities since they are better equipped to decide the facts of the case and their objective findings arrived on appreciation of full facts should not be interfered into by the Courts.

8. On going through the reply submitted by the Bank, we find that the details about the loan liabilities of other persons, who had been granted compassionate appointment was considered for giving them appointment whereas the appellants did not furnish any cogent material which could be relied upon to record satisfaction about their loan liability. The said statement about loan liability has not even been countered by the appellants. In the circumstances, no fault can be found in the order passed by the writ Court.

9. In the present case, the findings of the Bank, as extracted above, makes it clear that the appellants' case has been objectively considered and a conclusion has been arrived at negating their claim. Keeping in view the aforesaid, we find no infirmity in the order passed by the respondent-Bank, which has been upheld by the learned Single Judge. Therefore, the writ appeal deserves to be and is hereby dismissed with no order as to costs.