

State Bank Of India Rae Bareli ... vs Sri Shailendra Kumar Singh on 25 January, 2018

Author: Sudhir Agarwal

Bench: Sudhir Agarwal

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

(AFR)

Reserved on 24.05.2017

Delivered on 25.01.2018

Case :- SPECIAL APPEAL No. - 348 of 2013

Appellant :- State Bank Of India and others

Respondent :- Sri Shailendra Kumar Singh

Counsel for Appellant :- Anurag Srivastava, N. K. Seth

Counsel for Respondent :- H.G.S.Parihar, Meenakshi Singh Parihar

Hon'ble Sudhir Agarwal, J.

Hon'ble Virendra Kumar-II, J.

(Delivered by Hon'ble Sudhir Agarwal, J.)

1. Heard Shri N. K. Seth, Senior Advocate, assisted by Shri Anurag Srivastava for appellants and Shri H. G. S. Parihar, Senior Advocate, assisted by Shri Diwakar Kaushik for respondent.

2. This intra court appeal under Chapter VIII Rule 5 of Allahabad High Court Rules, 1952 has arisen from judgment and order dated 22.03.2013 passed by learned Single Judge in Writ Petition No. 5319 (S/S) of 2002, whereby learned Single Judge has allowed writ petition and directed appellants to consider petitioner-respondent, Shailendra Kumar Singh for compassionate appointment under dying in harness scheme applicable in the Bank, on a post for which petitioner-respondent is eligible and qualified.

3. Facts in brief giving rise to present appeal are as follows:

4. Shri Dinesh Kumar Thakur, father of petitioner was working as Cashier/ Record Keeper in State Bank of India at Amethi Branch (District Sultanpur). He died in harness on 29.12.1999. After his death, petitioner's mother submitted an application dated 09.01.2000 to Branch Manager requesting for payment of dues of deceased husband at the earliest and also to provide compassionate appointment to her son, Shailendra Kumar Singh, i.e., petitioner-respondent who also, himself, approached appellant Bank along with requisite certificates of qualification, date of birth, etc., and also documents showing agricultural land possessed by petitioner and Income Certificate verifying Rs.300/- per month, as income from agricultural land.

5. The said claim was rejected by Bank vide order dated 23.07.2002 on the ground that deceased employee has left widow, daughter and son, terminal benefits paid to family amounts to Rs. 3.74 lakhs, deceased employee owned loan liability of Rs. 39,000/- towards Bank and Rs. 51,000/- to others, family pension was computed at Rs. 4,125/- per month and, therefore, cumulative income of family (excluding liabilities towards loan) would come to around Rs. 6,377/- per month, hence it cannot be said that family of deceased employee is in penury.

6. This order was challenged by petitioner in the above writ petition. Bank contested the matter giving details of scheme of compassionate appointment that it was initially introduced by Circular dated 23.02.1979, Vide Circular dated 21.10.1982 scheme was modified and even on medical grounds, a Bank employee was allowed to retire with benefits of compassionate appointment to one family member of such employee. This scheme again was amended from time to time and latest updated scheme is applicable from 01.01.1998. As per the scheme, in order to determine financial condition of family, Bank is supposed to examine following aspects:

i. Family pension ii. Gratuity amount received iii. Employees/ Employers contribution to Provident Fund iv. Any compensation paid by the bank or its welfare fund v. Proceed of LIC policies and other investments of the deceased employee vi. Income of family from other sources vii. Income of other family members from employment or otherwise.

viii. Size of the family and liabilities, if any.

7. With regard to cumulative income assessed by Bank, the facts stated in the order dated 23.07.2002 were reiterated and it is said that compassionate appointment is not a matter of right and has rightly been rejected. It is also stated in para-26 of counter affidavit that petitioner's mother was paid Rs.2,84,000/- after adjusting all liabilities of Bank and others.

8. Learned Single Judge has examined the matter and observed that total amount paid by Bank to petitioner's mother, Rs.2,84,000/-, cannot be said to be a huge amount, sufficient to provide appropriate succour to the family of deceased employee. Further deceased was holding a Class-C post and amount of family pension was only Rs.2,214/- per month, which cannot be said to be sufficient financial resource for the family for their maintenance and sustenance of life in a dignified

and decent manner. It is in these circumstances, learned Single Judge has found that rejection of claim of petitioner for compassionate appointment is arbitrary and hence order dated 23.07.2002 has been set aside.

