(2016) 12 RAJ CK 0001

In the Rajasthan High Court

Case No : .Spl. ApplWrit No. 722 of 2008

UCO Bank APPELLANT

Vs

Devi Kishan Harijan RESPONDENT

Date of Decision : 21-12-2016

Acts Referred:

Citation : (2017) 1 KerLJ 16 : (2017) 1 RLW 632 : (2017) 1 RSJ 246 : (2017) 1 WLCRajUC 111

Hon'ble Judges : Mr. Sangeet Lodha and Mr. Deepak Maheshwari, JJ.

Bench : Division Bench

Advocate : Mr. N.R. Choudhary, Advocate, for the Respondent; Mr. Jagdish Vyas, Advocate, for the Appellants/Petitioner

Final Decision : Allowed

Judgement

Mr. Maheshwari, J. - This Civil Special Appeal (Writ) has been preferred to challenge the judgment dated 30.5.2008 passed by learned Single Judge in SB Civil Writ Petition No.6051/2006.

2. Succinctly, the facts are that the petitioner respondent Devi Kishan filed a petition for writ with a prayer to quash and set aside the order impugned dated 25.4.2006 whereby the appellant United Commercial Bank rejected his application for giving him appointment on compassionate ground with all other notional benefits. His father Shri Bhikha Ram Harijan, who was working on the post of Class-IV employee (Sweeper) in United Commercial Bank, Branch Office Gotan, expired on 27.10.1999 during his service tenure leaving behind his widow Smt. Shanti Devi, daughters and the only son Devi Kishan. Smt. Shanti Devi submitted an application on 27.12.1999 for appointing Devi Kishan on the compassionate ground in place of his father late Bhikha Ram. The said application came to be rejected vide order dated 25.4.2006 on the ground that monthly income of the family is higher than 60% of the gross salary of the deceased employee. It was also mentioned that the said application has been examined in terms of the provisions of scheme of the Bank circulated vide

Circular No.CHO/PMG/19/99 dated 21.09.1999 but the case is not covered under the parameters of the above referred scheme. A calculation sheet has also been annexed thereto showing the monthly income of the family as Rs.1487.13 as against the last pay drawn gross salary of the deceased employee which was Rs.1458.48.

3. Learned Single Judge decided the writ petition preferred by the petitioner-respondent Devi Kishan vide order dated 30.05.2008 issuing the direction to the respondent-appellant Bank to reconsider the case of the petitioner sympathetically for appointment on compassionate ground.

4. On perusal of the judgment impugned, it appears that learned Single Judge has observed that deceased Bhikha Ram has left behind his widow, five daughters and a son. A petty amount of family pension of Rs.812/- per month is not sufficient for them to meet out day to day expenses. The size of the family was also required to be taken into consideration, besides the income of the family. In view of these facts, learned Single Judge has observed that the denial of compassionate appointment to the petitioner is contrary to the basic principles of law as also it is violative of Article 21 of the Constitution of India.

5. Learned counsel appearing for the appellant UCO Bank has assailed the judgment passed by learned Single Judge alleging that the application of the petitioner-respondent has been objectively considered by the bank authorities on the para-meters of the scheme circulated for the purpose. As per the principles laid down by Hon''ble Supreme Court in case of State Bank of India & Anr. v. Somvir Singh, reported in (2007) 4 SCC p.778, it is well settled that the hardship of the dependent does not entitle him to compassionate appointment dehors the scheme or the statutory provisions, as the case may be. There is no scope for any deviation or applying any discretion in any manner by the officials of the Bank while implementing the scheme in place. The appellant Bank has objectively arrived at the conclusion while determining the financial condition of the bereaved family on the basis of the facts submitted by them in the application for appointment that the income of the family is more than 60% of the last drawn gross salary of the deceased. Learned counsel has submitted that in such situation, the scheme prohibits the appointment of dependent of deceased employee on compassionate ground.

6. He has also contended that learned Single Judge has directed the appellant Bank to reconsider the case of the petitioner while ignoring the formula for assessing the income as provided in the said scheme, which is not legally permissible. It has also been held by learned Single Judge that the formula prescribed in the scheme is contrary to the basic principles of law as also it is violative of Article 21 of the Constitution of India, which is not correct. He submitted that unless the financial condition of the bereaved family is entirely penurious, the compassionate appointment cannot be claimed as of right. He has also contended that besides other income, agricultural income of the family has also been mentioned as Rs.500/- per month in the application dated 23.12.1999,

which has been rightly included by the bank authorities while calculating the income of the bereaved family. Income thus calculated comes out to be more than 60% of the gross salary of the deceased employee, and hence the application for compassionate appointment of the petitioner has been rightly rejected as per the scheme circulated vide order dated 21.09.1999. Therefore, his argument is that there was no occasion for the learned Single Judge to pass an order to reconsider the case of the petitioner sympathetically dehors the scheme, which need to be quashed and set aside while allowing the appeal.

