
(2002) 05 KL CK 0028
In the High Court Of Kerala
Case No : O.P. No. 9424 of 2000

Suma Mohan

APPELLANT

Vs

Union Bank of India

RESPONDENT

Date of Decision : 27-05-2002

Acts Referred:

Citation : (2002) 94 FLR 516 : (2002) 3 LLJ 696

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : Dinesh Mathew J. Muricken, for the Appellant; A.S.P. Kurup, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioners have filed this Original Petition claiming appointment for the 2nd petitioner under the dying-in-harness scheme in the first respondent Union Bank of India. The brief facts necessary for the disposal of the case are the following:

2. The first petitioner's husband late M.K. Mohanan Pillai was a Clerk/Cashier in the Kottayam Branch of the Union Bank of India. He died in harness on 28.1.1996. The second petitioner is the eldest daughter of late M.K. Mohanan Pillai. The deceased employee left behind another daughter also. The first petitioner and two daughters were the dependants of the said employee. He died of Myloid Leukemia which is an acute form of blood cancer. The petitioners submit that all their earnings were spent for his treatment. Loans were also availed of for the said purpose. Ext. P1 is the scheme governing appointment under the dying-in-harness scheme in the Union Bank of India. The second petitioner had completed eighteen years of age and had passed SSLC and Pre Degree. Therefore, she was eligible to get appointment under Ext. P1 Scheme. So, she submitted Ext. P2 application dated 3.6.1996 claiming appointment as a Clerk in the first respondent bank. The first petitioner who is the widow of the deceased employee and the mother of the second petitioner, has given consent for appointing the second petitioner under the dying-in-harness scheme as per

Ext. P2(a). The second petitioner has given an undertaking as evidenced by Ext. P2(b) that she will look after her mother and younger sister. Even though those applications were submitted in accordance with the scheme, there was no response from the side of the first respondent for about two years. After repeated representations, the Branch Manager of the Kottayam Branch informed the second petitioner by Ext. P3 dated 2.3.1998 that the competent authority has declined the application of the second petitioner for appointment. But the decision of the competent authority was never communicated to the petitioners, even though a request was made for the same. Again, Ext. P4 dated 19.1.1998 was served on the second petitioner stating that the competent authority has rejected her claim for appointment. Again, the petitioners submitted a representation requesting to furnish a copy of the order passed by the competent authority declining the claim of the second petitioner, But, that order was never served on them. Thereafter, the trade union of the Bank employees in which the deceased employee was a member, took up the matter with the Bank. The union submitted Ext. P5 representation espousing the cause of the petitioners. Though the said union made several attempts to get the decision reconsidered, they were of no avail. Therefore, left without any remedy, the petitioners have filed this Original Petition challenging Exts. P3 and P4. They also seek a direction to the respondents to appoint the second petitioner as Clerk in the Bank. The petitioners submit that they were totally depending on the income of the deceased employee for their livelihood. While the second petitioner was denied employment after the death of her father, at least, three persons were appointed under the dying-in-harness scheme and their names are given in paragraph 6 of the Original Petition. So, it is submitted that the action of the management in declining appointment to the second petitioner is arbitrary and discriminatory. It is also submitted that the second petitioner is eligible to get appointment under the dying-in-harness scheme and the rejection of her application is illegal and unreasonable.

3. The respondents have filed a counter affidavit. They have produced Ext. R1 Scheme dated 19.2.1997 which is in fact a copy of Ext. P1 scheme. It is submitted that the second petitioner's claim has been considered in the light of Ext. R1 scheme and according to the Bank, she was found ineligible. The reason for rejection of the second petitioner's claim is that the first petitioner is getting a monthly family pension of Rs. 4,475/- and she has been paid terminal benefits to the tune of Rs. 73,156/34 (Rupees Seventythree thousand one hundred fiftysix and paise thirty four only). The appointments of certain persons pointed out by the petitioners under the dying-in-harness scheme are justified in the counter affidavit on the ground that the deceased employees in those cases did not opt for pension and therefore their families were not getting family pension.

4. The petitioners have filed a reply affidavit controverting the contentions of the respondents.

5. I heard both sides. The learned counsel for the petitioners submitted that the

receipt of family pension is not a ground for rejecting appointment under the dying-in-harness scheme, Reliance is placed on the decision of the Supreme Court in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, . The learned counsel for the respondents relied on the decisions of the Apex Court in *Umesh Kumar Nagpal Vs. State of Haryana and Others*, . Learned counsel made special emphasis on the following observations of the Supreme Court;

"The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment."

6. Learned counsel for the respondents also submitted that the appointment under the scheme has been denied to the second petitioner for the reason that her mother is receiving family pension. To a pointed query from the Court, he answered that the Bank does not have a case that the family has any other source of income. It is also not in dispute that all the three members of the family are unemployed also. Both the daughters are unmarried. They were also students at the relevant time.

7. In view of the above factual background, the point to be decided is whether the decision of the Bank to decline appointment to the second petitioner on the ground that the first petitioner is drawing a monthly pension of Rs. 4,475/- and she has been paid about Rs. 75,000/- by way of terminal benefits is valid or not. As per the family pension scheme, after seven years from the date of death, the quantum of family pension will be reduced. As per Ext. P1 scheme, the following matters can be taken into account to determine the financial position of the family:

1. Family Pension.
2. Gratuity.
3. Employee's/Employer's contribution to the Provident Fund.
4. Any compensation paid by the Bank or its Welfare Fund.

