

(2004) 11 AHC CK 0211

Allahabad High Court

Case No: C.M.W.P. No. 52002 of 2002

Mritunjay Mishra

APPELLANT

Vs

Chief General Manager, State
Bank of India and Another

RESPONDENT

Date of Decision: Nov. 18, 2004

Acts Referred:

- Constitution of India, 1950 - Article 41

Citation: (2005) 1 AWC 967 : (2005) 1 ESC 134 : (2005) 104 FLR 1139 : (2005) 1 UPLBEC 978

Hon'ble Judges: S.N. Srivastava, J

Bench: Single Bench

Advocate: M.S. Khan, for the Appellant; Vipin Sinha, for the Respondent

Final Decision: Allowed

Judgement

S.N. Srivastava, J.

Sri Uma Shanker Mishra, a regular employee of State Bank of India, Ballia City Branch, having died in harness on 19.5.2001, the widow represented the matter to the Bank authorities for compassionate appointment of her son, namely, the petitioner on the ground that the deceased was survived by two sons and four unmarried daughters, all school going and the family of the deceased was ill-equipped to fend for itself. The petitioner being the eldest son and also being equipped with necessary qualifications of having passed his B.Sc. examination from V.B.S. Purvanchal University, Jaunpur, was put forth for compassionate appointment by means of representation dated 25.5.2001. The representation travelled though haltingly upto the end of respondent No. 1 who was then holding the office of Chief General Manager, Local Headquarter Hazratganj, Lucknow, where the matter was considered and the request for compassionate appointment was ultimately turned down by the cryptic order the substance of which is that considering the cumulative/aggregate amount which the family had received in the wake of the death of deceased employee complete with pension, the financial condition of the

family cannot be termed as penurious and request/proposal for compassionate appointment was accordingly rejected by the competent authority. It is in the above backdrop that the present petition has been preferred for the relief of a writ of certiorari for quashing the impugned order dated 26.8.2002 and also for a writ of mandamus directing the respondent No. 1 to offer appointment to the petitioner under dying-in-harness Rules on compassionate grounds.

2. The learned counsel appearing for the petitioner took us through the impugned order and canvassed that the authorities concerned have not reckoned with the liabilities left behind by the deceased employee in passing the impugned order and also that the impugned order bristled with error in computation of income of the family. He further submitted that at the time of death, the deceased employee was drawing an aggregate salary of Rs. 18,072 and after his death, a meagre amount of Rs. 3,415 has been fixed as pension payable to the family that too for a period upto 20.5.2006. He further submitted that the amount sanctioned to the family as pension is payable only for five years and thereafter, it would stand slashed to a paltry amount of Rs. 565 only. The learned counsel also drew attention of the Court to the facet that the deceased is survived by six children out of whom four are school going unmarried daughters and the youngest male child in the family is Ashutosh aged about 7 years and that the competent authority has not reckoned with the aspect how the family would be able to fend for itself after 20.5.2006. Per contra, the learned counsel for the respondents contended that the details enumerated in the impugned order are self-explanatory and reveal that family of the deceased employee had received enough amount which constituted sufficient means. According to the learned counsel, the Bank has assessed the cumulative income of deceased family from all sources to the extent of Rs. 10,051.00 per month after taking into reckoning each and every aspect, which by no means could be said to be insufficient or inadequate to keep the pot of the family boiling.

3. The learned counsel for the respondents laid much emphasis on a recent decision of the Apex Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, to prop up his submissions and contended that a similar question was involved and the Apex Court discountenanced the view taken by the single Judge and thereafter by Division Bench of the High Court. This decision has been cited by the learned counsel as a sheet anchor of his arguments. I have been taken through this decision. It would appear from a perusal of the said decision that learned single Judge of High Court directed the Bank accordingly holding that the receipt of retiral benefit cannot be made a ground for rejecting the request for compassionate employment. The Division Bench also endorsed the said decision of the learned single Judge. The Apex Court held that financial condition of the family is a factor to be considered in the matter of employment on compassionate grounds as provided in the scheme of the Bank. There is no quarrel with the contention that financial condition of the family has to be reckoned with but the moot point is whether the manner in which the Bank has made assessment of the income of the deceased

family from all sources, could be said to be justifiable, sound and valid one.

4. The ratio that flows from the said decision is that the retiral benefits payable/paid to the family of the deceased cannot be eschewed from consideration in assessing the fiscal condition of the family. The question now that survives for consideration is whether considering the liabilities of the family, the income is adequate and comes within the periphery of the expression "sufficient means" and (2) whether the assessment of income by the Bank was correctly made?