9. Shri N. K. Seth, learned Senior Advocate urged before us that Rs.2,84,000/- was paid to the family of deceased employee and if invested in the Bank, it will earn annual interest at the rate of 8.25 % i.e. Rs. 23,430/-. Monthly interest will come to Rs. 1,952/-. He further said that family pension paid to deceased employee is Rs.4,125/- and therefore, total monthly income of family of deceased employee would be Rs.6377/-. He gave details of above calculation as under:-

Retiral benefit Rs. 3.74 lacs Loan 0.39 + 0.51 lacs = 0.90 lacs Balance Rs. 2.84 lacs
Annual interest on Rs. 2.84 lacs @ 8.25% = Rs. 23,430/-

Monthly interest Rs. 1952/-

Family mension Rs. 4.25 + agricultural income Rs. 300/-.

Monthly Interest @ 8.25 % per annum, on Rs. 2.84 lacs, = Rs. 1952/-

Total = Rs. 6377/- per month.

10. When questioned, if Rs.2,84,000/- is invested in Fixed Deposit and assuming that it will earn interest of 8.25%, i.e. annual payment would be Rs.23,430/-, but if one needs monthly withdrawal of amount, whether it can come to Rs.1,952/- as calculated by him, which he has conveniently divided from annual interest payable on fixed deposit of Rs. 2,84,000/- at the rate of interest at 8.25%, to which he could give no reply. Everybody knows and it is a matter of common knowledge, when monthly withdrawal is allowed, actual payment is lesser and even rate of interest is much less. Secondly, rate of interest is never fixed but variable.

11. Then coming to another part, it is also evident from record that deceased was maintaining his old mother, wife, son, daughter and daughter-in-law, since son was married. Therefore, when father of petitioner died, there were four members in the family, i.e., widow, unmarried daughter, petitioner and his wife. For marriage of unmarried daughter, family has to keep a reserve fund Rs.2,84,000/-, which cannot be said to be an income bearing fund for such family who has to undertake marriage of unmarried girl. Grand mother of petitioner also constitutes family since she was also dependent on deceased employee. In the family of four persons, family pension of four thousand and odd cannot be said to be sufficient and adequate amount so as to take away family from penurious conditions. With regard to agricultural income also, it is a matter of common knowledge that same cannot be said to be a fixed income for all times to come and therefore, to include the said meagre income for determining financial condition of family cannot be appreciated.

12. Learned counsel for appellants, however, placed reliance on certain authorities and it would be appropriate to examine those judgments at this stage.

13. The first decision is Umesh Kumar Nagpal Vs. State of Haryana and others : (1994) 4 SCC 138. It was cited to highlight the proposition of law that compassionate appointment is not a matter of right and objective of scheme is to grant immediate relief to the family, left in penury, due to sudden demise of employee. This proposition is well established. However, applicability of aforesaid proposition will depend upon the facts of each case. Umesh Kumar Nagpal Vs. State of Haryana and others (supra) was not a case where financial condition of family was in question. There, an attempt was made by legal representatives of deceased employee to get compassionate appointment on a post, above Class III and IV which was dispelled by Court. It was held that compassionate appointment is an exception to the general rule of right of equal opportunity to all persons. Such exception is permissible looking to the objective that compassionate appointment is to provide immediate succour to family who has come in penurious conditions due to sudden death of sole bread earner of the family. It is not to confer status upon the family members of deceased employee and also not a reservation against a post to post. If dependent of a deceased employee finds it below his dignity to accept the post offered to him, he is free not to do so. Court also said that compassionate appointment cannot be claimed or granted after a lapse of reasonable period, which must be specified in the rules. Relevant observations made by Court in para-5 and 6 of judgment are reproduced as under:

"5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over." (emphasis added)

14. The aforesaid judgment, therefore, as such, does not help the appellants at all.

15. The next authority relied by Shri Seth is General Manager (D&PB) and others Vs. Kunti Tiwary and another : (2004) 7 SCC 271, where employee Kunti Tiwary, working in State Bank of India, died in harness on 16.01.1998. Application for compassionate appointment was made when deceased's son was minor. He attained majority on 25.02.2000. Thereafter he applied for compassionate appointment. Financial condition of family was examined by Bank and it was found that deceased employee's family was paid Provident Fund of Rs.3,33,410/-, Gratuity of Rs.1,73,987/- and Leave Encashment of Rs. 1,01,344/-. The deceased employee had an investment of Rs. 66,000/- in share of State Bank of India, etc. Family was paid a pension of Rs.5,583/- per month. The application,

therefore, was rejected on the ground that possessed assets and monthly income was such as not to hold family in penury condition. The family also consisted of a widow, two sons and a daughter. Rejection of application was challenged in Writ Court and a learned Single Judge dismissed writ petition. In intra Court appeal judgment of learned Single Judge was set aside and direction was issued to Bank to give compassionate appointment. This order came to be challenged in Supreme Court, who allowed appeal and restored judgment of learned Single Judge. The facts of this case are evidently distinct from the case in hand inasmuch as more than Rs.6,00,000/- was received by family towards dues under various heads and family pension was Rs.5,583/-. Number of family members though equal to the case in hand but in the present case neither total dues paid to petitioner's family are comparable as that in General Manager (D&PB) and others Vs. Kunti Tiwary and another (supra) and therein incumbent died in January, 1998 while in the present case incumbent died in 1999.

