
(2003) 12 MP CK 0029

In the Madhya Pradesh High Court

Case No : Letters Patent Appeal No. 471 of 2003

State Bank of India and Others

APPELLANT

Vs

Akeel Ahmad Khan

RESPONDENT

Date of Decision : 15-12-2003

Acts Referred:

Citation : (2004) 1 MPHT 531

Hon'ble Judges : Kumar Rajaratnam, C.J.;Dipak Misra, J

Bench : Division Bench

Advocate : Rajendra Tiwari and Vivek Ranjan Pandey, for the Appellant; Rohit Arya, for the Respondent

Judgement

Kumar Rajaratnam, C.J.—This L.P.A. is taken up for final disposal with the consent of parties.

2. The person who sought for compassionate appointment is, the son of the deceased/employee (hereinafter referred to as "deceased") who had worked in the appellant/bank.

3. The deceased was initially appointed on the post of Messenger. Thereafter, he was promoted to the clerical cadre and subsequently he reached to the post of Deputy Head Cashier.

4. Deceased died as a result of cancer on 27-4-2000 while he was working in the post of Deputy Head Cashier.

5. After the death of the deceased, the respondent, who is the only son of the deceased, sought for compassionate appointment in accordance with the scheme. It is common ground that the respondent is a graduate.

6. By a letter dated 27-12-2000 (Annexure P-7), the Bank declined request for compassionate appointment.

7. Aggrieved by the rejection of his application, the respondent moved the

learned Single Judge.

8. The learned Single Judge in a detailed order took account of the fact that the deceased was suffering from cancer since 1974 till his demise on 27-2-2000 and also took into account that the family had to incur heavy expenditure in treatment and set aside the impugned order (Annexure P-7) and directed the Bank to reconsider the matter for compassionate appointment.

9. Aggrieved by the order of learned Single Judge passed in W.P. No. 2410/2001, dated 23-6-2003 = 2003(4) M.P.H.T. 167, the Bank is before us in this appeal.

10. Heard Mr. Rajendra Tiwari, learned Senior Counsel for the appellant/Bank and Mr. Rohit Arya, learned Counsel for the respondent.

11. After hearing the parties, this Court passed an interim order dated 14-11-2003, which reads as follows :--

"The learned Single Judge after exhaustively dealing with the scope of the compassionate appointment and relying on number of pronouncement of the Supreme Court, came to the conclusion that, the rejection of claim for compassionate appointment of the respondent was not based on a sound reasoning and directed the appellant/Bank to reconsider the matter within a period of three months. The case of the Bank was that the father of the respondent was Deputy head Cashier. Deceased's family was receiving family pension at the rate of Rs. 6,100/- per month and had received all the terminal benefits. The case of the first respondent, who sought compassionate appointment, was that his father died of "Cancer" and the family suffered huge financial loss because of long treatment and the amount received against the gratuity and Provident Fund has been utilized to meet out the medical expenses and it was only to tide over the sudden crises due to the death, of the bread winner, the respondent sought for compassionate appointment.

Aggrieved by the order of the learned Single Judge in directing the case of the respondent to consider for compassionate appointment, the Bank has preferred this appeal.

We have heard the learned Senior Counsel for the Bank for some time. We have also heard the Counsel for the respondent. We requested the appellant/Bank to consider the case for compassionate appointment even on a one-third salary Time Scale" in Class IV employment although he is a qualified graduate. We were rather staggered by the conduct of the Chief Manager who shouted over the head of the Senior Counsel that such a request by the Court can not be considered. We, therefore, directed the appellant/Bank to file an affidavit as to why the respondent can not be considered for compassionate appointment. An affidavit dated 14-11-2003 is filed by the Chief Manager. It was stated in the affidavit that the respondent's family was earning an income of Rs. 11,100/- per month on the basis of the terminal benefits given to the deceased (father of the respondent) and that the respondent's family is getting an income more than

the monthly salary last paid to the deceased. The extract of Paragraph 4 is as follows :--

"That it is respectfully submitted that while passing the order (Annexure A), the competent authority has taken into account all the relevant material available on the Bank's record, As per the record, the respondent's family's monthly income from pension and interest on the investment of terminal benefits is about Rs. 11,100/- per month which is obviously more than the last take home salary of the father of the respondent. If the family was managing with a take home monthly salary of Rs. 9,811/- per month, it can not be said that the income of the family has shrunk to the extent that it can not manage its affairs without compassionate appointment."

Mr. Rohil Arya, learned Counsel for the respondent submitted that the entire savings arising out of the terminal benefit have been spent on medical expenses of the deceased, who died of cancer. It was also submitted that the Chief Manager Mr. P.K. Nath, who had shown in an affidavit dated 14-11-2003, has not spoken the whole truth therein. It was further submitted by Mr. Arya that one Mr. K.J. Rajgopalan, Assistant Manager die din service and his wife has been given compassionate appointment and has been posted at the place she sought for, at Madras. One Hari Shankar Parashar, son of one Mr. Ravi Shankar Parashar, who was declared unfit for service, has been given compassionate appointment in September, 2001 and is posted at Shivpuri and in the case of Mr. Javed Akhtar, General Manager, Delhi Circle, his wife has been given compassionate appointment.

