

State Bank Of India & Anr vs Somvir Singh on 13 February, 2007

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Bench: H.K. Sema, B. Sudershan Reddy

CASE NO.:

Appeal (civil) 743 of 2007

PETITIONER:

State Bank of India & Anr

RESPONDENT:

Somvir Singh

DATE OF JUDGMENT: 13/02/2007

BENCH:

H.K. Sema & B. Sudershan Reddy

JUDGMENT:

J U D G M E N T (Arising out of SLP(c) No. 802 of 2006) B.SUDERSHAN REDDY,J.

Leave granted.

The sole respondent is the son of Zile Singh who died while in harness on May 5, 1998. He was serving as an Assistant (typist/clerk) in the appellants-State Bank of India (hereinafter referred to as appellant-Bank). The respondent's mother submitted an application requesting the appellant-Bank for appointment of respondent by way of compassionate appointment. The respondent at the relevant time was studying in his matriculation examination. The Zonal Office of the appellant-Bank at Chandigarh required the family of the deceased employee to furnish the details of assets/pension/loan/income and other details as are required in order to consider the compassionate appointment. The same were furnished by the respondent. The Deputy General Manager of the Bank submitted the proposal for the consideration of the Competent Authority in the printed format inter alia indicating the details regarding the deceased employee, terminal benefits, details of immovable property left behind him, investments and liabilities as well as pension paid. The Deputy General Manager while forwarding the request for consideration of the Chief General Manager observed that the family of late Zile Singh has reasonable source of income

to sustain itself and therefore, the request for appointment on compassionate ground does not qualify for favourable consideration. No doubt, the Branch Manager where the deceased employee was working recommended the case for appointment on compassionate ground. The Chief General Manager having regard to the financial condition of the family found that the resources of the family are adequate to meet its basic needs and accordingly rejected the request for appointment on compassionate grounds. The Competent Authority found that the financial condition of the family does not justify any such appointment on compassionate grounds. The order of the Chief General Manager in detail reveals that the deceased employee was entitled to Rs. 03.15 lacs towards terminal benefits and investments out of which Rs. 02.52 lacs were deducted towards the liabilities leaving net surplus of Rs. 00.63 lacs. The monthly family income included family pension drawn from the Bank at Rs. 2,214/- and income on agricultural land being Rs. 584/-. The family members are living in their own house. The value of the agricultural land possessed by the family has been fixed at Rs. 7 lacs. It is under those circumstances the Bank found that the family of the deceased employee had not been left in penury or without any means of livelihood.

Challenging the order of rejection, the respondent filed a writ petition in Punjab and Haryana High Court. The Division Bench held that the income of Rs. 2,798/- "could not be treated to be an amount for the family which could be termed as such amount to take out the family from penury." The High Court accordingly directed the appellant-Bank to reconsider the claim of the petitioner for compassionate appointment keeping in view the entire facts and circumstances of the case and the observations made in the order. The order of the High Court is challenged in this appeal.

In this appeal Shri Mukul Rohtagi, learned senior counsel for the appellant-Bank submitted that the High Court has committed error in directing the appellant-Bank to reconsider the case of the respondent on compassionate ground. The High Court ought to have appreciated that the provisions of the Scheme viz. compassionate appointment applies only in cases wherein the deceased employee left the family in penury and without any means of livelihood. The monthly income derived by the family and the immovable properties owned by it do not justify any appointment on compassionate ground. The compassionate appointment can be made only in accordance with the scheme and there is no right to claim any appointment de hors the scheme. The view taken by the appellant-Bank according to the learned senior counsel to reject the claim of the respondent is in conformity with the scheme.

Responding to the submissions made by the learned senior counsel, the learned counsel for the respondent submitted that the amount paid towards the terminal benefits and investments and the family pension cannot be taken into consideration for the purposes of assessing as to whether dependants of deceased employee are left without any means of livelihood.

We have given our earnest consideration to the rival submission made during the course of hearing of this appeal.

Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds

only of religion, race, caste, sex, descent. It is so well settled and needs no restatement at our ends that appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependants of employees died in harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer.

In Umesh Kumar Nagpal Vs. State of Haryana [(1994) 4 SCC 138] this Court held, "As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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 held by the deceased." (emphasis added) In Union Bank of India & Ors. Vs. M.T. Latheesh [(2006) 7 SCC 350], this Court while dealing with the similar question observed that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever-growing population of unemployed youth.

There is no dispute whatsoever that the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment de hors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

The scheme for appointment of dependants of deceased employee on compassionate grounds framed by the appellant-Bank inter alia provides that in making assessment of the financial condition of the family which is an important criterion for determining the eligibility to compassionate appointment, the following factors are required to be taken into consideration:

- a) Family pension
- b) Gratuity amount received

- c) Employee's/Employer's contribution to Provident Fund
- d) Any compensation paid by the Bank or its Welfare Fund
- e) Proceeds of LIC Policy and other investments of the deceased employee
- f) Income for family from other sources
- g) Income of other family members from employment or otherwise
- h) Size of the family and liabilities, if any.

The Competent Authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependants of employee who died in harness are not in penury and without any means of livelihood. The Authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant-Bank in fact mandates the Authority to take those factors into consideration. The Authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.

In our considered opinion the High Court itself could not have undertaken any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its survival and whether it had been left in penury or without any means of livelihood. The only question the High Court could have adverted itself is whether the decision making process rejecting the claim of the respondent for compassionate appointment is vitiated? Whether the order is not in conformity with the scheme framed by the appellant-Bank? It is not even urged that the order passed by the Competent Authority is not in accordance with the scheme. It is well settled that the hardship of the dependant does not entitle one to compassionate appointment de hors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant-Bank. It is not a case where the dependants of the deceased employee are left 'without any means of livelihood' and unable to make both ends meet. The High Court ought not to have disturbed the finding and the conclusion arrived at by the appellant-Bank that the respondent was not living hand to mouth. As observed by this Court in General Manager (D&PB) and others Vs Kunti Tiwary and anr. [(2004) 7 SCC 271], the High Court cannot dilute the criteria 'of penury to one of "not very well-to-do"'. The view taken by the Division Bench of the High Court may amount to varying the existing scheme framed by the appellant-Bank. Such a course is impermissible in law.

For all the aforesaid reasons, we allow the appeal filed by the appellant-Bank and set aside the order passed by the Division Bench of the High Court of Punjab and Haryana. There shall be no order as to costs.