

(2005) 02 KL CK 0003
In the High Court Of Kerala
Case No : W.A. No. 883 of 2003 (1)

Union Bank of India and Others

APPELLANT

Vs

M.R. Latheesh

RESPONDENT

Date of Decision : 25-02-2005

Acts Referred:

Citation : (2005) 02 KL CK 0003

Hon'ble Judges : B. Subhashan Reddy, C.J;Cyriac Joseph, J

Bench : Division Bench

Advocate : A.S.P. Kurup, for the Appellant; P.C. Sasidharan, for the Respondent

Final Decision : Dismissed

Judgement

B. Subhashan Reddy, C.J.—The order of compassionate appointment passed by the learned Single Judge is in question in this writ appeal.

2. The Appellant-Bank framed a scheme, and invoking the scheme, the Respondent-writ Petitioner had sought for compassionate appointment.

3. One T. Kunhambu was working as Clerk-cum-Cashier in Appellant-Bank and died in harness on 12-8-2001 leaving behind his widow and four children, i.e., one son-the Respondent-writ Petitioner and three daughters. Terminal benefits of T. Kunhambu were computed at Rs. 5,60,910-35, and what was paid in cash to his family members was only Rs. 74,910 as the balance amount of Rs. 4,86,000 was deducted as the liability of the deceased employee. The monthly family pension to his widow is Rs. 3,232.

4. The application for compassionate appointment by the Respondent having been dismissed, a writ petition was filed, which was allowed by the learned Single Judge directing appointment of Respondent on compassionate grounds. Hence, this writ appeal.

5. Mr. A.S.R. Kurup, the learned Counsel appearing for the Appellant, strenuously contend J that the learned Single Judge erred in ordering the compassionate

appointment. The learned Counsel submits that compassionate appointment is not a matter of right, and that nobody can claim the same regardless of financial soundness, and that, as sufficient amount has been granted to the family members of the deceased employee by way of terminal benefits, in addition to the monthly pension of Rs. 3,232, it cannot be said that there was any financial hardship to the family members of the deceased employee, and, as such, the order of the learned Single Judge is fit to be set aside. In support of his contention, he relied upon several judgments viz., Haryana State Electricity Board and another Vs. Hakim Singh, , National Institute of Mental Health and Neuro Sciences Vs. Dr. K. Kalyana Raman and others, , Commissioner of Police, Bombay Vs. Gordhandas Bhanji, , L. Hridaya Narayan v. Income Tax Officer AIR 1971 S.C.C. 31, Punjab National Bank and Others Vs. Ashwini Kumar Taneja, , General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, , Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , H.P.R.T. Corporation v. Dinesh Kumar 1996 (2) KLT S.N. 23, Sunil Kumar, K.G. v. Union of India and Ors. ILR 2003 Ker. 46, Judgment of a Division Bench of this Court dated 10th June 2003 in W.A. No. 1045 of 2003, Umesh Kumar Nagpal Vs. State of Haryana and Others, , and Union of India v. Kumaran 1998 (2) KLT 166.

6. In counter arguments, Mr. P.C. Sasidharan, the learned Counsel for the Respondent supporting the judgment of the learned Single Judge, had cited Canara Bank v. Priya Jayarajan 2001 (1) K.L.J. 411, Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, , and Vasantha Kumari v. Canara Bank 2002 K.L.J. 226.

7. On reading and understanding the above judgments either cited by the learned Counsel for the Appellant or the learned Counsel for the Respondent, what is discernible is that compassionate appointment is not a matter of right, and there should be some law governing the consideration of such appointment, and that, even if there is some rule or scheme or law providing for compassionate appointment, there cannot be any automatic appointment as the very object of compassionate appointment is to see that sudden loss of income to the dependents of the deceased who dies in harness is offset by providing help in the shape of providing a job, and that, if the financial condition of the dependents of the employee dying in harness is sound, then, in spite of there being a provision for compassionate appointment, compassionate appointment cannot be granted.

8. On the other hand, if there is no law providing for compassionate appointment, the employer can neither give employment on compassionate grounds nor can the seeker of employment can aspire for that. If the employment is given without such legal sanction, that would be illegal and without jurisdiction, as public employment cannot be a bounty.

9. But, if there is a provision, may be by way of an act, a rule, a regulation or even a scheme, then there is a right for the dependents of a deceased employee

to apply and there is a duty on the part of the employer to consider, subject to legal principles stated supra.

10. In the instant case, an application has been filed by the Respondent without undue delay. But, the same has been negatived on the ground of comfortable financial status of the dependents of the deceased employee. The deceased employee and his dependents belong to schedule caste community, their social status comes within the description of downtrodden. But, can it be said that they are economically sound? That is the question.

11. The cases decided by the Supreme Court and particularly of this High Court mentioned above, were on the basis of the facts stated therein; whether they were against the Respondents or in their favour. Those judicial precedents can be relied upon deducing the legal principles out of the same, but not on the basis of relief granted, as the relief granted was only on the basis of facts arising therein.

12. In so far as the broad legal principles are concerned, it is as stated above. And, in each case, those principles have to be applied and a due conclusion has to be arrived at.

13. In the instant case, the amount of terminal benefits got is paltry sum and the family pension also works out to Rs. 100 a day. Can this be sufficient for 5 dependents, and particularly 4 ladies therein, and more particularly 3 unmarried (and unemployed too) daughters, adding to the burden of the unemployed Respondent?

14. The learned Counsel for the Appellant tried to argue that lump sum amount of Rs. 7 lakhs was determined on account of terminal benefits of the deceased employee but a house was constructed, and loan was raised for that purpose and amounts were deducted towards the discharge of loan and that it cannot be said that no amount has been paid towards terminal benefits. If a house has been constructed, it has the burden of loan. At least, there is shelter on the head of the dependents of the deceased employee. And, for eking out livelihood, there is no sufficient income. At least, to supplement the meager pension of Rs. 3232, employment of the Respondent is very essential.

15. What is more, the Appellant Bank, while pleading that there was no vacancy after meeting the requirement of other employees dying in harness, has given employment to 4 persons very recently and, it is distressing to note that most of the persons who have been so employed under the scheme of compassionate appointment are the kith and kin of high ranking officers, and, this is sufficient to drub the Appellant as having acted arbitrarily and also capriciously. It only means that the Appellant is indifferent to the needs of its employee who was a mere Clerk-cum-Cashier while caring for high-salaried officers of the same Bank, while, in fact, the attitude of the Appellant should have been the converse, as it is the dependents of the low paid officers who had to be preferred than the dependents of high-paid officers.

16. The other plea of the learned Counsel for the Appellant that the scheme under which the above four employees have been appointed recently is a different one than the scheme applicable to Respondent, is also untenable. If the old scheme has been superseded by the new scheme, the new scheme has to be applied to the Respondent also along with the above four similarly situated dependants, particularly, in view of the fact that the latter are in a more comfortable position than the Respondent. Then, the Respondent ought to have been preferred first to the above four recently appointed.

And, now, we are of the considered view that we have addressed on the subject sufficiently, having applied the correct legal principles basing on the correct analysis of the facts and, thus, come to the conclusion that there is absolutely no error or infirmity either in law or in facts, on the part of the learned Single Judge, and, accordingly, dismiss the writ appeal. We direct the Appellant to implement the decision of the learned Single Judge within two weeks from today.