

(2004) 05 RAJ CK 0037
In the Rajasthan High Court
Case No : Civil Writ Petition No. 9299 of 2002

Vishnu Singh

APPELLANT

Vs

Managing Director SBBJ and Another

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 3 RLW 1742 : (2004) 3 WLC 394

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Kamlakar Sharma, for the Appellant; N.C. Goyal, for the Respondent

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The petitioner's father while serving with the respondent Bank as Daftari expired on August 22, 2001. The petitioner's request seeking compassionate appointment on the post held by his late father was declined by the respondent Bank vide communication dated August 9, 2002. By this writ petition the petitioner seeks direction in the name of respondent Bank to appoint the petitioner on the post held by his late father.

2. The respondent Bank filed reply to the writ petition and appended document Annexure R/1, which shows that on examining the issue relating to compassionate appointment it was revealed to the Bank that the petitioner's father late Narain Singh who was posted as Daftary at Murlipura Branch had following dependents:-

(i) Smt. Lalita Devi 50 years Widow; (ii) Vishnu Singh 26 years Son (Unemployed); (Petitioner) (iii) Anup Singh 23 years Son (Student); (iv) Kuldip Singh 18 years Son (Student).

It also appears from the perusal of Annexure R/1 that Bank loan in the sum of Rs. 3,33,293/- was outstanding against Narain Singh. Smt. Lalita Devi, the widow of Narain Singh was getting Rs. 3351/- as monthly family pension. The Bank

declined the prayer of the petitioner on the ground that total monthly income of the family was Rs. 3351/-per month, the family was living in its own house and the three grow up sons could earn some financial support for the family.

3. I have heard the rival submissions and scanned the case law cited at the Bar.

4. The respondent Bank vide Circular No. PER/29/87 dated March 28, 1987 circulated the scheme for appointment on compassionate ground for the dependent of deceased employee. Thereafter another Circular bearing No. PER/115/96-97 dated March 11, 1997 based on the guidelines issued by the Government of India and State Bank of India was issued. As per the circular the whole object of granting compassionate appointment was to enable the family to tide over the sudden crisis due to the death of the bread winner. Such appointment would only be offered 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.

5. Their Lordships of the Supreme Court in Umesh Kumar Nagpal v. State of Haryana (1), indicated thus:- (Para 2)

". . . .The whole object of granting compassionate employment is thus enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. 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."

6. Looking to the cost of living these days, I am of the opinion that the respondent Bank has not positively examined the financial condition of the family of deceased Narain Singh. Grant of family pension can not be taken as a ground for rejecting employment under the dying in Harness Scheme. Balbir Kaur v. Steel Authority of India (2), was the case wherein Hon'ble Apex Court propounded that "the Family Benefit Scheme can not in any way be equated with compassionate appointment. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by the family by lump-sum amount provided to it, this is rather unfortunate but this is a reality." The respondent Bank also did not take into consideration that the family of deceased Narain Singh has to repay a huge Bank loan. An affidavit has been filed by the respondent Bank that the petitioner during the pendency of the writ petition got married. I fail to understand as to how this fact supports the case of the Bank. If the petitioner enters into marriage to fulfil social obligation, it does not mean that financial condition of the family gets improved. A monthly family pension of Rs. 3351/-for the maintenance of a family consisting of 5 members is grossly inadequate.

7. The argument of the learned counsel for the respondent Bank that the

petitioner does not have any legal right to get appointment is devoid of merit. The concept of power is coupled with a duty as has been explained by their Lordships of the Supreme Court in *L. Hirday Narain v. I.T.O.* (3). Thus the power of respondent Bank under the Scheme to give appointment to the dependent of a deceased employee can be held to be a power coupled with a duty which creates a corresponding right in the dependent. Since the respondent Bank failed to discharge its duty arbitrarily arriving at the conclusion that the family of late Narain Singh had adequate means of livelihood, intervention under Article 226 of the Constitution appears necessary. Following observations of the Hon'ble Supreme Court made in *Balbir Kaur v. Steel Authority of India* (supra), may be usefully referred at this juncture:-

"The fact remains that denial of compassionate appointment would neither be fair nor reasonable in the context of constitutional philosophy. The concept of social justice is the yardstick to the justice administration system or the legal justice. The greater virtue of law is in its adaptability and flexibility. The Court ought to apply law depending upon the situation because Law is made for the society. Whatever is beneficial for the society, the endeavour of the Law Court would be to administer justice having due regard to it."

8. Having carefully analysed the material on record, I am of the considered view that the respondent Bank has not bestowed laborious thoughts upon the factors that the deceased Narain Singh was survived by a widow and three unemployed sons and it has also not given thought to the fact whether the family, in the circumstances, would require any permanent source of income to repay the loan and to sustain itself after having lost its sole bread earner to keep the pot of the family boiling.

9. For these reasons the impugned order dated August 9, 2002 declining compassionate appointment to the petitioner can not be sustained and the same accordingly stands quashed attended with the direction to respondent Bank authorities to reconsider within one month the claim of the petitioner for compassionate appointment in the light of the observations made in this order.

10. The writ petition stands allowed without any order as to costs.