

Sanjay Kumar Singh Vs State Bank of India

Court: Allahabad High Court (Lucknow Bench)

Date of Decision: Dec. 17, 2013

Citation: (2014) 3 ALJ 782

Hon'ble Judges: Vishnu Chandra Gupta, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

Vishnu Chandra Gupta, J.

By means of the present writ petition, petitioner-Sanjay Kumar Singh sought following reliefs:

(i) Issue a writ order or direction in the nature of certiorari thereby quashing the impugned order dated 10.08.2007 passed by the opposite party

No. 2 as contained in Annexure-1 to this writ petition.

(ii) Issue a writ order or direction in the nature of mandamus commanding the opposite parties to consider and appoint the petitioner on suitable

post under Dying-in-Harness Rules.

Brief Facts for deciding the present writ petition are that Dhani Ram Singh, the father of the petitioner-Sanjay Kumar Singh was appointed as

Driver-cum-Messenger in the State Bank of India, Hazratganj Branch (hereinafter referred to as "the Bank"). Dhani Ram Singh died-in-harness on

20.04.2001. The petitioner applied for compassionate appointment after the death of his father in the Bank as Class-IV employee. There was a

scheme of compassionate appointment known as ""The Scheme For Appointment on Compassionate Grounds For Dependents of

Deceased/Employees Retired on Medical Ground"" (hereinafter referred to as "the Scheme"). The said scheme has been annexed as Annexure-3

to the writ petition. The Bank declined the claim of the petitioner for appointment on compassionate ground vide order dated 22.12.2001.

Aggrieved by the said order, the petitioner preferred a Writ Petition No. 3922 (S/S) of 2002 before this Court. The said writ petition was allowed

vide order dated 05.05.2006 with a direction to the Bank to reconsider the request of the petitioner for compassionate appointment. The order of

this Court dated 05.05.2006 is quoted hereinbelow:

The petitioner is assailing the orders dated 26.11.2001 and 22.12.2001 passed on an application of the petitioner for appointment under

compassionate ground for dependents of deceased employee/employees retired on medical ground. It has been stated by the learned counsel for

the petitioner that the petitioner's father was appointed as Driver-cum-Messenger in the State Bank of India and while in service, his father expired

on 20.04.2001 after serving more than 30 years. On 10.10.2001 the petitioner applied for appointment on the post of Messenger in the requisite

format which was given by the Bank and in Clause 6 of the said application form, the details of the family members who were dependent on the

deceased were revealed. It has been specifically mentioned in the said application that the deceased left his wife, three sons, one unmarried

daughter and one daughter-in-law. The petitioner's claim for appointment was rejected by a non-speaking order and being aggrieved thereof, the

petitioner has preferred the instant writ petition inter alia on the grounds that the order has been passed in mechanical manner without applying the

mind as well as the financial condition of the family of the deceased.

Learned counsel appearing for the Bank has stated that the main object of the scheme is to enable the family to tide over the sudden crisis due to

the death of bread earner, the mere death of an employee in harness does not entitle his family to such source of livelihood. The compassionate

appointment is given to the dependents only when the bank is satisfied that the financial condition of the family of the deceased is such that the

family of the deceased would not be able to meet the crisis. In the present case, the family of the deceased has been paid a sum of Rs. 3.93 lac as

terminal benefits and family pension of Rs. 3,882/- plus Rs. 250/-. Thus, the bank after coming to the conclusion that no indigent circumstances

exist in the family of the deceased employee has rightly rejected the claim of the petitioner for appointment on compassionate ground.

Learned Counsel for the petitioner relying upon the citations of Subhash Chandra Yadav Vs. State Bank of India and Another, " contended that

the payment of family pension and dues of the deceased could not be a good ground for refusing the claim for compassionate appointment. The

respondents while rejecting the application for providing appointment failed to consider the entire factors including the size of the family.

In State Bank of India and others Vs. Ram Piyarey, ", a Division Bench of this Court, following the law laid down by Apex Court has held in

paragraph 11 that the receipt of family pension cannot be taken to be a good ground for rejecting the case for appointment on compassionate

ground. It is common knowledge that the widow is entitled to family pension and other benefits in the event her husband dies in harness. If the plea

of the bank is accepted, then no appointment can be made on compassionate ground and the scheme of the Bank shall have no meaning.

It is not in dispute that the scheme for appointment on compassionate ground has been amended from time to time and as per scheme the financial

condition and the dues paid to the family are to be taken while making appointment on compassionate ground, but the impugned order dated 26th

November, 2001/22nd December, 2001 does not specify as to whether the appointment has been refused after taking into consideration the entire

financial condition of the family. The financial condition of the family is the primary factor for giving appointment on compassionate ground. While

considering the appointment on compassionate ground, apart from pension, gratuity, fund and compensation, the competent authority is also

required to take into account the size of the family and its liabilities together with income of family from other sources.