7. Per contra, learned counsel appearing for the petitioner respondent has contended that there is no legal infirmity in the order passed by learned Single Judge. The bank authorities have ignored the various aspects, which were required to be taken into consideration while deciding the application for compassionate appointment. Agricultural income of Rs.500/- per month has been wrongly taken into consideration. He has drawn attention of the Court to the certificate issued by the ''Patwari'' Gotan wherein it has been stated that the agriculture land situated in Khasra No.1890 is of joint ''Khatedari'' wherein Devi Kishan and Shanti Devi are the share holders of the share 2/4. It has also been mentioned in the said certificate that as per ''Girdawari'', the land being uneven has not been put to agricultural use since ''Samvat'' 2056. He has also drawn attention to the application dated 20.5.2006 submitted by Devi Kishan wherein the actual facts regarding income of the family have been narrated. Learned counsel has submitted on the strength of these documents that the calculation of monthly income of the bereaved family has not been correctly done. Thus, even if case of the petitioner is scrutinized as per the scheme circulated by the bank, he should have not been denied the compassionate appointment as the salary comes out to be less than 60% of the last drawn salary of the deceased employee.

8. In support of his contentions, learned counsel for the respondent has relied upon the judgment in Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors., reported in AIR 2000 SC 1596. On going through the judgment, it comes out that Hon''ble Supreme Court, in terms of the provisions of Employees'' Provident Funds & Miscellaneous Provisions Act, 1952 has held that benefit of compassionate appointment cannot be negatived on ground of introduction of scheme, assuring regular monthly income to the dependents of deceased employee. It has been held that the terms of the said scheme compel the members of the deceased employee''s family to deposit the amount of gratuity and provident fund with the employer so as to get the regular monthly income in lieu of the compassionate appointment. Terms of the scheme were held to be violative of Section 4 of the Gratuity Act and Provident Fund Act. In light of provisions of this Act, denial of compassionate appointment in consequence of the said scheme was not held legally permissible. But this is not the fact and circumstance of the case in hand. Therefore, in our considered opinion, this judgment is not applicable in this matter.

9. Learned counsel for the respondent has also placed reliance upon the judgment rendered by Division Bench of this Court in Suresh Kumar Sharma v. Union of India & Ors., reported in 2003 WLC (Raj) UC p.317 wherein the retiral benefits received by heirs of the deceased employee were not held to be valid ground for rejecting the application for compassionate appointment and thus, the concerned department was directed to consider the petitioner''s case. It was observed that the major amount of the retiral benefits has been spent in the marriage of one of the daughters and also in repaying the loans taken during the life time of the deceased employee. Thus, the petition was allowed with the direction to consider the case of the petitioner for compassionate appointment. But these grounds, being alien to the scheme framed by the appellant Bank, in our considered opinion, cannot be taken into consideration for deciding the respondent''s claim.

10. Learned counsel for the appellant has vehemently opposed the reasons mentioned in the judgment impugned on the basis of the principles enunciated by Hon''ble Supreme Court in various judgments prescribing the criteria for giving the compassionate appointment. It is worth mentioning here that the appellant Bank had circulated a scheme for grant of compassionate appointment to the dependents of its deceased employees vide circular No.CHO/PMG/19/99 dated 21.09.1999. As per the para-meters of the scheme, the assets and liability of the bereaved family were calculated as per the calculation sheet attached to Annexure-P/5. As per the calculation, monthly income of the family was calculated to be Rs.1487.13 whereas the last pay drawn (gross salary) of the deceased employee was found to be Rs.1458.48. It was, thus, found that the monthly income of the family is more than 60% of the last drawn salary of the deceased and, thus, the petitioner respondent Devi Kishan was not found entitled for compassionate appointment as per norms of the scheme.

11. Learned counsel for the respondent has objected to the said calculation while including the agricultural income @ Rs.500/- per month on the basis of the certificate issued by ''Patwari'' Gotan wherein it was averred that the land being uneven it was not being used for agricultural purpose since long. Accordingly, he argued that the bank authorities should not have taken into account this amount while calculating the income of the family. Per contra, learned counsel for the appellant has referred to the application form submitted by widow of deceased employee wherein, she herself has mentioned the income from agricultural land as Rs.500/- per month. Thus, it cannot be said that the bank authorities have wrongly taken into considerations this income and the objection raised by the learned counsel for the respondent is found to be of no avail.

12. In this regard, it is also worth mentioning that in State Bank of India & Anr. v. Somvir Singh (supra), Hon''ble Supreme Court has observed that it is within domain of the employer to calculate income of the family of the deceased employee and High Court should not disturb the finding arrived at by the employer. The relevant observation of Hon''ble Supreme Court, governing the

compassionate appointment can be reproduced here :-

The hardship of the dependent does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant Bank. It is not a case where the dependents of the deceased employee are left "without any means of livelihood" and unable to make both ends meet. The High court ought not to have disturbed the finding and the conclusion arrived at by the appellant Bank that the respondent was not living hand-to-mouth. The High Court cannot dilute the criterion of penury to one of "not very well-to-do". The view taken by the Division Bench of the High Court may amount to varying the existing scheme framed by the appellant Bank. Such a course is impermissible in law."

