

State Bank Of India & Ors. vs Aspal Kaur ...Respondent(S) on 1 February, 2007

Equivalent citations: 2007 AIR SCW 1044, 2007 (9) SCC 571, AIR 2007 SC (SUPP) 414, (2007) 2 JCR 300 (SC), (2007) 2 SCT 226, (2007) 1 BANKCLR 577, (2007) 3 SERVLJ 1, (2007) 2 BOM CR 244, (2007) 5 MAD LJ 396, (2007) 1 LAB LN 613, (2007) 2 SCALE 397, (2007) 1 ESC 66, (2007) 3 SUPREME 179, (2007) 2 PAT LJR 39, (2007) 1 MAD LW 587, (2007) 2 PUN LR 754, (2007) 53 ALLINDCAS 129 (SC), (2007) 2 UPLBEC 1424, (2007) 112 FACLR 1037, (2007) 1 CURLR 947, (2007) 2 SERVLR 1

Author: Ar. Lakshmanan

Bench: Ar. Lakshmanan, Altamas Kabir

CASE NO.:

Appeal (civil) 409 of 2007

PETITIONER:

State Bank of India & Ors.

.... Petitioner(s)

RESPONDENT:

aspal Kaur

...Respondent(s)

DATE OF JUDGMENT: 01/02/2007

BENCH:

Dr. AR. Lakshmanan & Altamas Kabir

JUDGMENT:

J U D G M E N T (Arising Out of SLP (C) NO. 2432 OF 2006) Dr. AR. Lakshmanan, J.

Leave granted.

On 07.08.1996, the Government of India, Ministry of Finance, issued guidelines regarding scheme of appointment of dependents of deceased employees on compassionate grounds, which were entirely based on the observations of this Court in Umesh Kumar Nagpal vs. State of Haryana & Ors., (1994) 4 SCC 138. Subsequently, on 23.08.1996, the Indian Banks Association issued a circular suggesting to all Public Sector Banks, certain amendments to the scheme on compassionate appointment, while taking into account the financial condition of the family, the family pension, gratuity, proceeds of LIC, etc should be taken into consideration. Based on the guidelines issued by the Government of India and the Indian Banks Association, the appellant Bank framed a scheme for appointment on compassionate grounds for dependent of deceased employees. A memorandum of

the same was presented before the Central Board of the Bank, which was approved on 16.11.1996.

On 01.08.1999, Record Assistant (Cash & Accounts) in the Dhab Wasti Ram, Amritsar branch, Sri. Sukhbir Inder Singh (late), passed away. The respondent, widow of Sri. Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 05.02.2000. On 07.01.2002, the competent authority of the Bank declined the application of the respondent in view of the scheme vis-à-vis the financial position of the family. Against this decision of the authority the respondent filed Civil Misc. Writ Petition No. 3077/2002 before the Punjab and Haryana High Court.

The High Court ordered reconsideration of the case of Jaspal Kaur, respondent herein by its order dated 11.12.2003. On 05.03.2004, the Deputy General Manager of the Bank reconsidered the case of the respondent and declined appointment to the respondent on compassionate ground after taking into consideration the financial condition of the family. The Competent Authority thereafter declined the request of the respondent on 03.04.2004. This decision was conveyed to the respondent by the appellants on 05.04.2004. Thereafter, the respondent filed one more Civil Misc. Writ Petition No. 9629/2004 before the Punjab and Haryana High Court praying for quashing of the order dated 03.04.2004. The appellants filed their reply on 03.05.2005. On 20.09.2005, the High Court allowed the writ petition filed by the respondents and observed that, " the aforesaid kitty of Rs. 4,57,607/- granted to the family on account of terminal benefits could not be accepted to be sufficient . The said amount was naturally in the shape of a security for the marriage of the daughters In our considered view the aforesaid income is not sufficient for the bare maintenance of the family".

It is against this order and judgment of the Punjab and Haryana High Court, this Civil Appeal by way of Special Leave Petition is preferred by the appellant Bank in this Court. Learned senior counsel Mr. Mukul Rohtagi appeared on behalf of the appellant Bank and learned Counsel Mr. P.N.Puri appeared for the respondent.

