

(2019) 04 CAL CK 0089

In the Calcutta High Court

Case No : Writ Petitions (WP) No. 1929 (W) Of 2019

Uma Sarkar & Anr

APPELLANT

Vs

Central Bank Of India & Ors

RESPONDENT

Date of Decision : 26-04-2019

Acts Referred:

Citation : (2019) 04 CAL CK 0089

Hon'ble Judges : Arijit Banerjee, J

Bench : Single Bench

Advocate : Malay Dhar, Biswajit Sarkar, Aparajita Rao

Final Decision : Dismissed

Judgement

Arijit Banerjee, J

(1) The petitioner No. 1 is the wife and the petitioner No. 2 is the son of a deceased employee of the respondent bank. They have challenged an order of the respondent bank rejecting the prayer for giving compassionate appointment to the petitioner No. 2. Although, another order of the bank rejecting the prayer of the petitioners for ex gratia payment has also been challenged in the writ petition, the same was not pressed. At the very outset, I enquired from learned counsel for the respondents as to whether the respondents would like to file an affidavit-in-opposition. Learned counsel submitted that the facts are not disputed and, hence, no affidavit need be filed. Accordingly, I took up this writ petition for final disposal.

(2) The employee concerned namely, Late Chandra Sekhar Sarkar joined the bank in 1987. He died-in-harness on 1st April, 2011. He was the sole bread earner of the family. His son was a student. His wife had the option of applying for compassionate appointment or alternatively ex gratia payment. It was submitted on behalf of the petitioners that in view of the financial crisis faced by the family of the deceased, the petitioner No. 1 applied for ex gratia payment. Such application was made within the prescribed time period. Since, such

application was kept pending for a long time, in February, 2014 the petitioner No. 2 made an application in the prescribed format for compassionate appointment. The application for ex gratia payment was rejected by the respondent bank by a Memo dated 1st August, 2014. The application for compassionate appointment was rejected by the bank by a Memo dated 30th September, 2014. As aforesaid, these two memos are under challenge in the present writ application. However, the challenge to the Memo dated 1st August, 2014 has not been pressed.

(3) The impugned memo rejecting the petitioners' prayer for compassionate appointment reads as follows:-

"RO/HRD/KOLS/2014-15/09/1495

Date: 30/09/2014

Branch Manager

Diamond Harbour Branch

Reg: Application for Compassionate Grounds of Sri Kapildeb Sarkar S/O Lt. Sri Chandra Sekhar Sarkar, Emp No. 075632.

Ref: Your Letter No. BR/DIAMOND/2013-14/dated: 25/09/2014.

In the instant matter we would like to inform you that In terms of GOI and IBA guidelines appointment of dependent of deceased employee on compassionate grounds is allowed only in exceptional cases where an employee:

? Dies while performing his official duty as a result of violence, terrorism, robbery or dacoity: or

? Dies within five years of his first appointment or before he reaches the age of 30 years, whichever is later leaving a dependent spouse and/or minor children.

So we are returning the application of Sri Kapildeb Sarkar S/O Lt. Sri Chandra Sekhar Sarkar with an instruction to inform the applicant accordingly."

(4) Learned counsel for the petitioners submitted that the said two exceptional clauses in the 2009 circular of the bank restricting compassionate appointment to the cases mentioned in the said two clauses are unreasonable and arbitrary. An identical clause in a circular of State Bank of India pertaining to compassionate appointment was struck down by a learned Single Judge of the Punjab and Haryana High Court. The Appeal Court upheld the order of the learned Single Judge. Learned counsel took me through the said unreported judgment of the Punjab and Haryana High Court in the case of Maya Devi versus State Bank of Patiala and others. He also placed before me the order of the Appeal Court upholding the said judgment and order.

(5) Learned counsel also referred to a Division Bench decision of the Patna High Court in the case of The Central Bank of India through its Chairman and others versus Urmila Devi (Letters Patent Appeal No. 649 of 2017 in Civil Writ

Jurisdiction Case No. 15532 of 2013 along with Interlocutory Application No. 2547 of 2017) dated 24th July, 2017, wherein it was held that the 2014 circular of the Central Bank of India had replaced the 2009 circular.

(6) Learned counsel submitted that in the present case as on the date of rejection of the claim of the petitioners for compassionate appointment, the 2014 circular was in force. Hence, reliance of the bank authorities on the 2009 circular for rejecting the petitioners' prayer was misplaced. He prayed for setting aside of the impugned memo and a direction on the respondents to consider the petitioners' prayer for compassionate appointment on the basis of the 2014 circular.

(7) Learned counsel for the respondent bank submitted that as per the rules, the application for compassionate appointment should have been made within twelve months from the date of death of the concerned employee. However, the application was, in fact, made on 2nd February, 2014 i.e. almost three years after the death of the concerned employee. On that ground alone, the application was liable to be rejected.

