(2019) 08 CAL CK 0110

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 5906 (W) Of 2019

Tarun Das APPELLANT

Vs

United Bank Of India & Ors RESPONDENT

Date of Decision : 02-08-2019

Acts Referred:
Constitution Of India, 1950 — Article 14, 16

Citation : (2019) 08 CAL CK 0110

Hon'ble Judges : Amrita Sinha, J

Bench : Single Bench

Advocate : Golam Mastafa, Subir Sabud, Sumouli Sarkar

Final Decision : Dismissed

Judgement

Amrita Sinha, J

The father of the petitioner was an employee of the United Bank of India. He died in harness on 18th November, 2016 leaving behind his widow that is the mother of the petitioner, his married daughters and his son, the petitioner herein.

The petitioner states that his father died of cancer at the age of fifty years. The petitioner and his family members spent huge sum of money for the treatment of cancer but could not save him. After death of the employee the family was passing through severe financial crisis. The mother of the petitioner is also a cancer patient.

The widow of the employee made an application for giving appointment on compassionate ground in favour of her son that is the petitioner herein. Pursuant to the said application the Bank held an enquiry and by a letter dated 29th November, 2018 the petitioner was informed that the Competent Authority of the Bank has examined the prayer of the petitioner for compassionate appointment under the died in harness Scheme of the Bank. After scrutiny of all connected records and documents submitted by the petitioner vis-a-vis the family income the Bank has arrived at a conclusion that he was not eligible for compassionate appointment on the income criteria. The prayer of the petitioner was declined.

The impugned communication dated 29th November, 2018 made by the Bank declining the prayer for compassionate appointment of the petitioner is assailed in the instant writ petition.

The petitioner submits that the family has spent huge sum of money for the medical treatment of the employee and presently the widow of the employee is also suffering from cancer. The family is passing their days in penury and for want of regular income the treatment of the widow of the employee is getting hampered. He submits that the petitioner is qualified enough to be employed in the Bank and he was willing to perform any sort of duty that will be provided to him by the Bank authority.

The petitioner relies upon the judgment delivered by the Hon'ble Supreme Court in the matter of Balbir Kaur & Anr. -vs- Steel Authority of India & Ors. reported in (2000)6 SCC 493 paragraphs 8, 9, 13 and 19 wherein the Court held that the socialistic pattern of the society as envisaged in the Constitution had to be attributed its full meaning. Law Courts cannot be mute spectators where relief is denied to the horrendous sufferings of an employee's family on account of death of the bread earner.

The petitioner prays for issuance of a writ of Mandamus directing the respondent authorities not to give any effect to the impugned communication and further commanding the respondents to provide a job to the petitioner on compassionate ground.

The respondent Bank has filed an affidavit wherein it has been mentioned that the prayer of the petitioner for being appointed on compassionate ground was duly enquired by the Competent Authority and on enquiry it transpired that the wife of the petitioner is serving as a nurse in a government hospital drawing a monthly salary of Rs. 26,508/- (rupees twenty six thousand five hundred eight) only. The widow of the employee is also receiving monthly pension from the Bank. The terminal benefits that were received by the family of the deceased employee was Rs. 6,79,261/-(rupees six lac seventy nine thousand two hundred sixty one) only. The liability as on the date of the deceased employee was Rs. 2,68,653/- (rupees two lac sixty eight thousand six hundred fifty three) only and the net corpus was Rs. 4,10,409/- (Rs. 6,79,261 - Rs. 2,68,652) (rupees four lac ten thousand four hundred nine) only.

The gross salary of the employee on the date of his death was Rs. 24,047/- (rupees twenty four thousand forty seven) only. On the death of the employee the present monthly income of the family is Rs. 35,014/- (rupees thirty five thousand fourteen) only. The present family income of the deceased employee is 145% of the last drawn salary of the deceased employee.