It was submitted by Mr. Mukul Rohtagi, that the High Court has failed to appreciate that the respondent could be considered for compassionate appointment only under the scheme framed by the Bank. Hence the provisions of the scheme viz. compassionate appointment applies only in cases wherein the deceased has left the family in penury and without any means of livelihood are required to be taken into consideration. Also the appellant-Bank, as per the Scheme, is required to look at the penurious condition/indigent circumstances existing at the time of death of the sole breadwinner, warranting such compassion. And in any case if there does not exist any such circumstances, a writ of mandamus, cannot be issued, de hors the scheme. It was submitted that, the High Court failed to appreciate that in the present case the family of the deceased employee consists of widow, twin daughters and one son, and the financial condition of the family is as under:

a) a sum of Rs.4,57,607/- as terminal benefits has been paid (after deducting Rs.19,183/- towards liabilities);

b) a sum of Rs.2055/- p.m. was being paid towards family pension and monthly income under Staff Mutual Welfare Scheme.

c) The total monthly income of the family comes to Rs.5855/- (monthly pension of Rs.2055/- + Rs.3800/- p.m. as notional interest on the investment of Rs.4,57,607/-).

It was further submitted that the High Court failed to appreciate the fact that the terminal benefit of Rs.4,57,607/- paid to the family is an integral part of the financial security made available to the family of the deceased. The payment of terminal benefits are an important factor and cannot be left out while considering the financial condition of the family. Mr. Mukul Rohtagi submitted that the Division Bench of the High Court erred in substituting its views with the views/findings of the competent authority, by holding that the family income "is not sufficient for the bare maintenance of the family".

Learned senior counsel relied on the decisions of this Court in support of his contentions. He submitted that this Court has held that the Court exercising the jurisdiction of judicial review should not interfere with findings of fact arrived by the competent authorities, except in the case of mala fides or perversity as held in the case of Bank of India & Anr. vs. Degala Suranarayana, (1999) 5 SCC 762. He also relied on a recent decision of this Court in the case of Union Bank of India & Ors. vs. M.T.Latheesh, (2006) 7 SCC 350, (Dr. AR. Lakshmanan and Tarun Chatterjee, JJ) where this Court held that, "the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed".

The learned senior counsel also made the following submissions:

It is well established that the High Court, while exercising jurisdiction under Art. 226 of the Constitution of India, does not act as a Court of appeal.

The High Court failed to appreciate that clause (1) of the Scheme provides that in order to determine the financial condition of the family, the amounts paid towards terminal benefits, investments, income from other sources and size of the family etc. are required to be taken into account. However, in the present case while holding the condition of the family is not sufficient for the bare maintenance of the family, the High Court has failed to appreciate that the monthly income of Rs.2055/- p.m. and the terminal benefits of Rs.4,57,607/- has been paid to the family of the deceased. The High Court also failed to appreciate a well settled principle of law laid down by this Court in the case of L.I.C. of India vs. Asha Ramchandra Ambekar (Mrs) & Anr., (1994)

2 SCC 718 that the Court cannot order appointment on compassionate ground, de hors the provisions of the statutory regulations and instructions and that hardship of the candidate does not entitle him to compassionate appointment de hors the statutory provisions.

The High Court also failed to appreciate that the appointment under the scheme of compassionate appointment was at the discretion of the authority which was to be exercised keeping in view the scheme and the object/rationale behind it. It was submitted that compassionate appointment

cannot be claimed as a matter of right. Moreover the public office is not heritable.

The High Court failed to appreciate the ratio in General Manager (D&PB) & Ors. vs. Kunti Tiwary & Anr., (2004) 7 SCC 271 case where it was held that the criteria of penury has to be applied and only in cases where the condition of the family is "without any means of livelihood" and "living hand to mouth" that compassionate appointment was required to be granted.

The learned counsel appearing for the respondents submitted that the touchstone of compassionate employment is a stage of penury and destitution to which the family is reduced to as a result of the death of an employee in harness. Late Shri. Sukhbir Inder Singh was drawing a monthly salary of Rs. 15000/- when he died. On his death, besides his widow he left behind three minor children including two 15 years old daughters and a son who was 8 years of age. The respondents contented that the bank has not considered the case of dependent of Sukhbir Inder Singh keeping in view the size of the family and liabilities.