5. In connection with the first question, I feel called to scan the liabilities surviving the deceased employee. According to the learned counsel for the petitioner, the deceased employee was survived by six children consisting of petitioner, the eldest son, four daughters and thereafter one male child aged about 7 years and his widow. In para 11 to the writ petition, details of children have been enumerated according to which Km. Chandrakala Mishra is studying in Intermediate standard. Km. Shashikala Mishra is studying in High School. Besides the above, the third daughter namely, Km. Purnima aged about 15 years, Km. Arti Mishra aged about 13 years are also school going receiving their education in respective educational institutions. The youngest child namely, Ashutosh aged about 7 years is also stated to be receiving education. In the present set up, when school/college education is a costlier affair, it would be no exaggeration to say that it would be a difficult task for the widow of the deceased to meet the expenses to be incurred on imparting education to at least five college/ school going children besides amount being spent on fooding and maintenance of the entire family. The learned counsel approximated expenditure at Rs. 800 per month, which may be incurred on a child towards education including expenses on the count of purchase of books, school/college dresses, and day-today expenses besides transportation charges, etc. At a time when prices of each and every item are rising high and there is inflation all round, a cumulative expenditure approximating to a sum of Rs. 4,000 per month cannot be said to be abnormally high on the count of education of at least five school/college going children.

6. Yet another aspect which may be considered is that at the time of his death, the deceased employee was getting a salary to the extent of 18,070 per month and in the aftermath of his death, there would be a net depletion in the income of the family to the extent of Rs. 8,000 even if the income as assessed by the Bank in impugned order is posited to be correct. From a perusal of Annexure-7 to the writ petition which is a letter addressed to the widow of deceased employee by the Bank dated 23.11.2001, it is revealed that the pension payable to the deceased family has been pegged at Rs. 3,415 + Rs. 3,063 as D.A. total Rs. 6,070 which is payable to the widow for the period between 20.5.2001 to 19.5.2006 and thereafter it is further revealed, the pension would stand reduced to a sum of Rs. 565 per month. Taking into reckoning the age of the children, the youngest being 7 years old and also reckoning with the facts that four of the daughters still remain to be married off, I

am of the view that the total amount assessed by the Bank as income of the family has been overstated and cannot, by any stretch, be said to be sufficient to sustain the family comprising seven members.

7. In connection with the above, a kindred question also comes in the forefront for consideration as to what are the objects underlying compassionate appointment. This aspect need not be stretched beyond a point inasmuch as this question has received attention of the various High Courts as well as the Apex Court in several decisions. The quintessence of what has been consistently held that the objects underlying compassionate appointment is to enable the family to get over sudden financial crisis. In Umesh Kumar Nagpal Vs. State of Haryana and Others, it has been observed by the Apex Court that the appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. It was further observed that in such cases the objects is to enable the family to get over sudden financial crisis but such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. It would be eloquent from the above decision that stress has been laid on "livelihood". In another decision in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, it has been held that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family and such appointment should be provided immediately to redeem the family in distress. Again in Smt. Phoolwati Vs. Union of India and Others, ; Union of India (UOI) and Others Vs. Bhagwan Singh, and in Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, the Apex Court held on the lines that out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependents of the deceased who may be eligible for appointment. Again stress has been laid upon livelihood.

8. In the light of the above decisions, I feel called to delve into the aspect whether the family of deceased employee had sufficient means to keep the pot boiling. It is worth noticing that the Bank has assessed income of the family to the extent of Rs. 10,070 per month taking into reckoning the amount paid to the family as gratuity and other retiral-cum-death benefits at the same time. According to the own showing of the Bank, there is no immovable property left behind by the deceased family to sustain the family and the only means of livelihood are the lump-sum payment made by the Bank and the monthly pension as fixed. It would also appear that the Bank has assessed monthly income on the basis of lump sum payment on the count of provident fund, gratuity, leave encashment, etc. without considering the amount received by the family in the wake of the death of the deceased

employee. It would also appear that the Bank had not set apart the amount equal to liabilities left behind by the deceased employee, i.e., marrying off four daughters and also that the pension fixed at Rs. 6,070 payable to the family only upto 19.5.2006 would stand slashed to a sum of Rs. 565.

9. "Livelihood" according to dictionary meaning has been defined to mean means of subsistence. Likewise income means a regular payment or a payment expected to be regular. According to the ordinary meaning what is received is of the character of income, whether it is merely a casual receipt or mere windfall. According to dictionary meaning, income is whatever is received as gain, e.g., wages or salary, receipts from business, dividends from investment, etc. What transpires from the above is that it should be of regular character. As stated supra, the income of the family as assessed by the Bank consists of pension and the interest from the lump-sum amount received by the family in the aftermath of the death of deceased employee which in my opinion, cannot be said to be of regular character taking into reckoning that the liabilities left behind the deceased, i.e., marrying off four daughters and also taking into account that the income in the form of pension would stand slashed to Rs. 565 in the year 2006 have been eschewed from consideration by the Bank authorities while computing the income of the family in entirety. The Bank authority has also not taken into account the amount borrowed from relatives and friends for administration of treatment of the deceased employee. By this reckoning, the income of the family cannot be characterized as regular income, which is likely to suffer depletion after a certain period leaving the family again in lurch and penurious fiscal position. No doubt, as held by the Apex Court, the post-retiral/post-death benefits which the family had received from the Bank have to be included to consider the financial condition of the family but at the same time, the Bank has to take into reckoning the liabilities left by the deceased employee and after deducting average amount towards liabilities what is left has to be taken into reckoning to constitute income of the family. This having not been done, the impugned order passed by the Bank is not sustainable, as the same has been passed without determining amount towards liabilities and without making necessary deduction therefrom.

