

Canara Bank & Anr vs M. Mahesh Kumar on 15 May, 2015

Equivalent citations: AIR 2015 SUPREME COURT 2411

Author: R. Banumathi

Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.260/2008

CANARA BANK & ANR.

..Appellants

Versus

M. MAHESH KUMAR

..Respondent

WITH

CIVIL APPEAL NO.266/2008

CHAIRMAN AND MANAGING DIRECTOR
CANARA BANK & ORS.

..Appellants

Versus

SANTHA & ANR.

..Respondents

AND

CIVIL APPEAL NO.267/2008

CHAIRMAN AND MANAGING DIRECTOR
CANARA BANK & ORS.

..Appellants

Versus

A.K. SHEEBA & ANR.

..Respondents

J U D G M E N T

R. BANUMATHI, J.

Common question of law falling for consideration in these civil appeals is whether the dependant family members of the deceased employee of the appellant-Canara Bank were entitled to seek compassionate appointment on the basis of 'Dying in Harness Scheme' which was passed Vide Circular No.154/1993 w.e.f. 8.05.1993. The claim is resisted by the Canara Bank on the ground that the financial condition of the family members of the deceased employees is good and that the Scheme dated 8.05.1993 has been replaced with scheme dated 14.02.2005 (H. O. Circular No.35/2005) scrapping the provision of compassionate appointment and in lieu thereof introduced the new scheme of ex-gratia payment.

2. In Civil Appeal No.260/2008, the Division Bench of the High Court of Kerala at Ernakulam vide its Order dated 24.08.2006 in Writ Appeal No. 1313/2003 (B) titled as Canara Bank & Anr. vs. M. Mahesh Kumar directed the bank to reconsider the claim of the claimant- M. Mahesh Kumar within two months from the date of order. Further, due to the pendency of SLP against the decision dated 24.08.2006 in Writ Appeal No.1313/2003(B), the Division Bench of the High Court of Kerala also disposed off the Writ Appeal Nos.2333/2006 and 2335/2006 vide common order dated 11.12.2006 and directed the claimants to approach this Court. Assailing the aforesaid three decisions of the Division Bench of the Kerala High Court, the appellant-bank has filed the instant appeals.
3. For convenience, Civil Appeal No.260/2008 is taken as a lead case. Brief facts which led to the filing of the appeal are as follows:-

Respondent applied to the appellant-bank on 30.11.1998 claiming to be considered for compassionate appointment on account of death of his father, a clerk in the appellant-bank who while on duty died on 10.10.1998. Respondent had applied for the compassionate appointment on account of 'Dying in Harness Scheme' with effect from 8.05.1993 then in vogue in the appellant-bank. The bank vide its communication dated 30.06.1999 rejected the claim of the respondent on the ground that the respondent's family financial position does not show any indigent circumstances warranting to provide employment on compassionate ground. The respondent gave his representation to the General Manager of the appellant-bank and several other representations for reconsideration of his claim; but nothing fruitful happened in consideration of respondent's claim for compassionate appointment. Thereafter, respondent filed O.P. No.21630/2002 (Y) before the High Court of Kerala, Ernakulam seeking to quash the Ext.P4 and direction to the appellant-bank to appoint him as per 'Dying in Harness Scheme' then in force in the appellant-bank. The learned Single Judge of the High Court vide judgment dated 30.05.2003 allowed the Original Petition of the respondent herein and quashed Ext.P4 and directed the appellant-bank to reconsider the claim of the respondent for appointment in accordance with law within two months from the date of receipt of copy of judgment. Appellant-bank assailed the decision of the learned Single Judge in Writ Appeal No.1313/2003 (B) and the Division Bench upholding the order of the Single Judge dismissed the writ appeal. The appellant-bank has filed this appeal assailing the correctness of the above order.

4. Learned counsel for the appellant-bank contended that consideration for appointment on compassionate ground is contrary to Articles 14 and 16 of the Constitution of India and is only in the nature of concession and, therefore, it does not create a vested right in favour of the claimant/respondent. It was submitted that 'Dying in Harness Scheme' is a non-statutory scheme and is in the form of a concession and it does not create a vested right in favour of the claimant/respondent to be enforced through a writ of mandamus. It was further submitted that the compassionate appointment is justified when it is granted to provide immediate succour to the deceased-employee and cannot be granted on the passage of time and in all these cases, the concerned employee died about two decades ago and, therefore, the High Court was not justified in

directing the appellant-bank to reconsider the claim of the respondent for compassionate appointment. In support of his contention, learned counsel for the appellant relied upon number of judgments: Umesh Kumar Nagpal vs. State of Haryana And Ors., (1994) 4 SCC 138; Steel Authority of India Ltd. vs. Madhusudan Das & Ors., (2008) 15 SCC 560; Union of India & Anr. vs. B. Kishore, (2011) 4 SCALE 298; State of Haryana vs. Naresh Kumar Bali, (1994) 4 SCC 448; State Bank of India & Ors. vs. Jaspal Kaur, (2007) 9 SCC 571 and State Bank of India & Anr. v. Raj Kumar, (2010) 11 SCC 661.

