

(2009) 10 MP CK 0057

In the Madhya Pradesh High Court

Case No : Writ Petition No. 4329 (S) of 2006

Sushma

APPELLANT

Vs

State Bank of Indore and Another

RESPONDENT

Date of Decision : 21-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Penal Code, 1860 (IPC) — Section 409, 420

Citation : (2010) 124 FLR 381

Hon'ble Judges : S.S. Kemkar, J

Bench : Single Bench

Advocate : Anand Singh, for the Appellant; B.L. Pavecha and Yogesh Mittal, for the Respondent

Final Decision : Dismissed

Judgement

Shantanu Kemkar, J.—By this petition filed under Article 226/227 of the Constitution of India, the petitioner is seeking directions to the first respondent-State Bank of Indore to appoint her on the post of Peon on compassionate grounds.

2. Briefly stated the petitioner's husband Late Dinesh Kumar Yadav was working on the post of Peon at Mhow Branch of the first respondent-Bank. On account of serious charges of commission of fraud and misappropriation of funds, he was placed under suspension by the first respondent-Bank vide order dated 8.8.1997 (Annexure P-1). However, before any action could be taken against him, he died on 27.8.1997 due to commission of suicide.

3. On account of his death in harness the petitioner (wife) submitted an application dated 14.10.1997 (Annexure P-2) before the first respondent seeking her compassionate appointment. Since no decision was taken on the said application she filed a Writ petition No. 326/2003 before this Court alleging inaction on the part of the respondents in not deciding her application. The said writ petition was disposed of by this Court vide order dated 6.5.2004 directing

the respondents to consider her case in accordance with the Circular dated 17.2.1999 as also the circulars for such appointments issued from time to time. In compliance of the said order the petitioner's case was considered and she was informed vide letter dated 28.5.2004 (Annexure P-4) that her request for compassionate appointment has been examined and the same has been declined by the competent authority. Feeling aggrieved the petitioner filed a Writ petition No. 1694/2004 (S) before this Court which was decided vide order dated 25.2.2005 with a direction to the first respondent to pass a reasoned order on the petitioner's application for compassionate appointment after giving opportunity of personal hearing to her.

4. In compliance of the order dated 25.2.2005 passed by this Court in W.P. No. 1694/2004(S) the petitioner's case was considered once again and she was informed vide letter dated 4.4.2006 (Annexure P-9) that her application for compassionate appointment has been rejected by the competent authority. Aggrieved the petitioner has filed this writ petition.

5. The case of the petitioner is that her case ought to have been considered in the light of the Circular dated 17.2.1999 (Annexure P-10) as was ordered by this Court in W.P. No. 326/2003. It has been alleged by the petitioner that in identical circumstances, one Sandeep Khatri and one Smt. Ramvati w/o Late Asharam Yadav were granted compassionate appointment, whereas the petitioner has been deprived from such appointment.

6. The first respondent has filed reply and has stated that on account of alleged acts of fraud and embezzlements aggregating to Rs. 8,96,840/- the petitioner's husband was placed under suspension. However, before disciplinary enquiry could have been initiated against him he committed suicide on 27.8.1997. On lodging the F.I.R. the other two delinquent employees who were also involved with the petitioner in the incident were charge-sheeted and were held guilty by the competent Criminal Court for the offences under sections 409, 420, 467, 468 and 120-B of the Indian Penal Code. It has also been stated that after holding departmental enquiry the said two employees have been dismissed from service as they were found guilty of the misconduct.

It is further the case of the first respondent that on the death of petitioner's husband on 27.8.1997 she submitted an application for compassionate appointment on 14.10.1997. Thereafter, she remained silent for a long period of almost 6 years and had filed a writ petition before this Court for the first time on 9.10.2003 seeking compassionate appointment. In the circumstances, according to the first respondent having regard to the delay and laches on the part of the petitioner it is clear that she was not living in penury and was having sufficient means of livelihood for survival of herself and the family of the deceased-employee.

It is also the case of the first respondent that the petitioner's case was duly considered firstly vide decision dated 21.5.2004 of which mere communication