10. The Court is pained to notice that in almost every case of this nature the Bank authorities seem to be passing identical orders initially giving details of the amount received by the family of the deceased employee without any discussion of reasons whether income assessed by the Bank is of the character of regular payment after meeting all the liabilities left by the deceased employee. It is also being noticed that the Bank authorities, as a rule, eschew from consideration the liabilities to be met by the family of the deceased employee and proceed on prior consideration to compute the income without regard being had to the objects underlying compassionate appointment. No doubt, payments being received by the family of deceased are factors to be considered but the same have to be considered objectively and not subjectively as done in the instant case by the Bank authorities.

It has become a common practice with the State Bank authorities to enumerate details of income and thereafter, in fewer words to state reasons on threadbare lines and therefore, to obtain approval of the competent authority thereon. In the instant case, after stating details of amount, the Bank compressed their reasons in still fewer lines which were forwarded for approval to the competent authority and the competent authority marked his approval without anything being added. The reasons in the form of recommendations as contained in Annexure-C.A. 1 to the counter affidavit are quoted below :

"In view of the Central Office guidelines/Supreme Court judgment vis-a-vis the above financial position of the family, we observe that indigent circumstances do not exist in the family. We, therefore, recommend that request of Smt. Ramawati Mishra for compassionate appointment of her son, Murtunjai Mishra in the Bank may please be declined. We shall advise the Deputy General Manager, State Bank of India, Zonal Office, Varanasi, to advice Smt. Mishra suitably and treat the matter as closed."

11. In letter addressed to the widow of the deceased employee dated 26.8.2002, the Branch Manager while communicating that the request for compassionate appointment has been rejected by the competent authority, has also spelt out the guidelines extracted from various decisions of the Apex Court for consideration of compassionate appointment. The guidelines as recounted in its letter, may be excerpted below :

(a) The object of granting compassionate appointment is :

(i) to enable the family to tide over the sudden crisis caused by the death of the sole breadwinner, and

(ii) to relieve the family of the financial destitution and to help it get over the emergency.

(b) Mere death of an employee in harness does not entitle his family to such source of livelihood.

(c) The Government or public authority has to examine the financial condition of the family of the deceased and only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.

(d) The only ground which can justify compassionate appointment is the penurious condition of the deceased's family. Offering employment irrespective of the financial condition of the family is legally impermissible."

Upon consideration of the above guidelines, it would crystallise that the Bank has to examine the financial condition of the family of the deceased and only if it is satisfied that but for the provisions of employment, the family will not be able to

meet the crisis that a job is to be offered to the eligible member of the family. As stated supra, the Bank has added up the total of all amount received in lump sum by the family of the deceased employee and converged to assessing monthly income without, at the same time, regard being had to the liabilities and obligations to be discharged after the death of deceased employee. The petitioner clearly disclosed that the family is survived by five school going children the youngest one being 7 years old and that during ailment of the deceased employee, the family had to borrow and incur expenditure to the extent of Rs. 2,50 lac which the Bank authority did not include while computing aggregate income of the family. In my considered view, if the Bank had considered the entire amount received by the family of the deceased vis-a-vis the liabilities left behind by the deceased employee, the amount which, may be distilled as income would be very negligible and would not constitute sufficient means. No reasons, as stated supra, have been recorded and subjective satisfaction recorded by the Bank authorities has no grounding. The Bank authorities have also not reckoned with the aspect of liabilities of marriage of the four daughters and also the aspect of maintenance of family members the youngest being 7 years old, after 20.5.2006 when the pension would stand reduced to a paltry sum of Rs. 565. In the circumstances, the impugned orders cannot be sustained being one having been passed sans consideration of pivotal aspects bearing on the sustenance of the family members. According to own showing of the Bank, the family had no immovable property or any source of income, which could be said to be of permanent character and perennial nature. The amount disclosed in the impugned order is of dissipating character inasmuch as the same cannot be said to be perennial source of income. The eldest daughter aged 19 years is said to be receiving education in B.A. and by all reckoning, she can be said to be of marriageable age and may be required to be married off in a year or two. Even if it be assumed that a cumulative amount of Rs. 2.50 lacs may be required to be incurred in the marriage of one daughter, a net amount of Rs. 10 lac is required to marry off four daughters and by this reckoning also, the income on that count cannot be said to be income of permanent character. Having regard to the above calculation and computation, it would appear that only source of income for the family is by way of pension and that too for a period of five years which by no stretch of imagination can be said to be adequate or sufficient. In my considered view, the order impugned here falls short of compliance on the own showing of the Bank, with the guideline (c) as delineated in Annexure-8 to the writ petition.

