(2006) 07 DEL CK 0041

In the Delhi High Court

Case No : Writ Petition (Civil) No. 2260 of 2005

Sunil Kumar APPELLANT

Vs

The Chairman, Punjab National Bank and Another RESPONDENT

Date of Decision : 14-07-2006

Acts Referred:

Citation : (2006) 07 DEL CK 0041

Hon'ble Judges : Manju Goel, J

Bench : Single Bench

Advocate : M.K. Bhardwaj and Priyanka Bhardwaj, for the Appellant; Dhruv Mehta and Yashraj Singh, for the Respondent

Final Decision : Dismissed

Judgement

Manju Goel, J.—The petitioner is the son of late Shri Sat Pal, who was an employee in the Punjab National Bank when he died on 10.3.1997. The petitioner and all his siblings were minor at that time. On attaining the age of majority the petitioner made a representation for appointment on compassionate grounds in the year 2000-01. The petitioner represented that there was no source of livelihood and that the family of the deceased including the four minor brothers of the petitioner and one sister and grand-parents were depending on him. On the instructions of the respondent the petitioner applied on an application form and completed all formalities. The prayer for compassionate appointment was rejected by a letter dated 23.3.2004. The petitioner is seeking appointment in this writ petition on compassionate ground by assailing the letter dated 23.3.2004.

2. In the counter affidavit filed by the respondents it is contended that a scheme for employment of dependents of employees, who die while in bank service, on compassionate grounds is operating in the respondent bank, that the Board of Directors of the respondent bank had approved of the said scheme which is based on the guidelines circulated by the Indian Bank Association and on the law laid down by this Court in the Umesh Kumar Nagpal Vs. State of Haryana and

Others, and that the petitioner''s application was considered under the scheme. The factors to be taken into consideration in the present case were covered by Clauses 6(a) & 6(b). Clause 6(a) provided that the request for appointment under the scheme should be received as early as possible and not later than one year from the date of the death of the employee. In case the dependent was a minor and did not possess suitable minimum qualifications his case could be considered at the discretion of the bank within four years of the death of the employee to enable him or her in terms of age and qualifications provided that the dependent had made a request to the bank within one year of the death of the employee. Clause 2 of the scheme provided that the object of the scheme was to consider compassionate employment to the dependent of an employee dying in harness leaving his family without any means of livelihood. The bank was required to consider compassionate employment only in cases where it was satisfied that the financial condition of the family of the deceased was such that but for the provision of employment to his dependent, the family will not be able to meet the crisis it faces at the time of death of the said employee.

3. The financial condition which was required to be considered, the scheme said, would include (a) family pension, (b) gratuity amount received, (c) employee''s/ employer''s contribution to provident fund, (d) any compensation paid by the bank or its welfare fund, (e) proceeds of LIC policy and other investments of the deceased employee, (f) income for family from other sources, (g) employment of other family members and (h) size of the family and liabilities, etc.

4. Coming to facts it is contended that the deceased Sat Pal had been found guilty of misconduct and he was punished with stoppage of four increments with cumulative effect vide an order of the disciplinary authority dated 19.10.1993. It is contended that the bank found that the family of the deceased, at the time of death, had assets worth Rs. 65,887/- whereas the liability was only Rs. 25,059/- and net dues payable to the dependent was Rs. 40,828/-. The family also owned an ancestral property of which it had 1/3rd share which provided living accommodation to it. The respondents deny having received any application for compassionate appointment within one year from the date of death. The application is received after six years of the death from the present petitioner, Sunil Kumar. It is contended that at the time of considering the question of compassionate appointment the bank was also required to take into consideration the track record of the deceased and in the present case since the deceased was involved in a case of fraud the Board had to take that factor into consideration while deciding the case of compassionate appointment of the petitioner. The application for compassionate appointment was eventually rejected vide letter dated 12.3.2004 as stated in the reply. The same read as under:

Having regard to the amount of terminal dues received by the family and that the family is residing in its own accommodation vis a vis the liabilities upon the employee at the time of death, the financial condition of the family is not found to be indigent.

The past record of the deceased employee was not unblemished as he had been imposed with penalty for gross misconduct in connection with a fraud.

In view of the aforesaid, the Competent Authority has declined the case for providing employment on compassionate grounds to the applicant. The applicant/ family may be informed of the decision under intimation to us.

5. In the rejoinder filed the petitioner has disputed the allegation of disciplinary action against the deceased employee and also the alleged amount paid by the respondent to the petitioner''s family. The petitioner disputes the finding of the respondents that the financial position of the family did not require any compassionate appointment. It is disputed that the disciplinary action taken against the employee could have no bearing on the case of compassionate appointment since the scheme under which the appointment is sought does not make any mention of any disciplinary action.