letter dated 28.5.2004 was filed by the petitioner in the earlier Writ petition No. 1694/2004 (S) and thereafter vide decision dated 29.3.2006 (Annexure R-1) of which also mere communication letter dated 4.4.2006 (Annexure P-9) has been filed by her in this petition. Thus, it is the case of the first respondent that twice the petitioner's case has been considered by the competent authority of the first respondent and reasoned orders have been passed declining her prayer. It has been stated that the committee constituted for the purpose for considering such cases did not found her case to be a fit case for grant of compassionate appointment. By way of additional affidavit the first respondent has stated that the allegation that on identical facts one Sandeep Khatri and one Smt. Ramvati w/o Late Asharam Yadav were granted compassionate appointment is totally incorrect. According to the said additional affidavit Smt. Ramvati Yadav was granted compassionate appointment taking into consideration that she was young widow with five minor children living in the state of utter penury condition after the death of her husband Asharam Yadav. It was also taken into consideration that she had deposited the entire amount of loss amounting to Rs. 32,500/- caused to the Bank by her late husband out of the terminal benefits payable to him and in the circumstances her application was allowed. In the case of Sandeep Khatri, it has been stated that he was granted compassionate appointment within 5 months from the death of his father who died in a road accident, noticing that there was no earning member in the family which was facing financial hardship. The appointment was made on a condition of deduction of 25% of salary for a period of 10 years towards the loss caused to the Bank by his father. It has been further clarified that the said condition On reconsideration pursuant to the order passed by this Court in W.P. No. 1246/97 was waived. Thus, the stand of the first respondent is that there is no parity between the two cases on which petitioner has placed reliance. It has been stated that the petitioner was and is getting adequate family pension and she is also owning a residential house in Mhow and as such she has rightly been denied the compassionate appointment in view of the circulars for the same.

7. Heard learned Counsel for the parties and perused the annexures filed by them.

8. There is no dispute to the fact that the petitioner's husband was suspended on account of alleged act of fraud and embezzlement of the funds of the first respondent-Bank. It is also not in dispute that the other two employees have been convicted for offences under sections 409, 420, 467, 468 and 120-B of the Indian Penal Code. It is also not in dispute that the said two delinquent employees who were involved in the incident along with the petitioner's husband were charge-sheeted by the first respondent-Bank and a disciplinary enquiry was conducted in which they were found guilty of the charges and as such they have been dismissed from service. It is also not in dispute that after submitting the application for compassionate appointment on 8.8.1997, the petitioner for the first time approached this Court against the alleged inaction on 9.10.2003 i.e. about 6 years after the death of her husband and filing of the application for

compassionate appointment.

9. On going through the documents, I find that the petitioner's case for grant of compassionate appointment was considered by the competent authority of the respondents for the first time in the year 2004 and her application was rejected taking into consideration that she was getting Rs. 2611/- towards family pension to maintain herself and her two minor children. It was also taken into consideration that she was entitled for terminal benefits of her late husband aggregating to Rs. 1,87,781/- out of which Rs. 65,000/- was retained in term of deposit and the rest of the amount was paid to her. It was also noticed that she had inherited a double storied house situated at Dongargaon, Mhow. Thus, taking into consideration the financial status of the petitioner it was found that she is financially well placed and is not living in penury. In the circumstances, her case for compassionate appointment was not recommended and the prayer was declined. Once again after giving opportunity of personal hearing to her case was reconsidered by the competent authority and again it has been rejected vide decision dated 29.3.2006 (Annexure R-1) holding that even though the family pension has been reduced to Rs. 1,700/- per month but having regard to the lapse of time it was not deemed fit to review the decision dated 21.5.2004 which was already taken by the competent authority declining the petitioner's prayer for compassionate appointment.

10. Having gone through the impugned decision Annexure R-1 the Circular dated 9.5.1997 (Annexure R-2) and the Circular dated 17.2.1999 (Annexure R-4), I find that the competent authority of the first respondent committed no error in rejecting the petitioner's claim. The Circulars in regard to making appointment on compassionate basis and the factors enumerated in the said circulars for determining the eligibility for compassionate appointment and the financial condition have also been correctly applied. The well reasoned decision of the competent authority of the first respondent that the family of the deceased-employee is not in penury and is not without any means of livelihood needs no interference by this Court in a petition under Article 226/227 of the Constitution of India.

11. It has now been well settled that the Courts should not normally interfere with the decision of the competent authority in regard to the fact as to whether the deceased-employee left his family in penury and without any means of livelihood. It has been held by the Supreme Court that it is the job of the specially constituted authorities since they are better equipped to decide the facts of the case and their objective finding arrived on appreciation of full facts should not be interfered into by the Courts. See *State Bank of India and others v. Jaspal Kaur*. 2007 (112) FLR 1037 (SC)

12. Having regard to the aforesaid legal position, the fact that after submission of the application for compassionate appointment on 14.10.1997 the petitioner for the first time approached before this Court after 6 years in W.P. No. 326/2003 alleging inaction on the part of the respondents and also the fact that the

petitioner's case has been rightly considered twice by the competent authority of the first respondent and a finding has been arrived at that the petitioner is not living in penury and her financial condition is not such making her entitled for compassionate appointment, no case is made out to make interference in the said decision. In the case of General Manager, State Bank of India and others v. Anju Jain, 2008 (119) FLR 714 (SC) it has been held by the Supreme Court that the compassionate appointment is an exception and is not a right of an employee.

13. Accordingly, the petition deserves to be and is hereby dismissed. No orders as to the costs.