13. It is, thus, clear that when the employer has formulated a scheme to give compassionate appointment to dependents of the deceased employee, it has to be strictly adhered to and no deviation therefrom is legally permissible. The same view has been expressed by Hon''ble Supreme Court in various authorities relied upon by learned counsel for the appellant.

14. In State Bank of India & Anr. v. Raj Kumar, reported in (2010) 11 SCC 661, Hon''ble Supreme Court observed that claim for compassionate appointment is traceable only to the specific scheme framed by the employer therefor and there is no right whatsoever outside such scheme. Compassionate appointment is a concession and not a right.

15. In State of Gujarat & Ors. v. Arvind Kumar T. Tiwari & Anr., reported in (2012) 9 SCC 545, Hon''ble Supreme Court has observed that compassionate appointment should be made strictly in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. It was further held that such employment is an exception to the constitutional provisions contained in Articles 14 and 16 of the Constitution of India. The object of compassionate appointment is only to enable the family of the deceased to overcome sudden financial crisis and not to confer any status upon it.

16. In MGB Gramin Bank v. Chakrawarti Singh, reported in AIR 2013 SC 3365, Hon''ble Supreme Court has held that compassionate appointment cannot be claimed as a matter of right as it is not a vested right. It depends on various other circumstances i.e. eligibility and financial conditions of the family etc. The application has to be considered in accordance with the scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the scheme existing on the date of death of the incumbent.

17. In Umesh Kumar Nagpal v. State of Haryana & Ors., reported in (1994) 4 SCC 138, it was observed that mere death of an employee in harness does not

entitle his family to such source of livelihood (compassionate appointment). 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. It was further observed that compassionate appointment cannot be granted after a lapse of reasonable period, which must be specified in the rules. The consideration for such employment is not a vested right, which can be exercised at any time in future. It cannot be claimed or offered whatever the lapse of time and after the crisis is over.

18. In State Bank of India & Ors. v. Jaspal Kaur, reported in (2007) 9 SCC 571, it was held by Hon''ble Supreme Court that the case for compassionate appointment should be decided within the para-meters of the scheme prevailing when application for compassionate appointment was filed and not as prevailing on the date of decision of the Court. It was further observed that the financial condition of the family of the employee, who died in harness is main criterion under the scheme. Whether deceased left the family in penury and without any means of livelihood is to be decided by the competent authority. The court should not normally interfere with the decision of the authority. A court cannot order appointment on compassionate ground, dehors the provisions of the statutory regulations and instructions. Hardship of the candidate does not entitled him to compassionate appointment dehors the statutory provisions.

19. In Union Bank of India & Ors. v. M.T. Latheesh, reported in (2006) 7 SCC 350, Hon''ble Supreme Court has held that scheme for compassionate employment should require the financial conditions of the family to be examined in accordance with the norms specified therein. It was further observed that grant of compassionate employment by the courts ignoring the said facts would encourage litigation.

20. In General Manager (D&PB) & Ors. v. Kunti Tiwary & Anr., reported in (2004) 7 SCC 271, the Hon''ble Supreme Court has observed that terminal benefits received by the family of the deceased employee and other moveable and immoveable property possessed by it are found to show that the financial condition was not penurious. In such circumstances, denial by the employer bank to give compassionate appointment to the deceased''s son was held valid. It was further observed that in such circumstances, the High Court erred in diluting the criterion of penury to one of "not very well-to-do" while directing the Bank to appoint the deceased''s son.

21. Relying upon the judgment in Kunti Tiwary (supra), in another case of Punjab National Bank & Ors. v. Ashwini Kumar Taneja, reported in (2004) 7 SCC 265, Hon''ble Supreme Court held that retiral benefits received by the heirs of the deceased employee are to be considered as per the scheme while deciding the case for compassionate appointment. The interference by the High Court was held erroneous in giving the observation contrary to the scheme.

22. In view of the various pronouncements cited above, it is apparently clear that the philosophy behind giving compassionate appointment is just to help the family in harness to get over the immediate crisis by the loss of sole breadwinner. This category of appointment cannot be claimed as a right after lapse of the period when the crisis is over. More so, the financial status of the family is also to be looked into as per the scheme framed by the employer while giving compassionate appointment and such appointment cannot be conferred contrary to the para-meters of the scheme. In the matter in hand, death of Bhikha Ram took place on 27.10.1999 i.e. almost 17 years ago from now, therefore, the period of crisis is over for the family of the deceased employee. Further, the condition of the family was not found to be penurious as required under the para-meters of the scheme of the employer Bank applicable at the time of deciding the application for compassionate appointment.

23. In view of above, the direction given by learned Single Judge to reconsider the case of the petitioner respondent sympathetically for giving him compassionate appointment is not found sustainable. Accordingly, the impugned judgment dated 30.5.2008 is hereby quashed and set aside while allowing the appeal.