

State Bank Of India & Anr vs Raj Kumar on 8 February, 2010

Equivalent citations: AIR ONLINE 2010 SC 93, (2010) 125 FAC LR 572, (2010) 1 CUR LR 1027, (2010) 4 SCT 77, (2010) 3 RAJ LW 2343, (2010) 2 PUN LR 703, (2010) 2 LAB LN 638, (2010) 3 SCALE 635, (2017) 4 SCALE 271

Author: R.V.Raveendran

Bench: K. S. Radhakrishnan, R.V. Raveendran

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1641 OF 2010
[Arising out of SLP(C) No.28370 of 2008]

STATE BANK OF INDIA & ANR.

... APPELLANTS

VS.

RAJ KUMAR

... RESPNDENT

O R D E R

R.V.RAVEENDRAN, J.

Leave granted. Heard the parties.

2. The respondent's father employed as a Messenger in the Appellant Bank, died on 1.10.2004. Respondent's mother made applications dated 6.6.2005 and 14.6.2005 requesting for his appointment on compassionate grounds. When the applications were being processed and verified, the compassionate appointment scheme was substituted by the "SBI Scheme for payment of ex-gratia Lumpsum Amount" with effect from 4.8.2005. The new scheme abolished the old scheme for compassionate appointments and instead provided for payment of an ex gratia lumpsum amount as per its terms. Clauses 14 and 15 of the new scheme relevant for our purpose are extracted below:

"14. Date of effect of the Scheme and disposal of pending applications:

.....Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Executive Committee of the Central Board will be dealt with in accordance with the new Scheme for payment of ex-gratia lumpsum amount provided they fulfill all the terms and conditions of this Scheme.

15. Miscellaneous provisions of the Scheme x x x x x x x vi. With effect from the date the "SBI Scheme for Payment of Ex-gratia Lumpsum Amount" comes into force the Bank's scheme of compassionate appointments shall be deemed abolished/withdrawn and no request for compassionate appointment shall be entertained or considered by the Bank under any circumstance."

3. As the old scheme came to be abolished and compassionate appointment was no longer permissible after the new scheme came into force, the Bank on 31.1.2006 advised the family of the deceased to make an application under the new scheme for ex-gratia payment. Feeling aggrieved, the respondent filed a writ petition before the Allahabad High Court. A learned single Judge of the High Court by order dated 8.5.2008 directed the appellant to reconsider the case of the respondent for appointment on compassionate grounds, holding that the old scheme applied and the new scheme was only prospective in operation. The said order was affirmed by the Division Bench by order dated 1.9.2008, which is under challenge in this appeal by special leave.

4. Learned counsel for the Bank submitted that even though the respondent's father died on 1.10.2004, the application for compassionate appointment was made only in June 2005; that before the application could be processed, the compassionate appointment scheme was abolished and was replaced by a new scheme on 4.8.2005; and that therefore, the Bank was justified in calling upon the respondent to apply under the new ex-gratia scheme.

5. On the other hand, learned counsel for the respondent submitted that on the date of death of his father and on the date of making the application, the compassionate appointment scheme was in force and therefore, he was entitled to be considered for compassionate appointment under the said scheme.

6. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a

right in favour of the applicant.

7. Normally the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the scheme in force at the time of death would apply. On the other hand if a scheme provides that on the death of an employee, if a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfill any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

8. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, upto the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

9. In this context we may usefully refer to the decision of this Court in Union of India vs. R. Padmanabhan - 2003 (7) SCC 270, wherein this Court observed :

"That apart, being ex gratia, no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the Guidelines and Policy, in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the Scheme itself. The line of decisions relation to vested rights accrued being protected

from any subsequent amendments may not be relevant for such a situation and it would be apposite to advert to the decision of this Court reported in *State of Tamil Nadu vs. Hind Stone and Ors.* - 1981 (2) SCC

205. That was a case wherein this Court had to consider the claims of lessees for renewal of their leases or for grant of fresh leases under the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the applications filed for lease or renewal for a long time and then dispose them of on the basis of a rule which had come into force later. This Court, while reversing such view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay, if any, involved although it is desirable to dispose of the applications, expeditiously."

We may also refer to the decision of this Court in *Kuldeep Singh v. Govt. of NCT of Delhi* [2006 (5) SCC 702] which considered the question of grant of liquor vend licences. This Court held that where applications required processing and verification the policy which should be applicable is the one which is prevalent on the date of grant and not the one which was prevalent when the application was filed. This Court clarified that the exception to the said rule is where a right had already accrued or vested in the applicant, before the change of policy.

10. In this case the employee died in October, 2004, the application was made only in June, 2005. The application was not even by the respondent, but by his mother. Therefore, it was necessary to ascertain whether respondent really wanted the appointment, whether he possessed the eligibility, and whether any post was available. Within two months of the application, the new scheme came into force and the old scheme was abolished. The new scheme specifically provided that all pending applications will be considered under the new scheme. Therefore it has to be held that the new scheme which came into force on 4.8.2005 alone will apply even in respect of pending applications.

11. The respondent relied upon the following observations in *State Bank of India v. Jaspal Kaur* - 2007 (9) SCC 571 to contend that he was entitled to be considered under the old scheme which was in force at the time of the application by his mother:

"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".

The said observations are read out of context by the respondent. In that case the Bank employee died on 1.8.1999. Application was filed by the widow on 5.2.2000. The case of the widow was considered twice and the request for appointment on compassionate grounds was declined by taking into consideration the financial position/capacity of the family. The High Court allowed the writ petition filed by the widow in 2004 on the ground that the terminal benefits of Rs.4,57,607/- received by the family were not sufficient for the sustenance of the family. In an appeal by the Bank, it was contended before this Court that in addition to Rs.4,57,607/- paid as terminal benefits, the widow was getting Rs.2055/- per month as family pension and that was not considered by the High Court. During the hearing before this court, the widow relied upon the new scheme dated 4.8.2005 and sought additional payment in terms of the scheme. The above observations were made in the context of rejecting the widow's request for additional payment under the 2005 scheme. In fact, this court allowed the Bank's appeal and dismissed the writ petition filed by the widow for additional benefits. The said observations, cannot therefore be of any assistance to consider the applicability of the old scheme for compassionate appointment vis-`-vis the new scheme for ex- gratia payment.

12. The respondent was not entitled to be considered for compassionate appointment. The High Court was not justified in quashing the communication dated 31.1.2006 or in directing reconsideration of the case of the respondent for compassionate appointment.

13. We therefore allow this appeal in part as follows:

(i) The orders of the learned Single Judge and Division Bench are set aside.

(ii) The respondent and/or his family may file a fresh application under the new scheme, as directed by the Bank in its letter dated 31.1.2006.

(iii) The appellant Bank is directed to process such application under the new scheme, if and when made, and pay the lump sum ex gratia amount due in terms of that scheme, to the beneficiaries, within four months of the receipt of the application.

_____.J.

(R.V. RAVEENDRAN) _____J.

(K. S. RADHAKRISHNAN) New Delhi;

February 08, 2010.