Further the respondents relied on para 8 of the Scheme which reads as under:-

"8) EX-GRATIA:

Ex-gratia on compassionate grounds in lieu of compassionate appointment may be granted to the family of the employee and subject to the ceilings specified below, if the monthly income of the family from all sources calculated in the manner shown below in paragraph 9 (B) is less than 60% of the last drawn gross salary (net of taxes) of the employee. The family shall be deemed to be eligible for ex- gratia payment if the income so arrived at is below 60% of the gross salary (net of taxes) last drawn, and ineligible if it is 60% or more of the gross salary (net of taxes). Ex-gratia will be paid to the family of the deceased employee or the employee who has retired due to incapacitation of eligible under the Scheme within three months of the receipt of application, complete in all respect".

It was submitted that the Bank in its policy issued in 2005 laid down criteria for determining penury i.e. the income of the family of the deceased employee/dependents have been reduced to less than 60% of the salary which was drawn by the deceased at the time of death. In the present case, as have been stated above, the income of the family of deceased is Rs.3000/- only, but even according to the finding given in order dated 03.04.2004, the said income is Rs.5855/- which is less than 40% of the salary last drawn by Late Shri. Sukhbir Inder Singh. The respondents claimed that this scheme formulated on 18.08.2005, was not complied with by the appellant bank while deciding her claim for appointment in the Bank on compassionate ground.

Concluding his submissions, Mr. P.N.Puri, submitted that the stage of penury and destitution is to be determined after balancing the assets vis-`-vis liability which was not done in this case by the appellant bank.

We heard both the parties in detail. We have also perused through all the documents presented in the Court and both the judgments passed by the High Court of Punjab and Haryana.

We are now of the view that, the submissions made by the appellants deserve favourable consideration and merit acceptance.

The law with regard to employment on compassionate grounds for dependents of a deceased employee was laid down by this Court in case of Umesh Kumar Nagpal vs. State of Haryana & Ors. (supra), where this Court observed that, "Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood".

This Court has further observed in General Manager (D&PB) & Ors. vs. Kunti Tiwary & Anr. (supra), that, "the particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth. The Division Bench erred in diluting this criteria of penury to one of "not very well to do".

It was again observed in 2005 by this Court in the case of SBI vs Vikas Dubey, (Civil Appeal No.7003/05 dated 21.11.2005), also followed the decision in Kunti Tiwary (supra) case.

Hence a major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial condition is entirely penury, such appointments cannot be made. In the present case the financial condition of the respondents family is not one of destitution, the appellants have already paid a sum of Rs.4,57,607/- as terminal benefits (after deducting Rs.19,183/- towards liabilities); a sum of Rs.2055/- p.m. was being paid towards family pension and monthly income under Staff Mutual Welfare Scheme and in addition the total monthly income of the family comes to Rs.5855/- (monthly pension of Rs.2055/- + Rs.3800/- p.m. as notional interest on the investment of Rs.4,57,607/-). The competent fact finding authority on the basis of the above financial details had arrived at the conclusion that the financial condition of the family is not penurious and that the family earns sufficient income to maintain themselves. Hence appointment on compassionate ground was not granted to the respondent. We however, do not feel the necessity to interfere with this order of the Bank Authority on the fact situation of this case.

The competent authority of the bank had to consider the case of the respondent as per the laid down parameters laid down in the scheme. Accordingly, while deciding on the financial condition of the respondent factors like:

- a) Family Pension
- b) Gratuity
- c) Employee's/Employer's contribution to the Provident Fund

- d) Any compensation paid by the Bank or its Welfare Fund
- e) Proceeds of LIC Policy & other investments of the deceased employee
- f) Income for family from other sources
- g) Employment of other family members
- h) Size of the family and liabilities, if any, etc. were taken into consideration by the Competent Authority and based on these details appointment was declined to the respondent on compassionate ground.

Also we are of the view that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Both the Benches of the High Court that heard this present matter have erred in entertaining the claim of the respondent and allowing the claim of the respondent. This was the view taken in a recent decision of this Court in Union Bank of India and Others vs. M.T. Latheesh (supra), where the court observed that, "Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment". Finally in the fact situation of this case, Sri. Sukhbir Inder Singh (late), Record Assistant (Cash & Accounts) on 01.08.1999, in the Dhab Wasti Ram, Amritsar branch, passed away. The respondent, widow of Sri. Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 05.02.2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 04.08.2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of deceased is Rs.5855/- only, which is less than 40% of the salary last drawn by Late Shri. Sukhbir Inder Singh, in contradiction to the 2005 scheme does not hold water.

In the result, we allow the appeal filed by the appellant the Bank in this case and set aside the order passed by the two Benches of the High Court of Punjab and Haryana. However, there shall be no order as to costs.