6. So far as the question of the deceased being involved in any case of misconduct is concerned the same is depicted by the documents filed by the respondent namely, pages 60 & 61 of the paperbook, which is a letter dated 19.10.1993 revoking the suspension and punishing him with stoppage of four increments with immediate effect. It is true that the scheme under which the compassionate appointments are granted in the respondent bank does not make any mention of the service record of the deceased. However, the question came up for consideration before the Punjab National Bank Personnel Division and vide the communication dated 20.3.1997 the initial scheme was superseded by the circular letter No. 6/97. One of the points for consideration was pointed as under:

In the cases where any disciplinary proceedings were being contemplated at the time of death of the employee or the employee was proceeded against before death, all the details of disciplinary action cases Along with the extent of financial loss, if any, caused or likely to be caused to the bank, must be conveyed Along with the proposal

7. Thus, the consideration regarding the track record of the deceased employee forms part of the scheme and the respondent is within its right to take into consideration the fact that the deceased employee was guilty of misconduct and had been punished after due departmental proceedings.

8. So far as the financial condition of the family of the deceased is concerned the respondent has taken into consideration the assets and liabilities apart from the payments made to the family of the deceased on the occasion of the death. It is contended by the petitioner''s counsel that the amount received from the employer on the event of the death was not to be taken into consideration at the time of assessing the financial position of the family. This position is settled by the Supreme Court in the case of Punjab National Bank and Others Vs. Ashwini Kumar Taneja, in which it was held that the retiral benefit received by the heirs

of the deceased employee was also required to be considered while examining the question of financial hardship.

9. The petitioner''s counsel submits that even taking into account the payments received and the alleged asset position, the decision of the respondent about the financial position of the family was incorrect. I am afraid this is not the scope of the writ jurisdiction in considering whether the petitioner is entitled to a writ directing the respondent to appoint the petitioner on compassionate grounds. It is sufficient for the respondent to show that all the relevant factors were taken into consideration while rejecting the prayer of the petitioner.

10. Another important factor that comes in the way of the petitioner getting the compassionate appointment is the condition that the application is made within four years in case the dependent who seeks compassionate appointment was minor at the time of death. In the present case the application is received after nearly a period of six years. Undoubtedly the petitioner at that time was minor and could not have made an application even within a period of four years. The scheme, however, is not in challenge in the present petition. It has to be noticed that the purpose of compassionate appointment is to help the family to overcome the immediate hardship that results on account of the death of the bread-winner of the family. The employer cannot be burdened with the liability to appoint a person of the family of the deceased beyond a period of four years whereas the family needed the appointment immediately on the death. This perhaps is the rationale behind the clause which required that the application be made within a period of four years.

11. The petitioner''s counsel has referred to the case of the Supreme Court in Govind Prakash Verma v. Life Insurance Corporation of India and Ors. (2005) 10 SCC 289 wherein it was held that whatever is admissible to the legal representatives of the deceased employee as benefits of service was over and above the benefit of compassionate appointment. The distinctive feature of this case is that the appointment of the petitioner is governed by the scheme which, inter alia, prescribes that the retiral benefits and other payments received by the family on account of the death will form part of the consideration and this very scheme has found approval from the Supreme Court in the case of Punjab National Bank and Others Vs. Ashwini Kumar Taneja, . In Govinder Prakash Verma''s case (Supra) there was no scheme which required the retiral benefits to be taken into account.

12. Learned Counsel for the petitioner has vehemently argued that the question of delay beyond a period of four years had not been mentioned in the order refusing the compassionate appointment and the point cannot be raised at this stage. He has laid stress on the requirement to pass a speaking order by citing the judgment of the Supreme Court in the case of S.N. Mukherjee Vs. Union of India, . This judgment relates to the orders passed by quasi judicial authorities. The principles can be extended even to the administrative orders. In the present case, however, the order of rejection has given two grounds for rejecting the

claim. Although the delay in making the application has not been specifically mentioned in the order of rejection one cannot lose sight of the fact that even if the grounds on which the compassionate appointment has been rejected are overlooked, the court cannot direct the respondent to consider the case of the petitioner by overlooking the scheme itself. The scheme itself provides a limitation for making such an application and although the ground has not been taken in the letter of rejection this Court cannot ignore the same.

13. In view of the above factors, I find that the petitioner cannot succeed in his prayer for a direction to appoint him on compassionate ground. The petition, Therefore, fail. This, however, will not stop the petitioner''s case being sympathetically considered by the respondent under any other scheme which may be available to him.

