

(2022) 12 CAL CK 0011
Calcutta High Court (Appellete Side)
Case No: W.P.A. No. 17691 Of 2021

Sk. Irsad

APPELLANT

Vs

State Of West Bengal
& Ors.

RESPONDENT

Date of Decision: Dec. 6, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16

Hon'ble Judges: Partha Sarathi Sen, J

Bench: Single Bench

Advocate: Sufi Kamal, Baidurya Ghosal, Avipsha Dutta Roy

Final Decision: Disposed Of

Judgement

Partha Sarathi Sen, J

1. In this writ petition as filed under Article 226 of the Constitution of India, the writ petitioner has challenged the vires of the letter no.

BGVB/HO/HR/3300/2021 dated 06.09.2021 whereby and whereunder the respondent nos. 2 to 5 observed that the present writ petitioner is not fit for being appointed on compassionate ground.

2. The facts leading to filing of the writ petition is discussed hereunder in a nutshell.

3. One Sk. Faijudin, the deceased father of the present writ petitioner took his last breath on 04.08.2020, when he was employed as an Office

Assistant in Bangiya Gramin Vikash Bank (hereinafter referred to as the said Bank™) leaving behind his wife and four sons including the

present writ petitioner. After the death of the father of the present writ petitioner, the writ petitioner made an application before the bank for providing

him an appointment under compassionate ground and on such application an enquiry was conducted by the Branch Manager of the said bank wherein it was found that all the legal heirs of the deceased including the writ petitioner were unemployed and were dependent on the deceased. Subsequently on 19.03.2021, the respondent no.3 being the Chief Manager of the said Bank under cover of his letter dated 19.03.2021 informed the writ petitioner that he cannot be considered for appointment on compassionate ground. Challenging the said communication of the respondent no.2 the present writ petitioner filed a separate writ petition being WPA no. 10640/21 which was disposed of on 01.07.2021 whereby and whereunder the decision dated 19.03.2021 of the bank authority was set aside with a direction to the respondent no.2 i.e. General Manager of the said bank to consider the application for compassionate appointment of the present writ petitioner in terms of the Clause 2 and Clause 5 of the Scheme upon hearing the petitioner and upon considering the financial condition of the deceased employee. In view of such direction of this Honâ€™ble Court a fresh enquiry was conducted and on conclusion of same, impugned regret letter dated 06.09.2021, was issued in favour of the present writ petitioner.

4. In support of the instant writ petition learned advocate for the writ petitioner at the very outset draws attention of this Court to the impugned letter dated 06.09.2021 as written by General Manager (HR) of the said bank. Attention of this Court is also drawn to the scheme for appointment on compassionate ground in the said bank especially, Clause 2 and Clause 5. It is argued that the respondent bank while issuing the impugned regret letter dated 06.09.2021 did not adhere to the aforementioned Scheme as well as to the order dated 01.07.2021 as passed by this Honâ€™ble Court in WPA No.10640/21. It is contended further that in the impugned letter dated 06.09.2021 the officials of the respondent bank had assigned no reason as to why they have found the family members of the father of the present writ petitioner is not indigent. It is thus argued that the impugned finding of the respondent bank authority dated 06.09.2021 is without any logic and perverse and the same may be quashed with a direction to the respondent bank to issue letter of appointment in favour of the present writ petitioner on compassionate ground.

5. Learned advocate for the respondent bank however opposes such contention. In course of his submission he draws attention of this Court to the impugned letter dated 06.09.2021 and to the minutes of personal hearing of the writ petitioner as held on 01.09.2021. Attention of this Court is also drawn to page no.5 of the affidavit-in-opposition. It is contended that on conjoint perusal of the said minutes and page no. 5 of the affidavit-in-opposition, it would reveal that the family members of the father of the writ petitioner have obtained huge amount of terminal benefits as well as other benefits and thus the respondent bank is very much justified in holding that the case of the present writ petitioner cannot come under the purview of Clause 5 of the aforementioned scheme.

6. On perusal of the entire materials as placed before this Court and after hearing learned advocate of both sides this Court considers that for effective disposal of the instant writ petition a look to the aforementioned Scheme for appointment on compassionate ground in the said bank is required to be looked into. Clause 2 of the said scheme is as under:-

“

2.DEPENDENT FAMILY MEMBER

2.1. Spouse; or

2.2. Wholly dependent son (including legally adopted son); or

2.3. Wholly dependent daughter (including legally adopted daughter); or

2.4. Wholly dependent brother or sister in the case of unmarried employee
”

Clause 5 of the said scheme is reproduced hereinbelow in verbatim:-

“

5.ELIGIBILITY

5.1. The-family is indigent and deserves immediate assistance for relief from financial destitution; and

5.2. Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant

Recruitment Rules. ”

7. On perusal of the aforesaid two clauses it reveals that the writ petitioner comes under the purview of the dependent family member and the same is

also evident from the letter dated 11.12.2020 as written by the Branch Manager of the said bank which has been annexed with the writ petition with

the mark "P5". In order to decide as to whether the respondent bank is at all justified in holding that the family of the father of the writ petitioner

is not indigent, a look to the relevant portion to the reported decision of the State of Himachal Pradesh vs. Sashi Kumar reported in (2019) 3 SCC 653:

(2019) 3 WBLR 419 is necessary and relevant portion of the same is reproduced hereunder in verbatim:-

“..