Considering the aforesaid financial condition the Bank was of the opinion that the family of the deceased was not in distress and no relief was required to be granted for their maintenance. The prayer of the petitioner for being appointed on compassionate ground was accordingly rejected.

The Bank has relied upon the Scheme for appointment on compassionate ground in the Bank dated 29th November, 2014. As per the said Scheme there is a Committee for consideration of application for compassionate appointment. The said Committee comprises of three members namely the General Manager (HRM) as the Chairman (Ex-officio), the Deputy General Manager (HRM), the Assistant General Manager (HRM) or the Assistant General Manager, PA (AS) Department as members (Ex-officio).

The liability criteria as regards financial conditions mentions that prior to granting appointment on compassionate grounds under the Scheme the authority shall determine i) the family is indigent and deserves minimum assistance for relief from financial destitution and ii) that the applicant for compassionate appointment is eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules. It was clarified that the appointment under the Scheme is not an entitlement, but may be granted at the sole discretion of the Bank looking into the financial condition of the family and in deserving and eligible case only appointment may be given.

The Scheme provides that in deserving cases even when there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with the prior approval of the Competent Authority of the Bank who, before approving such appointment, will satisfy himself for the reasons to be recorded in writing that grant of compassionate appointment is justified, having regard to the number of dependents, assets and liabilities left by the employee, income of the earning members as also his liabilities including the fact that the earning member is residing with the family and where he shall not be a source of support to other members of the family.

The Scheme further mentions that in cases where any member of the family of the deceased is already in employment and not supporting the other members of the family of the deceased, extreme caution shall be observed in ascertaining the economic distress of the members of the family, so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the other member of the family already employed is not supporting the family.

On receiving an application for appointment on compassionate ground the Committee shall process the same. The recommendation of the Committee is placed before the Competent Authority for a decision. If the Competent Authority disagrees with the Committee's recommendation the case is referred to the higher authority for a decision.

The Scheme also mentions that an application for compassionate appointment shall, however, not be rejected merely on the ground that the family of the employee has received the benefits under the various welfare scheme, yet, considering a request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family shall be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes) and all other relevant factors such as the presence of an earning member, size of the family etc.

In the instant case the Committee considered the application made by the petitioner and upon enquiry about the financial condition of the family has come to a specific finding that after the death of the employee the family income of the deceased employee has increased.

There is already a government employee in the family who earns sufficiently to take care and maintain the family. The decision of the Committee not to provide appointment to the petitioner on compassionate ground was duly accepted by the Competent Authority.

It is settled law that appointment on compassionate ground is not a regular mode of employment. It is provided with the sole purpose to tide over the immediate financial crisis faced by the family on the untimely death of the bread winner. As the family of the petitioner has a decent source of regular income the Committee came to the conclusion that there was no requirement of providing the petitioner with a job in the Bank.

The Hon'ble Supreme Court in the matter of Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138 took into consideration the decision of Balbir Kaur (supra) and laid down that :-

Mere death of an employee does not entitle his family to compassionate employment and that the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death.

The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post must less a post for post held by the deceased. Mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.

In the matter of Steel Authority of India Limited vs. Madhusudan Das & Ors.: (2008) 15 SCC 560 the Supreme Court held that appointment on compassionate ground cannot be claimed as a matter of right. It is meant to provide for a minimum relief. Article 14 and 16 of the Constitution of India mandates that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a defendant of a deceased employee is an exception to the said rule. It is a concession, not a right.

The Supreme Court never directed to give appointment to an applicant de hors the Rules.

The finding of fact about the financial income of the family of the deceased employee being undisputed the decision of the respondent Bank not to provide compassionate appointment to the petitioner does not call for any interference. The right of the petitioner for being appointed on compassionate ground flows from the Scheme of the Bank. The petitioner does not meet the requirement of the said Scheme.

In view of the aforesaid no relief can be granted to the writ petitioner in the instant case.

W.P. No. 5906 (W) of 2019 is dismissed.

Urgent photostat certified copy of this order, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.