12. Coming to the next question, it is noticeable that an amount of Rs. 2.5 lacs stated to have been received from outsiders by the deceased employee has not been taken into reckoning on the ground that the same was not verifiable. It brooks no dispute that the deceased employee was ailing and was hospitalized for treatment at Mata Anand Mai Hospital, Varanasi. The Bank authorities reckoned out of consideration the sum of Rs. 2.50 lac on mere ground that the said amount was not verifiable. Besides, it would also appear, the external liability has been disclosed in the letter of

the widow of deceased employee dated 25.6.2002 (Annexure-5 to the writ petition). From a perusal of the contents of aforestated letter, it would transpire that it has been clearly stated in para 1 that a sum of Rs. 1,50,000 had been incurred towards the treatment of the deceased which payment was repaid after receipt of gratuity and provident fund. In para 2 of the letter, it has been stated that a sum of Rs. 40,000 was expended in performing last rites of the deceased employee which amount was repaid after receipt of provident/gratuity fund. In para 3 it has been stated that a sum of Rs. 60,000 was borrowed from various relatives which were spent on maintaining family after the death of deceased employee and the said amount was repaid after receipt of gratuity/provident fund. It is further stated that the aforesaid amount was required as payment of pension and fund, etc. had been delayed by seven months. In my firm opinion, the expenses enumerated above are normal expenses and the same cannot be disputed and should not have been eschewed from consideration. In reply to para 8 of the writ petition, the deponent of the counter-affidavit has not denied the averments. The impugned order does state external liabilities but the same seems to have been ignored as not verifiable. There is no denying that the deceased employee was ailing and after protracted ailment, he breathed his last. The expenses incurred on last rites can also not be disputed and delay of seven months in fixing pension and payment of funds would naturally entail borrowing, which has been done by the family of the deceased in the case. In the cumulative circumstances, the same cannot be eschewed from consideration merely on the ground that the same were not verifiable. In this view of the matter, I am of the view that the income has not been correctly assessed by the Bank and therefore, impugned order cannot be sustained. I would not forbear from articulating that benefit of employment by way of compassionate appointment under dying-in-harness rules should flow liberally unless there be clinching evidence to demonstrate that the family of the deceased had sufficient means to fall back upon. The scheme for appointment on compassionate ground is a scheme in the nature of beneficial legislation to those on whom the destiny has inflicted the unkindest cut and it would not be proper to inflict further cut on the family bedeviled by misfortune.

13. I would also like to observe that it is a sad commentary that the family of an employee who has devoted his best years in the service of Bank, has been left in lurch without care and concern by the employer as to how surviving school going children would receive education from scantiness of means. The employer, in the instant case, is a Nationalized Bank, an instrumentality of State and therefore, it is expected to behave as a model employer also taking into consideration that right to education is a right enshrined under Article 41 of the Constitution of India and in case for want of sufficient means, the right to education of any of the children left behind by the deceased is affected, it would be seen to be infringing upon the goals cherished in the Constitution of India.

14. It would also appear from a perusal of impugned order turning down the request for compassionate appointment that it is a one liner order with no reasons assigned for conclusion that the fiscal condition of the family was such which could enable the family to meet the crisis. Besides, it would appear that the satisfaction arrived at is by all means subjective and not objective inasmuch as there is no indicia of analysis of reason warranting conclusion that the family with the lump sum would be able to tide over the crisis occasioned by the death of the only earning member. In this regard, it may be noticed that the basic principle of Constitution makes it imperative for administrative authorities clothed with the duty to decide something on consideration of policy or scheme, to act judicially in order to guard against arbitrariness. It has been reiterated in a number of decisions that a clear application of mind must be discernible in the order. Thus, it would not be difficult to hold that the satisfaction is subjective and not objective.

15. In the result, the petition succeeds and is allowed and in consequence, the impugned order dated 30.7.2002 (Annexure-C.A. 1 to the counter-affidavit) and the communication letter dated 26.8.2002 (Annexure-8 to the writ petition) are quashed. Before parting, I feel called to observe that the Bank authorities will assess the income taking into consideration the observations made by this Court in the body of this judgment and would pass appropriate speaking orders on objective consideration for compassionate appointment of the petitioner after taking into reckoning the liabilities of the family also within one month from the date of receipt of a certified copy of this judgment.