
(2008) 03 CHH CK 0032
In the Chhattisgarh High Court

Smt. Sukanti Naik

APPELLANT

Vs

The Chief General Manager and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Citation : (2008) 2 MPHT 73

Hon'ble Judges : Rajeev Gupta, C.J.;Sunil Kumar Sinha, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Sunil Kumar Sinha, J.—Being aggrieved with the order dated 27-2-2007 passed by the learned Single Judge in Writ Petition No. 5715/2005, the appellant/petitioner has preferred this writ appeal.

2. The brief facts are that the husband of the petitioner namely Shri Bhaskar Naik was working as a Security Guard in the State Bank of India, Main Branch, Jagdalpur, Distt. Bastar. He died in harness on 6-7-2000 leaving behind the petitioner (wife), 3 daughters and one minor son. After his death, the petitioner made an application for her appointment on compassionate grounds. Her application was processed and ultimately vide order dated 22-7-2005, the same was dismissed.

3. The contention of the respondents before the Single Judge was that there is a Scheme for appointment on compassionate ground in terms of the guidelines received from the Government of India and the Indian Banks Association, according to which, the financial condition of the family has to be determined by the Competent Authorities before granting such appointment and if the authorities are satisfied that the family of the deceased is not in penury and the monthly income of the family vis-a-vis its size was adequate to tide over the immediate financial crisis caused by the death of the employee, then, the application for compassionate appointment may not be accepted. They specifically pleaded that in case of the petitioner, the family of the deceased

employee consisted of 5 dependent members; they have been paid terminal benefits comprising of Provident Fund Rs. 62,760/-, gratuity Rs. 28,147/- and leave encashment Rs. 12,839/-. Besides the above, petitioner's family received amount from the credit society Rs. 70,600/- and the family has also received Rs. 1,57,531/- after deductions of Rs. 16,815/- towards the loan liabilities. They further pleaded that the petitioner's family is also being paid defence family pension of Rs. 1677/- per month and therefore, in terms of Clause 10 of the said Scheme, the notional monthly income of the petitioner's family was computed as Rs. 2,798/-. The authorities determined that the deceased husband had drawn the last gross salary of Rs. 5,719/- and the net salary after various deductions was paid as Rs. 3,577/- and the family of the deceased consisting of six members was managed with the take home salary of Rs. 3,557/-, therefore, in the present situation, a family of 5 members would certainly be managed with the monthly income computed as above, therefore, the application was rejected holding that the family of the deceased was not in penury.

4. The learned Single Judge considering the above grounds with reference to the provisions of Clause 10 of the Scheme recorded the finding that the authorities have rightly come to the conclusion that the family of the deceased earns sufficient income to maintain themselves, therefore, the petitioner was not entitled to compassionate appointment in terms of the provisions of Clause 10 of the Scheme.

5. Counsel for the appellant argued that the learned Single Judge has not dealt with the matter properly and has not considered the hardship caused due to actual financial burden suddenly incurred on the family of the deceased on account of his death. He also argued that the order is against the spirit of provisions for compassionate appointment, which is made for giving a financial assistance and support to the family of an employee who died in harness.

6. On the other hand, Counsel for the respondents opposed these arguments and supported the order passed by the learned Single Judge.

7. We have heard learned Counsel for the parties at length and have also perused the records of the writ appeal.

8. It is not disputed that in the present case, the matter of compassionate appointment is to be considered in accordance with the Scheme called as Scheme for Appointment on Compassionate Grounds for dependents of Deceased Employees/Employees retired on Medical Grounds (referred to as the Scheme in the order) and nothing can be done by the discretion of any authority de hors the Scheme. Clause 1 of the Scheme deals with the object saying that object of granting compassionate appointment is to enable the family to tide over the sudden crisis due to death of the sole bread winner. The mere death of an employee in harness does not entitle his family to such a source 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 clause also refers to the judgment of Supreme Court rendered in the matter of Umesh Kumar Nagpal Vs. State of Haryana and Others, .

9. Clause 10 of the Scheme deals with regard to the financial condition of the family. It reads as under:

10. 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 the 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 on 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 other sources
- (viii) Size of family and verifiable liabilities, in any.

10. According to the return filed by the Bank, a computation of income in accordance with the provisions of Clause 10 has been done with an intention to find out the financial condition of the family and ultimately giving details about the terminal benefits received by the dependents as also the pensionary benefits which are being given to them, a notional monthly income has been determined and income of the family as on today and the take home salary of the deceased has been compared and a finding has been recorded that looking to the number of family members existing as on today, the present financial benefits are proportionally sufficient to manage the family of the deceased and then only the application filed by the appellant/petitioner has been rejected.

11. In the matter of State Bank of India and Another Vs. Somvir Singh, , the Supreme Court while dealing with the scope of judicial review held that High Courts are not supposed to undertake any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its survival and whether it had been left in penury or without any means of livelihood. In the said case, the Apex Court observed that the only question, the High Court could have adverted itself 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 ? The Apex Court said that it is well settled that the hardship of the dependent does not entitle one to compassionate appointment de hors the scheme or the statutory provisions as the case may be. While observing further it was said that the income of the family from all sources is required to be taken into consideration according to the scheme and then the matter is to be decided. The decision rendered in Umesh Kumar Nagpal's case (supra) has also been referred by the Apex Court in this judgment.

12. In the matter of General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, , the Apex Court said that the retrial (sic: retiral) benefits received by the heirs of the deceased employee are to be considered and then it has to be determined that whether the family of the deceased had been left in penury or without any means of livelihood.

13. If we apply the above principles in the facts and circumstances of the present case, it would appear that the application of the petitioner has been scrutinized in accordance with the provisions of Clause 10 of the Scheme and every requirement set forth in Clause 10 has been satisfied by the Bank while considering the application of the petitioner. In the jurisdiction of judicial review, we do not find any irregularity or illegality committed by the Bank Authorities in the scrutiny of the application filed by the petitioner. Each and every source of income as required under Clause 10 has been categorically considered, the reference of which has been made in Para 6 of the impugned order. Therefore, on this count, the authority cannot be faulted with.

14. In the matter of Punjab National Bank and Others Vs. Ashwini Kumar Taneja, , the Apex Court held that the appointment on the compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. Basic intention is 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.

15. The Apex Court further -held in the matter of I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, , that the public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by the Supreme Court, the same must be strictly complied with. The Apex Court said that the appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

16. Therefore, it is clear that on the face of constitutional mandate regarding

equality of opportunity in the matter of public employment and appointment to a public office under the State, no discrimination is possible and the appointment on compassionate ground is an exception to the above principle that the recruitment to public services is to be made in a transparent and accountable manner providing equal opportunity to the eligible persons and if the employer is considering a case under the exception that has to be dealt with in accordance with the provisions especially made for the same.

17. In the present case, as stated above, the Bank Authorities have considered the case of the petitioner giving strict meaning to the provisions made for the same and nothing on generality or discretions would be possible to consider the case of the petitioner. The learned Single Judge has rightly held that the authorities have taken a proper decision and has rightly dismissed the petition filed by the petitioner. We do not find any reason to interfere with the order passed by the learned Single Judge.

18. The appeal has no merits and the same is accordingly dismissed.

19. No costs.