

(2004) 11 KL CK 0086
In the High Court Of Kerala
Case No : W.A. No. 2972 of 2002

State Bank of Travancore and Others

APPELLANT

Vs

Judy Thomas

RESPONDENT

Date of Decision : 06-11-2004

Acts Referred:

Citation : (2004) 1 KLJ 242

Hon'ble Judges : K.P. Balachandran, J;J.B. Koshy, J

Bench : Division Bench

Advocate : M. Pathrose Mathai and Saji Varghese, for the Appellant; K.P. Satheesan, K.K. Gopinathan Nair, M.R. Jayaprasad, N.V. Ajayakumar, K.K. Rajeev and S. Vibheeshnan, for the Respondent

Judgement

Koshy, J.—Father of the respondent (petitioner in O.P.), who was an employee of the appellant bank, expired on 28-06-1999. Respondent filed Ext.P1 application for appointment in the dying-in-harness scheme. Application in the prescribed form was submitted on 20-09-1999. It was rejected by Ext.P8 on the ground of mother's income and overage of the petitioner. Ext.P8 reads as follows:

With reference to the above, we are advised by our Head Office that the object of granting compassionate appointment is to enable the family to tide over the sudden crisis due to the death of the bread-winner. The object is to offer compassionate appointment only when the Bank is satisfied that the financial condition of the family will not be able to meet the crisis. Considering the family income of Smt. Josephine Thomas, wife of late Sri. K.F. Thomas, the competent authority has rejected your representation. Moreover, you are overaged for compassionate appointment.

In the counter affidavit, it was stated that mother's income and financial position of the family was calculated taking into account the family pension and other dues received on account of the death of the father. It was averred as follows:

....Accordingly the financial condition of the family is determined by taking into

account the family pension, the gratuity amount received, payment from the provident fund, income of family from other sources and size of the family and liabilities. It is submitted that a sum of Rs.2,24,296/- has been paid as gratuity payable to petitioner's father. A sum of Rs.4,36,095/- has been paid as provident fund. Rs. 1,06,320/- has been paid as leave encashment. An amount of Rs.45,165/- has been recovered against the balance amount of the housing loan availed of by petitioner's father. The petitioner and his mother are getting a monthly pension of Rs.4,135/-. Petitioners have an investment of Rs.30,000/- also. They are also getting interest from the aforementioned amounts received by them. It is respectfully submitted that the financial condition of the petitioner's family cannot be said to be in penury. The monthly pension of the petitioner's family is more than Rs.4,000/- and the admitted income and the interest from the terminal and other benefits of more than Rs. Seven lakhs will clearly establish that the petitioner's family is not in financially difficult condition so as to deserve compassionate appointment under the dying-in-harness scheme.

The learned single Judge held that the Financial position of the Family because mother received terminal benefits on the death of her husband, cannot be a ground for rejecting the application. The learned Judge held as follows:

.....The family pension now received will be progressively reduced with the advancement of years. Further, the Apex Court in the decision in Balbir Kaur v. Steel Authority of India ((2000) 8 SCC 493) has held that the terminal benefits paid to the dependents of the employee cannot be treated as a substitute for appointment under the dying-in-harness scheme.

The employer has got a right to relax the age for appointment under the dying-in-harness Scheme and on this ground also, petitioner cannot be denied employment. It was held by the learned single Judge as follows:

The age limit for a candidate claiming appointment under the dying-in-harness scheme can be relaxed by the Managing Director under Clause 6(e)(iv) of the Scheme. The said power to grant relaxation is a power coupled with a duty to grant relaxation in appropriate case.

Third ground urged before the Court was that applicant's father was about to retire at the time of his death. Looking by his actual date of birth, he has attained the date of superannuation. But, he was on extension of service upto 30-06-1999, that is, end of the month. On that ground alone, his dependents are not entitled to the benefit of dying-in-harness Scheme. Further, it is submitted that because of the death of petitioner's father just two days prior to the actual date of retirement, no difficulties would be caused to the family. The learned Single Judge found that it was not mentioned in the order and before passing Ext.P8, petitioner was not heard. The Court directed to reconsider the application and grant a hearing to the petitioner. Learned Judge held as follows:

.....before rejecting the petitioner's application, he was not heard. Further, the impugned orders are bald and cryptic without giving proper reasons. Even the

reasons regarding the financial position of the petitioner's mother are those supplied through the counter affidavit. For all the above reasons, Exts.P8 and P10 are quashed. The matter is remitted to the first respondent for fresh decision in accordance with law after affording an opportunity of being heard to the petitioner in the light of the observations contained hereinabove.

It is submitted by the counsel for the appellant that the observations of the learned Judge regarding financial ability of the family and need for compassionate appointment in dying-in-harness scheme are against the decisions of the Apex Court and even though it is a case of remand only, a finding on this aspect is very much pivotal. It is well-settled law that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made 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. Such exceptional appointment can be made only according to rules, regulations or administrative instructions as held by the Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, . Appellant bank is a public sector bank. There is a scheme for appointment on compassionate grounds for dependents of deceased employees in the bank. A copy of the Scheme was produced along with a Memo dated "Object" of the Scheme is mentioned as follows:

The object of granting compassionate appointment is to enable the family to tide over the sudden crisis due to the death of the bread winner. The death of an employee in harness does not entitle the family to such a 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.

Clause (1) of the Scheme deals with how financial condition of the family shall be considered as follows:

Financial condition of the family Appointment in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of 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 or its 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 otherwise
- (viii) size of the family and liabilities, if any.

The criteria was recommended by Indian Banks' Association and adopted by various public sector banks. Identical schemes in other banks were approved by the Apex Court in *General Manager (D and PB) and Others Vs. Kunti Tiwary and Another*, and *Punjab National Bank and Others Vs. Ashwini Kumar Taneja*, . After considering the identical schemes, the Apex Court in *Punjab National Bank's* case held as follows:

9. One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in *General Manager (D and PB) and Others Vs. Kunti Tiwary and Another*, . It was categorically held that the amounts have to be taken into consideration.

Therefore, in view of the scheme for compassionate appointment in the banks, bank has necessarily to consider the retiral benefits received, size of the family etc. for determining the financial position of the family justifying exceptional appointment. In another establishment, where it is not specified that retiral benefits received also should be considered, the position may be different. But, we are bound to consider the question in accordance with the Scheme in the appellant bank. With regard to the over age, in view of clause (6) (m) (d), five years' exemption can be given and petitioner will be entitled to get exemption as on the date of his application as held by the learned single Judge.

Other grounds relied on in the counter statement supporting rejection of his application were not stated in Ext. P8 and Ext. P8 was not passed after a hearing. On the facts of this case, hearing need not be an oral hearing. Now, the petitioner is aware as to what are the grounds against him. He may make a detailed representation within one month from the date of receipt of a copy of this judgment. On receipt of such a representation, it is for the respondent to consider the entire matter afresh and pass orders according to law in accordance with the Scheme. Since the matter is only remitted, we see no ground to interfere with the order for reconsideration of the matter; but, it should be done strictly according to the Scheme for granting compassionate appointment in the appellant bank. The writ appeal is disposed of accordingly.