(2008) 08 PAT CK 0109

In the Patna High Court

The State Bank of India and Others APPELLANT

Vs

Manoj Kumar RESPONDENT

Date of Decision : 22-08-2008

Acts Referred:

Citation : (2009) 1 PLJR 593

Hon'ble Judges : Chandra Mohan Prasad, J;Barin Ghosh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh and Chandra Mohan Prasad, JJ.—Heard learned Counsel for the parties.

Death in harness of a Manager of the appellant - Bank occurred on 5th December, 1999. Prior thereto, on 1st January, 1998, the appellant - Bank devised a scheme for appointment on compassionate ground of a member of the family of an employee, who has died in harness. In the said scheme, the Bank provided that the object thereof is to offer compassionate appointment only when the Bank is satisfied that the financial condition of the family is such that, but for the provision of employment, the family will not be able to meet the crisis. The scheme specifically provided that appointments in the public services are made strictly on the basis of open invitation of applications and merit but, however, exceptions are made in favour of dependants of employees dying in harness and leaving their family in penury and without any means of livelihood and, accordingly, determination of financial condition of the family is an important criterion for deciding the proposal for compassionate appointment.

2. The aforesaid scheme provided, amongst others, that while considering a request for compassionate appointment, the authority competent to grant such appointment shall consider the financial condition of the family arising out of many a factors, including family pension, gratuity amount, size of the family and liabilities of the family. For the purpose of obtaining the benefit under the said

scheme, the appellant - Bank prescribed a proforma, under Clause 6 whereof, informations regarding the details of the family of the deceased were to be furnished and under Clause 7 thereof, informations pertaining to properties, deposits as well as liabilities were to be furnished by the member of the family of the deceased employee seeking appointment on compassionate ground.

3. The writ petitioner - respondent, who happens to be the eldest son of the said deceased Branch Manager of the appellant - Bank, upon the death of his father in harness, applied in the prescribed proforma for an appointment on compassionate ground. In the said proforma, he furnished the details of the family of the deceased as well as the details of the properties, deposits and liabilities of the family. From the details so furnished it appears that the deceased died leaving behind his widow, two daughters and two sons.

4. The request for compassionate appointment was rejected by an order which was assailed in a writ petition. The reason for rejection was that the deceased, while he was alive, was taking home a salary of Rs. 8,114.78, whereas the family will be entitled to a family pension of Rs. 7,252/- and that the family, in addition to such family pension, is entitled to other income, the aggregate whereof would entail an income of Rs. 10,751/- per month for the family and as such it was felt that the death of the deceased did not leave the family of the deceased in penury.

5. In the writ petition it was contended, which is not in dispute, that the family pension of Rs. 7,252/- would be available to the family for a period of five years from the date of death and thereupon the quantum thereof would be reduced drastically. It was contended in the writ petition and accepted by a learned Single Judge of this Court in the judgment and order under appeal that at the time of consideration for appointment on compassionate ground, it was obligatory on the part of the appellant - Bank to consider what will happen five years later when the family pension would stand drastically reduced. It was also contended in the writ petition and accepted by the learned Judge that the deceased had a daughter to be married off, his wife was old and had medical liabilities and, accordingly, the appellant - Bank should have taken into account the financial condition of the family likely to occur after five years, when there would be a drastic reduction in the family pension and to adjudge the entitlement of the family accordingly. On such premise, by the judgment and order under appeal, the writ petition was allowed with a direction upon the appellant - Bank to reconsider the prayer of the writ petitioner - respondent for compassionate appointment. In sum and substance, therefore, the appellant - Bank was directed to consider the application of the writ petitioner - respondent for compassionate appointment on the basis of projected income of the family which the family would be likely to get after five years of the death of the deceased employee.

6. In the present appeal, the appellant - Bank is contending that the same, in terms of the scheme, the appellant - Bank is incompetent to do.

While it is true that the family pension would stand reduced drastically after five years from the date of death, but there is no parameter known on the basis of which one can gather as to what would be the income of the family after five years. If an attempt is made to do so, recourse to guess work would be required to be taken. Furthermore, because the appellant - Bank has devised a scheme for granting compassionate appointment to a member of the family of an employee, who has died in harness, a member of the family of such a deceased employee of the appellant - Bank can apply for or make a prayer for grant of such an appointment. As the right to make such prayer has been accorded by the scheme, so the scheme has envisaged how the same should be decided. The principal direction in the scheme is to consider impecunious condition of the family by reason of death of the employee. The impecunious condition that should be considered should prevail on the date of death, because the right under the scheme crystallizes together with the obligation to decide the same stands fixed by the death and cannot be dragged to any future date. The impecuniousness of the family to be decided should, therefore, be as existing on the date immediately after the death has occurred, and not on what would happen after five years by reason of reduction of the family pension. In those five years, many things may happen, and it may be possible that the petitioner - respondent, who is asking for compassionate appointment, may get himself involved in a much lucrative profession or vocation.

7. The learned Counsel appearing on behalf of the petitioner -respondent contended that the daughter of the deceased, who is married, after her marriage has not gone back to her in-laws house and while sending her back to her in-laws place, according to the custom, a ceremony is required to be performed involving substantial expenses. It was submitted that the deceased had a young daughter, who is to be married off and the same also involves financial commitments. It was stated that these are the liabilities and these liabilities might occur after five years and, accordingly, these factors ought to have had been taken note of. In Clause 7 of the proforma submitted by the writ petitioner respondent, he did not indicate any such liability. Secondly, although as per custom there may be some financial liability on those accounts, but having regard to the bar imposed by law, those liabilities cannot be taken note of.

8. The learned Counsel for the petitioner - respondent lastly contended that two of the siblings of the petitioner - respondent were students at the time of death of the deceased and they have to be provided education. At the time of death, the student daughter was 19 years old and the student son was 21 years old. It had not been indicated in the application for compassionate appointment that any of them would remain student even after expiry of five years from the date of death of the deceased employee. Furthermore, education though is a means of livelihood and, sudden impecunious condition of the family of the deceased employee, may affect such a means of livelihood, but in the application it had not been indicated that such means of livelihood, after five years, cannot be gained out of the reduced family pension.

9. The scheme provides for making of a request for compassionate appointment through the prescribed proforma within the time specified. The application made thereafter is not to be entertained. Accordingly, addition of ground to suggest impecunious condition subsequent to expiry of such time is not permissible.

10. We, accordingly, allow the appeal, set aside the judgment and order under appeal and, at the same time, dismiss the writ petition.