5. Per contra, learned counsel for the respondent contends that the order was passed by the appellant-bank without considering the facts that is size of the respondent's family/employment status of his family members and sources of their income, liabilities and expenses and the decision of the bank rejecting the case of the respondent for compassionate appointment is arbitrary. Placing reliance upon Jaspal Kaur's case (supra) and other decisions, it was submitted that the case of the respondent ought to have been considered in the light of the Scheme 'Dying in Harness Scheme' which was then in vogue. The respondent averred that the payment of terminal benefits cannot be taken as a ground for rejecting employment under the 'Dying in Harness Scheme'.

6. We have considered the rival contentions of both the parties and perused the impugned judgments and the material on record.

7. Law with regard to employment on compassionate ground for dependant of a deceased employee is well settled. In Sushma Gosain & Ors. vs. Union of India & Ors., (1989) 4 SCC 468, this Court held as thus:

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant." The settled law which has been reiterated in various cases has been succinctly elucidated in MGB Gramin Bank vs. Chakrawarti Singh, (2014) 13 SCC 583, wherein it was observed that compassionate appointment cannot be granted as of right and the application to be decided as expeditiously as possible and held as under:-

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is

satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.” (Underlining added)

8. The above consistent view has been reiterated in various judgments by this Court in Umesh Kumar Nagpal vs. State of Haryana & Ors. (1994) 4 SCC 138, State of Manipur vs. Md. Rajaodin, (2003) 7 SCC 511, Steel Authority of India Ltd. vs. Madhusudan Das & Ors., (2008) 15 SCC 560 and Sanjay Kumar vs. State of Bihar & Ors., (2000) 7 SCC 192.

9. Before advertng to the arguments of the learned counsel for the parties, it is necessary to examine the scope of the Scheme dated 8.05.1993 vide Circular No.154/1993 for “compassionate appointment”. The object of the Scheme is to help dependants of employees of Canara Bank who die or become totally and permanently disabled while in harness and to overcome the immediate financial difficulties on account of sudden stoppage of the main source of income. The employment under the scheme will be considered only if there are indigent circumstances necessitating employment to one of the dependants and the deceased employee’s service record is unblemished. Mere eligibility will not vest a right for claiming employment. As per para 3.1, application for employment should be sought within 2½ years from the date of death of the employees. In para 3.2, it is stated that in case of the dependant of the deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.

10. During the pendency of the matter before the Division Bench, Indian Banks Association (for short ‘IBA’) formulated a scheme based on the guidelines issued by the Government of India. As per the said Scheme, the banks have scrapped the scheme of compassionate appointment and introduced the new scheme of ex-gratia payment in lieu of compassionate appointment by H.O. Circular No.35/2005 dated 14.02.2005. According to appellant-Bank, as on date of consideration of the application for compassionate appointment, there was no policy to provide compassionate appointment under ‘Dying in Harness Scheme’. It is therefore the contention of the bank that the new scheme of 2005 applies to all pending applications for appointment on compassionate ground, respondent’s case could not be considered and as per the new Scheme, they are only entitled to ex-gratia payment in lieu of compassionate appointment.

11. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex-gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. Appellant-bank has placed reliance upon the judgment of this Court in Jaspal Kaur’s case (supra) to contend that the respondent’s case cannot be considered on the basis

of 'Dying in Harness Scheme 1993' when the new Scheme of 2005 providing for ex-gratia payment had been put in place. In Jaspal Kaur's case (supra), Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 1.08.1999. Widow of the employee applied for compassionate appointment in State Bank of India on 5.02.2000. On 7.01.2002, the competent authority of the bank rejected the application of Jaspal Kaur in view of the Scheme vis-a-vis the financial position of the family. Against that decision of the competent authority, the respondent filed writ petition before the Punjab and Haryana High Court which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.08.2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that claim of compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

12. The same principle was reiterated by this Court in the case of Bhawani Prasad Sonkar vs. Union of India & Ors., (2011) 4 SCC 209, wherein it was held as under :-

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

17. In Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138, while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Classes III and IV, this Court had observed that: (SCC p. 140, para 2) “2. ...The whole object of granting compassionate employment is thus to 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone

can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. 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 dependant 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 to the [pic]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 the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee’s family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.” (Underlining added)

13. Applying these principles to the case in hand, as discussed earlier, respondent’s father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme ‘Dying in Harness Scheme’ dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent’s claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of

respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993.

14. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant- bank is not justified in contending that the application for compassionate appointment of the respondent cannot be considered in view of passage of time.

15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

16. In *Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors.*, (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

“13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.” Referring to *Steel Authority of India Ltd.'s* case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for

appointment on compassionate ground.

17. Considering the scope of the Scheme 'Dying in Harness Scheme 1993' then in force and the facts and circumstances of the case, the High Court rightly directed the appellant-bank to reconsider the claim of the respondent for compassionate appointment in accordance with law and as per the Scheme (1993) then in existence. We do not find any reason warranting interference.

18. So far as the cases in Civil Appeal No.266/2008 and Civil Appeal No.267/2008 are concerned, they are similar and those respondents are similarly placed and the appeals preferred by the bank are liable to be dismissed. The appellant-bank is directed to consider the case of the respondents in Civil Appeal Nos. 266/2008 and 267/2008.

19. In the result, all the appeals preferred by the appellant-bank are dismissed and the appellant bank is directed to consider the case of the respondents for compassionate appointment as per the Scheme which was in vogue at the time of death of the concerned employee. In the facts and circumstances of the case, we make no order as to costs.

.....J. (T.S. Thakur)J. (R. Banumathi) New Delhi;

May 15, 2015