
(2005) 09 KAR CK 0075
In the Karnataka High Court
Case No : Writ Petition No. 34505 of 2003

Smt. Usha P. Murari

APPELLANT

Vs

Canara Bank

RESPONDENT

Date of Decision : 29-09-2005

Acts Referred:

Citation : (2005) 4 KCCR 2789

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : P.A. Kulkarni, for the Appellant; D.L.N. Rao, for the Respondent

Judgement

R. Gururajan, J.—Petitioner Smt. Usha P. Murari is before me seeking for a writ of certiorari to quash an endorsement dated 17.7.2002 at Annexure-B passed by the Respondent -Bank, with a further direction directing the Respondent -Bank to consider the case of the Petitioner for appointment on compassion grounds.

2. Petitioner's husband died while in service with the Respondent -Bank at Bidar. Petitioner made application seeking for compassionate employment. She has the requisite qualification. Her husband belongs to Scheduled Caste. Petitioner at present is residing at Nipani with her brother. Petitioner is getting family pension of Rs. 1,440/-. According to the Respondent there exists no indigent circumstances to consider the case of the Petitioner for appointment on compassionate grounds. Respondent therefore rejected the case of the Petitioner in terms of Annexure-B. Annexure-B is challenged in this petition.

3. Respondent -Bank has filed a detailed objections. Bank says that the scheme of employment is extended to the dependents in the indigent circumstances to over the financial difficulties on account of sudden stoppage of main source of income when employee dies or becomes totally and permanently disabled while in harness. The scheme provides for employment in the event of unblemished records of the deceased employee. Petitioner's husband was punished for misconduct touching upon the integrity and honesty. Petitioner is therefore

ineligible under the scheme according to the Respondent . Respondent admits that the competent authority did look the same, but to safeguard the dignity it was not specifically mentioned in the order impugned. Bank wants dismissal of the petition.

4. Sri Kulkarni, learned Counsel for the Petitioner would invite my attention to the reasons mentioned in Annexure-B and further argues that the said reasons cannot be accepted in the light of binding judgment of the Supreme Court in Balbir Kaur and Anr. v. Steel Authority of India Limited and Ors. Etc. AIR 2000 SC 1596.

5. Per contra, Sri D.L.N. Rao, learned Counsel for the Respondent would argue that the Petitioner is ineligible for employment in terms of the Scheme. He refers to Clause 12.3 of the Scheme of Employment on Compassionate Grounds to say that the Petitioner's husband suffered the proceedings. He relies on a judgment of the Supreme Court in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, .

6. After hearing, I have carefully considered the material on record.

7. Admitted facts would reveal of a request of the Petitioner for compassionate employment and its rejection in terms of the impugned endorsement. In the impugned endorsement, Bank would say that the Petitioner has received terminal benefits of Rs. 1.81 lakhs including the Insurance Claim in addition to family pension. Rejection was not on the account of any reason in terms of Clause 12.3 of the Scheme. Same is admitted even in the objection statement.

8. Let me see as to whether the reasonings in the endorsement are acceptable in the given circumstances. The Supreme Court in the case of Balbir Kaur and Anr. v. Steel Authority of India Limited and Ors. Etc. AIR 2000 SC 1596 had an occasion to consider a similar circumstance in its judgment. In para-15 of its judgment, the Supreme Court has ruled as under:

15. It is upon consideration of the above noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the Provident Fund but as regards the Gratuity amount, be it noted that there is a mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependents in the event of his early death - the introduction of Family Pension Scheme by which the employee is compelled to deposit the Gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs or the nominees of the concerned employees but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with the adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which

this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.

9. The present endorsement in the light of the Apex Court judgment cannot stand the test of law. However, I must notice the objections raised by Sri D.L.N. Rao, learned Senior Counsel, with regard to non-availability in the light of Clause 12.3 of the Scheme. Clause 12.3 of the Scheme would state if the deceased employee is issued with any charge sheet during his life time or was being contemplated at the time of the death, request for employment on compassionate grounds would be considered purely at the discretion of the Bank depending upon the merits of the case and subject to permission from the Ministry of Finance, Government of India. Prohibition under Clause 12.3. is not absolute in terms of the Scheme in the matter of compassionate employment. Discretion is available. Admittedly, in the case on hand, rejection is not on account of prohibition in terms of Clause 12.3. In the absence of rejection not in terms of Clause 12.3, it is not possible for this Court to re-introduce Clause 12.3 as sought to be argued by the learned Counsel for the Respondent . In fact, reasons are provided in the statement of objections. Reasons as stated in the objection statement is one of safeguarding dignity of the deceased. This reason is not acceptable to me. It does not appeal to me. The plea has been probably taken for the purpose of this case.

10. Sri D.L.N. Rao, learned Senior Counsel for the Respondent refers to two judgments of the Apex Court in terms of the submission. In General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, , the Apex Court considered the factum of the family of the deceased and the Court notices on facts that the family was well placed in terms of the findings in the said judgment. The said judgment is not therefore available. In so far as the decision of the Apex Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, , it is to be seen that the Court was considering the scheme available in that case. In fact, in that very case, the Supreme Court has ruled that the Respondent 's case has to be considered sympathetically under any scheme or by any administrative decision in accordance with law. These two judgments do not support the Respondent and they are not applicable to the facts of the case.

11. In the circumstances and in terms of the reasons for rejection and also in the light of the judgment of the Supreme Court in Balbir Kaur case (supra), I deem it proper to accept this petition by way of setting aside Annexure-B. Respondent is directed to consider the case of the Petitioner for compassionate employment in accordance with law in terms of this order within eight weeks from the date of receipt of a copy of this order. Ordered accordingly. No costs.