(8) Learned counsel further submitted that the 2014 circular relied upon by the petitioners was issued by the Indian Banks' Association. These are generally advisory and not strictly binding on the individual banks. Individual banks issue their own circulars generally in consonance with the circular issued by the Indian Banks' Association. The respondent bank issued a circular in 2015 pertaining to the scheme for compassionate appointment and made the scheme applicable to deaths of employees occurring after 5th August, 2014. Since the father of the petitioner No. 2 died prior to that date i.e. 1st April, 2011, his family would not be entitled to the benefit of the scheme for compassionate appointment.

(9) In reply, learned counsel for the petitioners submitted that the delay in applying for compassionate appointment can be explained. The petitioners found themselves in severe financial crisis upon the demise of concerned employee. Hence, they immediately applied for ex gratia payment with the hope that such prayer will be allowed at an early date. However, when such application was kept pending for more than two years, as an alternative, the petitioner No. 2 applied for compassionate appointment.

Court's View:-

(10) The writ petitioners have restricted their challenge to the memo dated 30th September, 2014 whereby the application of the petitioner No. 2 for compassionate appointment was rejected.

(11) The respondent bank issued an Office Circular dated 9th April, 2008 regarding appointment of dependents of deceased employees on compassionate grounds in exceptional cases and scheme for payment of ex gratia amount in lieu of appointment on compassionate grounds. Paragraph 2 of the said circular reads as follows:-

"Government of India, vide D.O. letter No. F.18/1/2006-IR dated 19th June, 2007 has since advised modification to the existing scheme, for payment of ex-gratia providing the compassionate appointment, in exceptional cases, where an employee:

(a) dies while performing his official duty as a result of violence, terrorism, robbery or dacoity; or

(b) dies within five years of his first appointment or before he reaches the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children."

(12) In the present case, the employee concerned died-in-harness on 1st April, 2011. It is nobody's case that the death occurred while performing official duty as a result of violence, terrorism, robbery and dacoity. The said employee had joined the bank on 10th August, 1987. Hence, his death did not occur within five years of his appointment. He passed away after approximately 24 years of his appointment and, hence, could not have been less than 30 years old. Hence, going by the Circular of 2008, the petitioner No. 2 would not be entitled to compassionate appointment.

(13) Further the circular of 2008 provided that application for employment under the scheme would have to be made not later than 12 months from the date of death of the employee. In the present case, the petitioner No. 2 applied on 14th February, 2014 i.e much beyond one year from the date of death of his father. However, his application was not rejected on the ground that it was made belatedly.

(14) The clause regarding death within five years of first appointment of the employee or before the employee reaching 30 years was challenged by way of a writ petition before the Punjab and Haryana High Court in CWP No. 26213 of 2016 (O&M) (Maya Devi Versus State Bank of Patiala and others). By his judgment and order dated 7th November, 2017, a learned Single Judge quashed the said clause as arbitrary. However, in the present case, there is no such challenge to Paragraph No. 2 of the Central Bank of India Circular dated 9th April, 2008.

(15) Learned counsel for the petitioner also relied on the decision of a Division Bench of the Patna High Court (supra). In that case, the Division Bench directed the Central Bank to consider the case of the petitioners in terms of the circular dated 8th April, 2015 and the scheme for compassionate appointment that was brought into force by the said circular. As I understand, the Special Leave Petition preferred by the Central Bank against the said Division Bench judgment and order is pending before the Hon'ble Supreme Court.

(16) The scheme for compassionate appointment that was introduced by the circular dated 8th April, 2015 has been made applicable for cases occurring on or after 5th August, 2014. Therefore, the scheme would not be applicable for the dependents of a deceased employee, whose death occurred prior to 5th August,

2014. I do not quite see the rationale behind this. However, in the absence of challenge to the said scheme also, I do not deem it appropriate to interfere with the same. As was held by the Hon'ble Apex Court in the case of State of Bihar & Anr.-vs.-Dr. Radha Krishna Jha & Ors., (2002) 6 SCC 308, if a relief is not claimed in a writ petition, the same ought not to be granted.

(17) I am also in agreement with learned counsel for the bank that the circulars issued by the Indian Banks' Association are advisory in nature and are not binding on the individual banks. These are in the nature of guidelines. It is up to a particular bank whether or not to adopt such guidelines.

(18) It is well-established that the dependents of a deceased employee do not have any vested right to be appointed on compassionate basis. Giving appointment on compassionate grounds is an exception to the normal rules of recruitment and is normally done by the institutional employers by framing special scheme to enable the dependents of a deceased employee to tide over immediate financial crisis that they may be faced with particularly when the deceased employee was the sole bread-earner of the family. In the present case also the Central Bank framed a scheme for compassionate appointment in 2007 and has replaced the same by a scheme framed in 2015 which is made applicable to cases occurring on or after 5th August, 2014. The petitioner No. 2 does not appear to qualify under either of the said schemes.

(19) In the premises, although I may have full sympathy for the petitioners, I am unable to grant any relief to them.

(20) The writ petition is dismissed without, however, any order as to costs.

(21) Urgent Photostat certified copy of this judgement shall be given to the parties, if applied for, upon compliance with requisite formalities.