

(2014) 05 RAJ CK 0078
In the Rajasthan High Court
Case No : Civil Writ Petition No. 810/2002

Ugam Singh Rawat

APPELLANT

Vs

State Bank of India and Others

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Citation : (2014) 05 RAJ CK 0078

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : M.I. Baig, for the Appellant; S.S. Hasan, for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.?The petitioner, in the instant writ application, has impeached the order dated 12th June, 2000, declining his prayer for appointment on compassionate grounds and therefore, has approached this Court praying for the following relief(s):--

"1) by appropriate writ, order or direction the impugned order dated 12.6.2000 may kindly be quashed and set aside and the respondents be directed to issue appointment orders of the petitioner on the post of messenger cum Farash on compassionate grounds already given in the State Bank of India.

2) Any other order which, this Hon''ble Court may deem fit, just and proper may kindly be passed in favour of the petitioner."

2. In substance, the essential material facts necessary for adjudication of the controversy raised are: that the father of the petitioner, Late Shri Chhotu Lal Rawat, while working as Messenger cum Farash, expired on 3rd July, 1997 at Ajmer, after having rendered satisfactory service of more than 27 years. The petitioner, being major son, submitted his application for appointment on compassionate grounds since the widow of the deceased employee i.e., mother of the petitioner herself prayed for his appointment and gave "No Objection

Certificate" in favour of the petitioner. It is pleaded case of the petitioner that he was born on 30th July, 1973 and he had been working on purely temporary basis with various Branches of the respondent/Bank at Ajmer since 3rd June, 1988. It is further detailed out that father of the petitioner died in harness leaving the family in depression and financial crisis. The matter was considered by the respondent/Bank at various levels as per procedure and ultimately, vide communication dated 12th June, 2000 (Annexure-11), the competent authority declined the prayer of the petitioner for appointment on compassionate grounds.

3. Learned counsel for the petitioner reiterating the pleaded facts of the writ application assailed the order, declining the prayer for compassionate appointment of the petitioner, as arbitrary and contrary to the facts and law. Learned counsel for the petitioner would further submit that the claim for appointment on compassionate grounds has been mechanically declined without application of mind and ignoring the acute financial constrains of the bereaved family on account of sudden demise of the sole breadwinner of the family. The authorities of the respondent/Bank have not considered the case of the petitioner for compassionate appointment sympathetically and with due consideration to the penurious condition of the family. Learned counsel further argued that the action of the respondent/Bank is also discriminatory for the reason that compassionate appointment has been accorded to one Shri Raju S/o. Smt. Laxmi Bai, while Smt. Laxmi Bai died in harness, serving as Class-IV employee. Similarly, one Shri Mahesh Lala was also accorded appointment on compassionate grounds. The appointment on compassionate grounds of one Ms. Manju Sharma, in similar facts and circumstances, is yet another example and therefore, the claim of the petitioner for compassionate appointment deserves to be allowed with a direction to the respondent/Bank to accord appointment to the petitioner on compassionate grounds keeping in view the object underlying the Scheme for such an appointment. Learned counsel for the petitioner in order to reinforce his submissions, placed reliance on the opinion in the case of Kuldeep Kalla Vs. State Bank of India and Others, ; Suresh Kumar Sharma v. Union of India & Ors.: 2003 WLC (Raj.) UC 317 and Vishnu Singh Vs. Managing Director SBBJ and Another, .

4. Per contra; learned counsel for the respondent/Bank supporting the action, in declining the prayer of the petitioner for compassionate appointment, vehemently argued that the claim of the petitioner for compassionate appointment is not sustainable in the eye of law keeping in view the peculiar facts and materials available on record in the instant case at hand. The father of the petitioner served the respondent/Bank for 28 years and 4 months and as a consequence, the widow of the deceased employee received a sum of Rs. 1,07,128/- (Rupees : One Lakh Seven Thousand One Hundred and Twenty Eight) as Gratuity, a sum of Rs. 2,08,718/- (Rupees : Two Lakhs Eight Thousand Seven Hundred and Eighteen) was paid on account of Provident Fund and a sum of Rs. 40,881/- (Forty Thousand Eight Hundred and Eighty One) was released on account of pension arrears. That apart, the widow was in receipt of pension to