It is also submitted by Mr. Arya, learned Counsel for the respondent that the deceased (father of the respondent) has rendered loyal service to the Bank.

It appears to us that in spite of orders of the learned Single Judge, the respondent is being targeted to hostile discrimination. After all, the learned Single Judge, after exhaustively dealing with the case, rightly directed the consideration of the case of the respondent in accordance with the Scheme.

In view of the averments made by the learned Counsel for the respondent and in view of the fact that Paragraph No. 4 of the affidavit filed by the Chief Manager is bereft of details, we request the Chief Manager to file a fresh affidavit stating as to show he arrived at the calculation of Rs. 11,100/- as the monthly income of the deceased's family and also to state on oath whether those persons mentioned in our order have been given compassionate appointment and under what circumstances. We are inclined to pass this order in view of the fact that the respondent although is a highly qualified graduate was willing to work as a Class IV Peon" on one-third salary which we think is fair and reasonable offer by the respondent.

At the request of Counsel for the appellants, post this matter next Monday, i.e., 24-11-2003."

12. Pursuant to the request made by this Court to reconsider the case of the respondent by our order dated 14-11-2003, the Bank considered the matter over again and rejected his case, even to be appointed as "Class IV Peon"s on a Time Scale".

13. Accordingly the matter is being taken up for final disposal on merits.

14. Shri Tiwari, learned Senior Counsel for the appellant submitted that there was no material on record to show that the deceased was either suffering from cancer for 25 years or he died of cancer. There was also no record to show that the deceased had incurred huge expenses for treatment for cancer. Apart from that, it was submitted by the learned Counsel for the appellant that the total assets the deceased"s family received was Rs. 5,32,429/-and it was also submitted that the wife of the deceased is being paid monthly; (a) family pension of Rs. 6,100/-, (b) Notional interest income from retirement dues Rs. 4,500/- and (c) Rs. 500/- from Family Welfare Scheme. It was submitted that the total income of the family of the deceased comes to Rs. 11,100/- per month. Accordingly, the income of the deceased"s family is sufficiently to meet any situation. In these circumstances, it was vehemently argued by the learned Counsel for the appellant that the learned Single Judge had committed error in seeking the Bank"s reconsideration of the matter for compassionate appointment.

15. Mr. Rohit Arya, learned Counsel for the respondent submitted that the family pension of Rs. 6,100/- was only to be paid to the wife of the deceased for the period of 2000 to 2005 and after 27-4-2005, the family pension will be reduced to Rs. 517/-. This reduction in family pension, according to the Bank, is as per rules in force and it is not denied that the wife of the deceased will get only Rs. 517/- per month from 27-4-2005 and not Rs. 6,100/-.

16. The another aspect of the matter was that the learned Single Judge has clearly given a finding that it is not in dispute that the deceased/employee had been suffering from cancer for a long time.

17. It appears that no material was produced before the Bank at the time of seeking compassionate appointment to show that the family of the deceased had incurred heavy expenditure in the welfare of the deceased and for his medical expenses. Learned Counsel for the respondent further submits that there was no query from the Bank with regard to nature of treatment and total liability that was incurred on account of the medical expenses. The learned Counsel for the respondent submitted that if materials were sought for, it would have been perfectly possible for the respondent and his mother to have produce evidence got show that the deceased had in fact died of cancer and had incurred huge expenses on his treatment. If those expenses are taken into account, it was very clear that from the amount of Rs. 5,32,429/-, a larger portion of that amount must have been spent for the medical expenses of the deceased as observed by the learned Single Judge and certainly the assets of the deceased"s family would have diminished considerably.

18. Unfortunately, neither did the Bank seek for particulars nor did the family of the deceased submit any particulars with respect to the expenses incurred.

19. We have, at the first blush observed in our earlier order dated 11-11-2003 that the matter could have been easily resolved, if the Bank, had adhered to our advice and avoided the protracted litigation by offering a job to the respondent as a Peon. This interlocutory order was made in the ferment hope that this litigation would come to an end.

20. We also had hoped that the Bank would take into account the fact that the deceased had suffered from cancer for many years and ultimately succumbed to it. The treatment of cancer is not available in Government Hospitals, therefore, it can not be ruled out that the family of the deceased may have incurred heavy expenditure.

21. But alas, our advice to the Bank to employ the son of the: deceased as a peon, although he was a graduate, fell on deaf ear.

22. The Bank Manager, who was present in the Court, was extremely discourteous in raising his voice over the head of the Senior Counsel, who represented him. All that we required the Bank to do is to reconsider the case for compassionate appointment in accordance with the Scheme as was directed by the learned Single Judge.

23. Number of instances were also cited by the Counsel for the respondent that under similar circumstances compassionate appointment was given. Be that as it may, we affirm the order of the learned Single Judge and direct the appellants to seriously consider the case of the respondent for compassionate appointment, as directed by the learned Single Judge. The respondent shall give a representation, within four weeks from the date of receipt of this order and the appellants-Bank shall dispose of the representation in terms of the order passed by the learned Single Judge and by us, as expeditiously as possible at any rate within eight weeks from the date of receipt of the representation.

24. With the aforesaid direction, writ petition is disposed of. There shall be no order as to costs.