16. The other authority relied by Shri Seth is of Punjab National Bank and others Vs. Ashwini Kumar Taneja : (2004) 7 SCC 265, wherein also father of Ashwini Kumar Taneja, a Class IV employee in Punjab National Bank died on 03.12.1999 in harness leaving behind his mother, widow, two sons and one daughter. Request for compassionate appointment was declined by Bank, whereagainst writ petition before Rajasthan High Court was allowed by learned Single Judge and Letters Patent Appeal was dismissed by Division Bench. That is how matter was brought to Supreme Court, by Bank. Therein, argument was raised on behalf of Ashwini Kumar Taneja that for considering financial hardship, amount paid towards gratuity, provident fund, etc., cannot be looked into, which was negated by Court. We also find from the judgment that High Court had allowed claim of Ashwini Kumar Taneja on this very ground that for considering application for compassionate appointment, retiral benefits cannot be taken into account and this question "whether retiral benefits can be considered for judging financial hardships or not" has been answered by Supreme Court.

17. We are not of the view that retiral benefits cannot be taken into account for the purpose of financial hardship but then it has to be seen in the manner whether the said amount can justify a conclusion by a person of ordinary prudence, in the given facts and circumstances, to come to the conclusion that family cannot be said to be in financial hardship.

18. In State Bank of India Vs. Jaspal Kaur : 2007 (9) SCC 571, Court reiterated principles that under scheme applicable to the Bank, in order to establish financial condition of family, amount paid towards terminal benefits, investments, income from other sources, etc., have to be taken into account. Therein Sukhbir Inder Singh husband of Jaspal Kaur died in harness on 01.08.1999 while working as Record Assistant. An application for compassionate appointment of widow was rejected by Bank. In writ petition filed by Jaspal Kaur, High Court directed Bank to reconsider the application, which was again declined. The matter again came to High Court, which took a view that retiral benefits of Rs. 4,57,607/- paid to the family as terminal benefits cannot be said to be a sufficient amount to bring away family from financial hardship. Court found that family of deceased consisted of a widow, two daughters and a son. Terminal benefits were paid as Rs.4,57,607/- and monthly pension was Rs. 2,055/-. However, instead of considering the matter in the light of Scheme as it was applicable in 2000, when application for compassionate appointment was made, High

Court applied the scheme which came into force on 04.08.2005 and decided the matter accordingly. This approach of High Court was found erroneous and it was held that a dispute which arose in 2000, ought to have been decided on the basis of Scheme as was available on that date and not on a scheme which came into force in 2005.

19. In Chief General Manager, SBI Vs. Durgesh Kumar Tiwari : (2004) 22 AIC 314 (All), again the issue was that the guidelines as applicable when dispute arose for the purpose of compassionate appointment have to be applied and not the subsequent one.

20. A Division Bench judgment of this Court in State Bank of India Vs. Ajay Kumar (Special Appeal No. 14 of 2007), decided on 21.11.2013 shows that, therein family received terminal benefits of Rs.3.79 lakhs, Rs. 1.00 lakh from LIC Policy and gross monthly income comes to around four thousands and odd while take home salary of deceased himself was only Rs. 6,145/-, therefore, it was held that it cannot be said that family is in penurious condition.

21. Similarly, in Punjab National Bank Vs. Deepak Pandey (Special Appeal No. 867 of 2006), decided on 21.11.2013, Court found that family pension was Rs.4,807/- per month after death of deceased, while deceased employee after various deductions was having a carry home salary of only Rs. 4,807/-. In these facts, it was held that family was not in penurious condition.

22. In the present case, in order to judge the correctness of method of computation of financial condition of the family, the appellant had calculated monthly interest Rs.1,952/- on Rs. 2,84,000/-. When questioned, learned counsel for the Bank, whether Appellant Bank is ready to pay every month aforesaid amount to petitioner-respondent, if the said amount is kept in a fixed deposit with the appellants' Bank itself, but he could not give any categorical reply at all, which shows that very method of computation of monthly interest on the part of appellant for considering financial condition of family is apparently erroneous and bereft of ground level facts.

23. It is in these facts and circumstances, looking into the peculiar facts of this case, we find no reason to interfere with the judgment passed by learned Single Judge.

24. Appeal lacks merit.

25. Dismissed.

Order Date :- 25.01.2018 Virendra/Mustaqeem