5. Proceeds of LIC Policy & other investments of the deceased employee.
6. Income for family from other sources.
7. Employment of other family members.
8. Size of the family and liabilities, if any, etc.

8. As stated earlier, it is not in dispute that the only source of income for the family is the family pension and the interest, if any, that may accrue in case Rs.75,000/- is deposited. The deceased employee being a Senior Clerk/Cashier of a nationalised Bank must have been drawing a fairly handsome salary. The pleadings of the petitioners regarding the liabilities created for the treatment of the employee, are not disputed by the respondents. The income from family pension is very low when compared to the monthly salary that was received by the deceased employee. Further, during these days of inflation, the said income is insufficient to bring up and educate two girls decently and to marry them off in future. Apart from that, in another one year, the family pension is going to be reduced also. Therefore, the finding of the competent authority that family pension is a substitute for appointment under the dying-in-harness scheme is plainly unreasonable. The Apex Court in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, has held that the grant of benefits from the family benefit scheme cannot be a substitute for appointment under the dying-in-harness scheme. In the said decision, it was held:

"But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family-this is rather unfortunate but this is a reality. The feeling of security drops to zero in the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."

Again, in the concluding portion of the judgment, the Apex Court held:

"We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

9. In view of the above decision, the stand taken by the respondents is "

unsupportable. The three ladies, one old and two young, are entitled to live with dignity in the Society and the same they can do if only one of them is provided with employment.

10. The justification put-forward by the respondents for providing three persons with employment under the dying-in-harness scheme after the application submitted by the second petitioner also is perverse. When during mid-Nineteens, pension scheme was introduced in the nationalised banks, the employees were given option to opt to get provident fund or to get monthly pension. The employees opted having regard to their length of service and the length of remaining service. For certain persons provident fund was more beneficial and for certain others, monthly pension was more beneficial. In the case of those opted for monthly pension, the provident fund contribution of the Bank in their Provident Fund Account with interest was transferred to the pension fund. Such employees were given only their provident fund contribution with interest. In the case of others who did not opt for pension, the provident fund contribution of the bank along with interest accrued thereon was also paid to them. Therefore, the benefits available to the pension optees and others were more or less the same. Those who opted Provident Fund will get a substantial lumpsum amount by way of terminal benefits. Therefore, the distinction drawn by the respondents on the ground that the deceased employee in this case had opted for pension is plainly arbitrary and unreasonable.

11. In the light of the interpretation given by the respondents to Ext. P1 scheme, the dependants of an employee who opted for pension will not get employment under the dying-in-harness scheme. In the case of every pension opted employee, on his death, the widow will get family pension. In the case at hand, the employee died was a Clerk/Cashier. In the case of Officers, the family pension will definitely be higher. The amount by way of other terminal benefits received by the petitioners herein was only around Rs. 73,000/-. So, for the dependants of employees, who opted pension scheme, the scheme for compassionate appointment is redundant or otiose. Normally, going by the rules of interpretation, an interpretation which renders a provision redundant, should be avoided. Maxwell on Interpretation (12th Edition) says:

"A construction which has left without effect any part of the language of a Statute will normally be rejected".

Craies on Statute Law quotes with approval the following words of the Judicial Committee in *Ditcher v. Denison*, (1857) 11 Moore P.C:

"It is a good general rule in jurisprudence that one who reads a legal document whether public or private should not be prompt to ascribe - should not without necessity or sound reason, impute - to its language tautology or superfluity and should be, rather at the outset, inclined to suppose every word intended to have some effect or be of some other use".

Our Supreme Court in *Aswini Kumar Ghosh and Another Vs. Arabinda Bose and*

Another, has held:

"It is not a sound principle of construction to brush aside words in a Statute as being inapposite surplusage, if they can have appropriate application in circumstances conceivable within the contemplation of the Statute". (Pathanjali Sastri, C.J.)

12. If the interpretation advanced by the respondents is accepted, the words in paragraph 4 of Ext. PI that the competent authority has to take into account the income of the family from other sources, employment of other family members, size of family and liabilities, if any, etc. are redundant. If the widow is in receipt of family pension without taking into account anything more, the application could be rejected as evident from this case. Therefore, the other relevant factors have been rendered superfluous by the stand taken by the respondents. The same is impermissible in the light of the principles of interpretation of statutes stated above.

13. In view of the above, the impugned orders Exts. P3 and P4 are quashed. It is declared that the second petitioner is eligible for appointment under the dying-in-harness scheme notwithstanding the drawal of family pension by her mother provided she is otherwise eligible. The learned counsel for the respondents submitted that in view of the computerisation, at present, there are no vacancies available for appointing the 2nd petitioner. It is also submitted that the Bank has introduced Voluntary Retirement Scheme and reduced the staff strength. The Union Bank of India being a huge bank, the chances of occurrence of vacancies which are suitable for second petitioner are not remote. Therefore, respondents 1 to 4 are directed to consider the claim of the second petitioner for appointment under the dying-in-harness scheme in the light of the observations contained hereinabove within two months from the date of receipt of a copy of this judgment. The result of this consideration shall be informed to the petitioners within two weeks thereafter. In case the second petitioner is found eligible for appointment, she shall be accommodated in the next arising vacancy in the post of Clerk/Cashier or any other equivalent/suitable post.

The Original Petition is allowed as above.