19. While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that

appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the

Constitution. Dependents of a deceased employee of the State are made eligible by virtue of the Policy on compassionate appointment. The basis of

the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the

employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment.

Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be

reduced to being indigent, an application from a dependant member of the family could be considered. The terms on which such applications would be

considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of

law that there is no right to compassionate appointment. But, where there is a policy, a dependant member of the family of a deceased employee is

entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are

prescribed by the State.

“..

27. The decision in *State Bank of India Vs. Somvir Singh* 7 (2007) 4 SCC 778 has noticed the scheme for appointment of dependants of deceased

employees on compassionate grounds framed by the State Bank of India. The Court expressly held that the authorities were not in error in taking

account of the terminal benefits, investments and the monthly family income including the family pension paid by the Bank. The view of this Court

finds expression in the following extract:

“12. The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that

the dependants of the 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.”

28. In the view of this Court, the only issue to be considered was whether the claim for compassionate appointment had been considered in accordance

with the Scheme. The income of the family from all sources was required to be taken into consideration according to the Scheme. This having been

ignored by the High Court, the appeal filed by the Bank was allowed.”

8. On perusal of the aforesaid reported decision it reveals to this Court that the peculiar nature of compassionate appointment is an exception to the

general rule of appointment to a public post basically on the policy that the family of a deceased employee may not be placed in a position of financial

crunch on account of the death of an employee while in service. In the aforesaid reported judgement it has also been made clear that compassionate

appointment cannot be claimed as of right and on the contrary such appointment is to be made on fulfillment of certain terms and conditions as

prescribed by rules considering the financial and other circumstances of the dependent family. It has also been made clear that in consideration of such circumstances due regard shall have to be given to the terminal benefits as received by the family members, the investments, the total monthly family income, etc.

9. In course of his argument learned advocate for the writ petitioner tried to insist that while issuing the impugned regret letter the respondent bank did not consider the letter dated 11.12.2020, as written by the Branch Manager of the self same respondent bank wherein it has been categorically stated that the present writ petitioner as well as the other legal heirs of the deceased are unemployed and dependent. It has also been contended that from annexure P10 i.e. income certificate dated 05.10.2021 as issued by B.D.O Ratua I, District Malda it would reveal that the monthly income of the writ petitioner and his family is Rs.3000/- per month.

10. In considered view of this Court, the instant writ petition cannot be considered favourably only on the basis of such income certificate especially when it reveals from the minutes of personal hearing of the present writ petitioner dated 01.09.2021 that the family members of the father of the writ petitioner have received a good amount of terminal benefits which is also evident from page no.5 of the affidavit-in-opposition of the respondent bank.

11. On perusal of the impugned regret letter dated 06.09.2021 as issued by the General Manager of the respondent bank, it appears to this Court that the respondent bank though considered such terminal benefits and thus found the family members of the deceased Sk. Faijudin as not indigent but in such letter the quantum of annual income from such terminal benefits, namely; ex gratia, Provident Fund, family pension, etc. has not been mentioned, probably on the date of such finding such calculation could not be completed. As reveals from page 5 of the affidavit-in-opposition where however, the "head wise" quantum has been mentioned specifically.

12. In view of the discussion made hereinabove this Court in exercise of its plenary power set aside the letter no. BGVV/HO/HR/3300/2021 dated 6.09.2021 and directs General Manager (HR) Bangiya Gramin Vikash Bank, to reconsider the application for compassionate appointment of the

present writ petitioner afresh upon hearing the petitioner and upon considering the financial condition of the family of the deceased employee. The

reasoned order must contain the arithmetical calculation of the annual income of the family members of the deceased employee, "head wise"

from all sources including income received by the said family members of the deceased on account of leave encashment, gratuity, ex gratia, provident

fund, family pension, arrears, etc. The reasoned order should be passed and communicated to the petitioner within a period of 8 weeks from the

communication of this order.

13. It is however made clear that while disposing the instant writ petition, this Court has not entered into the merits of the petitioner's claim and

thus before the General Manager, Bangiya Gramin Vikash Bank, all points are kept open for his consideration. With the aforementioned observation

the instant writ petition is disposed of however, without any order as to costs.

14. Urgent Photostat Certified copy of this judgment, if applied for, be supplied to the parties expeditiously after complying with all necessary legal

formalities.