Having heard learned counsel for the parties and perused the material on record, I am of the considered opinion that the impugned order has been

passed without considering the scheme formulated by the bank as also the law laid down by the Apex Court. No reasons have been assigned

while rejecting the claim of the petitioner for appointment on compassionate ground. It is not the case of the respondent that the petitioner is

unqualified or is not eligible for appointment.

In view of the above, the order dated 26th November, 2001/22nd December, 2001, as contained in Annexure-1, is hereby quashed. The

opposite parties are directed to consider the claim of the petitioner afresh in the light of the observations made hereinabove together with the

scheme of the bank and pass a speaking and reasoned order, expeditiously.

With these observations and directions, the writ petition is allowed.

2. The Bank in pursuance of the order passed by this Court in Writ Petition No. 3922 (SS) of 2002 reconsidered the claim of the petitioner and

once again, the claim of the petitioner was declined vide order dated 10.08. 2007 (Annexure-6 to the writ petition) passed by the opposite party

No. 2-Chief General Manager, State Bank of India. While rejecting the application of the petitioner for compassionate appointment, the Bank held

that the family pension (Basic + Dearness Allowance) is Rs. 3882/- and apart from it, a monthly relief of Rs. 250/- is also paid by the Bank under

Mutual Welfare Scheme. It was also held that the terminal benefits to the tune of Rs. 3,93,000/- and the liabilities of the deceased was to the tune

of Rs. 2,35,000/- and after deducting the liabilities, the figures comes to Rs. 1,58,000/- and interest thereon was calculated as Rs. 1066/- and as

such the monthly income of the family comes to Rs. 5198/- though the last carry home salary of Dhani Ram Singh was of Rs. 4081/-. It was further

observed in the impugned order that the deceased was having a wife and two married sons. The married sons supposed to be earning livelihood

for their respective families. The authority thereafter taking into considering the judgment of the Hon"ble Apex Court in General Manager (D and

PB) and Others Vs. Kunti Tiwary and Another, and in Chief General Manager, SBI and others v. Durgesh Kumar Tewari delivered in Civil

Appeal No. 996 of 2006 decided on 06.02.2006 and also keeping in view the judgment rendered by the Division Bench of this Court in State

Bank of India v. Ram Piyare and others decided on 18.12.2003 dismissing the claim of the petitioner on compassionate appointment.

3. I have heard learned counsel for the petitioner Manju Gupta and learned counsel for the Bank.

4. It has been contended by learned counsel for the petitioner that the family of the deceased employee consisting 14 members and the calculation

made in respect of total monthly income of the deceased family of Rs. 5198/- is based on wrong calculation. It was further submitted that the

application has not been disposed of in accordance with law and considering the Scheme applicable for the employees of the Bank for

compassionate appointment.

5. The respondent-Bank has passed the impugned order on the basis of presumption that by the income of the married sons of the deceased

employee they must have sufficient means for livelihood for their families which is not permissible under the scheme. Learned counsel for the

petitioner has submitted that before declining the claim of the petitioner on the ground of income of any member of the family, the competent

authority should inquire the quantum of income of the family members and to ascertain by conducting an inquiry whether the particular member of

the family is actually supporting other family members or not?

6. It was further argued that in this case, the salary actually paid to the petitioner has been counted on the date when he died. The net carry home

salary is the salary which comes into the hands of deceased employee after deducting the payment of the liabilities which the deceased used to pay.

7. So far as, additional amount of interest of Rs. 1066/- is also imaginary and is not possible to deposit the entire amount in the fixed deposit

considering the need of the family.

8. It was further submitted that the calculation of pension to wife of deceased was made on the date when the impugned order was passed but the

carry home salary was counted when the death was occurred. If on the basis of the present pay scale the salary is counted, it will be more than

three times therefore, the order impugned passed is arbitrarily without taking into consideration the Scheme of compassionate appointment wherein

power to relax the conditions is also vested with the Bank's authorities.

9. It was further submitted by learned counsel for the petitioner that the authorities have not considered these aspect of the matter, therefore, the

decision taken by the authorities cannot be allowed to sustain.