the tune of Rs. 4,250/- (Rupees : Four Thousand Two Hundred and Fifty) per month. Learned counsel for the respondent/Bank further contended that the petitioner is a grown up married man blessed with three children. Further, admittedly the petitioner had been in employment since 3rd June, 1988 as detailed out in the memo of the writ application. The deceased left behind two houses at Shantipura and Kotage, District Ajmer and the valuation of the two houses was around Rs. 5.28 lakhs (Rupees : Five Lakhs and Twenty Eight Thousand). The widow of the deceased was in receipt of pension to the tune of Rs. 4,250/- (Rupees : Four Thousand Two Hundred and Fifty) per month and the petitioner was earning Rs. 700/- (Rupees : Seven Hundred) per month out of his employment though temporary and therefore, the family cannot be said to be in financial crisis by any stretch of imagination. Highlighting the object underlying the compassionate appointment, the learned counsel emphasized that such an appointment is an exception to regular recruitment according to the Constitutional Scheme and therefore, such an appointment can be accorded only in exceptional circumstances more particularly to help the family to tide over the financial crisis on account of sudden demise of the sole breadwinner of the family. Repelling the allegation of discrimination with reference to the case of Ms. Manju Sharma, the learned counsel for the respondent/Bank urged that in that case, Ms. Manju Sharma wife of Late Shri Govind Narayan Sharma, was accorded compassionate appointment and the status of widow of the deceased cannot be equated to that of the petitioner, who happens to be a major married son aged more than 40 years as on date, in view of the admitted fact of date of birth of the petitioner being 30th July, 1973. Similarly, in the case of Smt. Reshma Lala widow of Late Shri Mahesh Lala, it was a case wherein the widow of the deceased was accorded appointment on compassionate grounds having regard to the financial assets of the family and liabilities, as the family consisted of two daughters aged about 8 and 5 years and a son who was aged about 2 years and the pension amount in that case was Rs. 2,200/- (Rupees : Two Thousand and Two Hundred) per month. The matter of appointment on compassionate grounds extended in favour of one Raju S/o. Late Shri Laxmi Bai, is also distinguishable on facts from that of the petitioner having regard to the financial status and constitution of the family. Late Smt. Laxmi Devi left behind her 3 sons and 2 daughters. The matter in the case of Smt. Laxmi Devi was considered by the competent authority having regard to the penurious condition and constitution of the family as well as the fact that Late Smt. Laxmi Bai herself was appointed on compassionate grounds after the death of her husband Late Shri Ram Charan. The family received an amount of Rs. 68,000/- (Rupees : Sixty Eight Thousand) as net terminal benefits and the monthly income was Rs. 2,449/- (Rupees : Two Thousand Four Hundred and Forty Nine), in those circumstances and factual matrix, it was concluded that the income was inadequate to sustain the family and therefore, in those penurious circumstances, to help the family tide over the hardship and financial crisis, an appointment on compassionate grounds was extended in favour of Raju.

5. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

6. It is not disputed that the date of birth of the petitioner is 30th July, 1973 and by now, he is more than 40 years of age. It is also an admitted fact that he is married and has been blessed with 3 sons, who were aged about 6, 4.6 and 3 years respectively in the year 1997. From the contents of the application submitted by the petitioner staking claim for appointment on compassionate grounds, it is evident that the petitioner was in receipt of an income of Rs. 700/- per month. The daughter of the deceased employee was also married and the widow of the deceased was not interested for appointment on compassionate grounds and therefore, gave "No Objection Certificate" for appointment of the petitioner, her son. Thus, having regard to the constitution and liability of the family as well as financial liabilities and assets including immovable properties, the matter was considered by the competent authority and after an objective consideration of the matter, declined the claim of the petitioner for appointment on compassionate grounds.

7. The details furnished about 3 cases, with whom the petitioner made an attempt to equate his case, make out a clear distinction as compared to the case of the petitioner having regard to the terminal benefits received by the family, financial condition of the family as well as assets and the liabilities. By no stretch of imagination, the case of the petitioner can be equated with that of Raju S/o. Late Smt. Laxmi Devi, Mahesh Lala and Ms. Manju Sharma.

8. It is trite law that compassionate appointment is a concession as an exception, to the regular recruitment to public service in view of the Constitutional Scheme. The intended object of compassionate appointment is to tide over the family of the immediate financial crisis in view of sudden demise of the sole bread winner of the family, if the family of the deceased is so faced with such circumstances.

9. The Schemes/Rules providing for compassionate appointment, by the very nature, is a concession in exceptional circumstances, on account of sudden demise of the sole bread winner of the family, leaving the family in depression and financial hardship. Appointment to public service is regulated by the Constitutional Scheme and Statutory Recruitment Rules, affording an opportunity to all other eligible candidates, to have consideration of their candidature to seek employment in public service.

10. In the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , the Hon"ble Apex Court of the land held thus:--

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving

gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment or seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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 that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual and manual categories. It was observed:--

"The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz, relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned." (p. 140)

11. In the case of *Umesh Kumar Nagpal* (supra), the Hon"ble Apex Court of the land has declared in unequivocal terms that consideration for an appointment on compassionate grounds is not a vested right, which may be exercised at any time in future, keeping in view the very object of such an appointment being to enable the family to get over the financial crisis on account of demise of the sole breadwinner of the family.

12. For the reasons and discussions herein above, I find substance in the counter-

affidavit submitted on behalf of the respondent/Bank and contentions raised while repelling the claim for compassionate appointment. The action of the respondent/Bank in declining the prayer of the petitioner for compassionate appointment, cannot be faulted.

13. In the result, the writ petition is devoid of any substance and deserves to be dismissed.

14. Ordered accordingly.

15. However, in the facts and circumstances of the case, there shall be no order as to costs.