
(2004) 08 AHC CK 0171
In the Allahabad High Court
Case No : Special Appeal No. 900 of 2001

Subhash Chandra Yadav

APPELLANT

Vs

State Bank of India and Another

RESPONDENT

Date of Decision : 05-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 5 AWC 4887 : (2005) 1 LLJ 277 : (2004) 3 UPLBEC 2926

Hon'ble Judges : Umeshwar Pandey, J; M. Katju, J

Bench : Division Bench

Advocate : Ashok Khare, Hare Krishna Mishra and Rajendra Prasad Mishra, for the Appellant; Vipin Sinha and S.C., for the Respondent

Final Decision : Allowed

Judgement

M. Katju and Umeshwar Pandey, JJ.—This Special Appeal has been filed against the judgment of the learned Single Judge dated 17.7.2001 by which he has dismissed the Writ Petition.

2. Heard learned Counsel for the parties.

3. The father of the appellant was a gardener (Mali) in the service of the State Bank of India, Main Branch, Allahabad. He died-in-harness on 18.1.1998. The appellant is his son who had applied for appointment under the Dying-in-Harness Rules prevalent in the Bank.

4. By the order of the Chief General Manager dated 2.6.2001 (copy of which is Annexure-1 to the Special Appeal) his application was rejected.

5. A perusal of the order dated 2.6.2001 shows that the appellant's application was rejected on the ground that his family does not appear to be in indigent circumstances as the family members of the deceased have received Rs. 2.69 lacs towards Provident Fund and Gratuity, apart from Family pension. They also own a house and two family members are earning members and only one

daughter in the family is married.

6. Against the aforesaid order, the Writ Petition was filed in which the impugned judgment was given.

7. The learned Single Judge has given a very cursory and cryptic judgment which is as follows :-

"Reasons have been given in the impugned order for refusing relief. Under Article 226 of the Constitution of India this Court cannot examine sufficiency of the material on the basis of which the findings have been recorded. I do not find any infirmity or illegality in the impugned order dated 2.6.2001 passed by the respondent No. 1 and subsequent order dated 21.6.2001 passed by the respondent No. 2 which refuses compassionate appointment on the ground that the family of deceased employee is not in indigent circumstances. It is in accordance with the purpose of grant of compassionate appointment and the bank's policy. Therefore, the writ petition is dismissed."

8. In our opinion the judgment cannot be sustained. It has been held by the Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, , that the grant of family pension does not disentitle one to get compassionate appointment. A similar view was taken by a Division Bench of this Court in State Bank of India and others Vs. Ram Piyarey, .

9. The Division Bench has held that the payment of Rs. 2.69 lacs to the widow cannot be a good ground for rejecting the application for compassionate appointment. Also, the ground of family pension will not disentitle such appointment. Similar view has been taken by another learned Single Judge in Writ Petition No. 35344 of 2001, decided on 19.2.2003.

10. Sri Vipin Sinha, learned Counsel for SBI has stated that the two sons of the deceased are employed. In his argument, he has relied on the observations in the order of Chief General Manager dated 2.6.2001 that two elder sons are earning members, in our opinion, this is a very vague observation. If it is claimed that a person is employed somewhere, then the details must be given as to in which particular establishment he is employed and in what capacity and how much he is earning etc. If a mere vague allegation is made that a person is employed without stating where he is employed and in what capacity then his application for appointment under the Dying-in-Harness Rules, can always be rejected by making such vague assertion. No details have been given even till today, as to where the 2 elder sons are said to be employed. Hence we cannot accept this baseless assertion.

11. The Special Appeal is hence allowed and the impugned judgment dated 17.7.2001 of the learned Single Judge is set aside.

12. Sri Vipin Sinha, learned Counsel for S.B.I., states that the S.B.I., was never given opportunity of filing counter-affidavit either before the learned Single Judge or in this Special Appeal. Hence we are remanding the matter to the

learned Single Judge.

13. Learned Counsel for SBI may file counter-affidavit in the Writ Petition before the learned Single Judge within three weeks from today and we hope and trust that the matter shall be decided by the learned Single Judge very expeditiously thereafter.