10. Contrary to it, learned counsel for the Bank has contended that the order is strictly in conformity with the judgments of the Apex Court as well

as in terms of the Scheme. The calculation is made on the basis of prevailing values of money as such there is nothing wrong in declining the claim

of the petitioner for compassionate appointment and, therefore, there is no illegality and arbitrariness in passing the impugned order. It was further

submitted that the scope of interference in the form of judicial review is very limited in the cases of compassionate appointment. It was further

submitted that writ court cannot work as a court of appeal and to enter into the finding of fact arrived at by the Bank authorities and substitute its

own finding. It was further submitted that this Court has no jurisdiction to issue mandamus against the Bank to give appointment to the petitioner on

compassionate ground and if it is found that the order is not in conformity with the scheme, the matter may be sent back for reconsideration to the

competent authority. It was further submitted that the purpose of granting compassionate appointment is to provide immediate financial assistance

to help the family of the deceased and in this case about 13 years have already been passed, therefore, this writ petition should not be allowed and

the matter does not require reconsideration for compassionate appointment which has been rightly declined. It was further submitted that it is not

the case where it could be said that the family of the deceased have no means of livelihood or the family of the deceased is in penury. It was further

submitted that compassionate appointment cannot be used as a tool for income of the deceased family. It was further submitted that compassionate

appointment cannot be claimed as of right hence it cannot be said that the discretion exercised by the authorities is arbitrary or against the judicial

norms therefore this Court while exercising jurisdiction under Article 226 of the Constitution of India cannot go for minute scrutiny of the order as a

court of appeal. Therefore the writ petition deserves to be dismissed.

11. In support of contentions raised, learned counsel for the respondent Bank relied upon the following judgments:

(sic) 1. Special Appeal No. 867 of 2006, Punjab National Bank v. Deepak Pandey.

(sic) 2. Special Appeal No. 14 of 2007, State Bank of India through Chairman and three others v. Ajay Kumar.

3. State Bank of India and Another Vs. Somvir Singh, .

4. Punjab National Bank and Others Vs. Ashwini Kumar Taneja, .

5. General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, .

6. Union Bank of India and Others Vs. M.T. Latheesh, .

7. Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, .

8. Union of India (UOI) and Another Vs. Shashank Goswami and Another, .

12. In this case the petitioner has not denied that they have income from other sources but he has not disclosed in the pleadings and side tracked

by saying that it is very meagre. Nothing has been brought on record by the petitioner that what was the actual salary and what was actual carry

home salary of the deceased employee at the time of death. More over the amounts disclosed in the impugned order under different heads have

not be stated to be incorrect including the family pension. It was also not disclosed what was the initial family pension and what is the present family

pension of wife of deceased employee. It is necessary to the petitioner when he is seeking equitable relief from Court he should disclosed all those

facts which are necessary for deciding the lis and which are in the exclusive knowledge of the petitioner.

13. It is well settled that compassionate appointment can not be claimed as of right and should be dealt with in accordance with scheme, rules,

administrative instructions etc. if any, in this regard.

14. The scheme which has been framed by the State Bank of India to govern applications for compassionate appointment specifies that the

financial condition of the family is to be considered. The relevant part of the scheme is as follows:

1) Financial condition of the family

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. Determining the

financial condition of the family is, therefore, an important criterion for deciding the proposals for compassionate appointment. The following

factors should be taken into account of determining the financial condition of the family:

I. Family Pension

II. Gratuity amount received

III. Employee's/Employer's contribution to PF

IV. Any compensation paid by bank/or its welfare fund

V. Proceeds of LIC policy and other investments of the deceased employee

VI. Income of the family from other sources

VII. Employment of other family members

VIII. Size of the family and other liabilities, if any, etc.

15. Having regard to the terms of the scheme, it is evident that the terminal benefits which have been paid to the family of the deceased have to be

duly taken into account. This is also the position in law which has been enunciated in the judgments of the Supreme Court in (i) General Manager

(D and PB) and Others Vs. Kunti Tiwary and Another, , (ii) Punjab National Bank and Others Vs. Ashwini Kumar Taneja, (iii) Smt. Mumtaz

Yunus Mulani Vs. State of Maharashtra and Others, and (iv) Union of India (UOI) and Another Vs. Shashank Goswami and Another, . The

earlier decision in Govind Prakash Verma v. Life Insurance Corporation of India and others, 2005 SCC (L & S) 590 has been distinguished on

the ground that it did not consider the binding precedents which had been enunciated earlier.

16. So far as the impugned order is concerned the bank has considered the relevant aspect of the matter in deciding the claim of the petitioner in

terms of the scheme. The family pension payable to the wife of the deceased and other terminal benefit, the immovable property possessed and the

fact that the both sons of deceased employee are married and earning were taken into consideration while passing of the impugned order.

17. In my view, the interference in a petition under Article 226 of the Constitution was not warranted having regard to the parameters for judicial

review set out in the judgment of the State Bank of India and Another Vs. Somvir Singh, , where the Supreme Court held as follows:

13. 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 to 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 dehors 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 the 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 G.M. (D & PB) v. Kunti Tiwary the High Court cannot dilute the

criterion 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.

18. Similarly in Union Bank of India and Others Vs. M.T. Latheesh, the Supreme Court held as follows:

37. It is also settled law 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.

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. After that even

though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his

appointment. This is against the law laid down by this court. It is settled law that the principles regarding compassionate appointment that

compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and

circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim

relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme.

19. For these reasons mentioned herein above, the writ petition is dismissed. There shall be no order as to costs.