

Sudhir Gupta Vs General Manager (H.R.D.), Central Bank of India and Another

Court: Allahabad High Court

Date of Decision: Aug. 20, 2009

Citation: (2010) 1 AWC 1076

Hon'ble Judges: Sudhir Agarwal, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Sudhir Agarwal, J.

Heard Sri D.S.P. Singh, learned Counsel for the petitioner at great length and perused the record.

2. This writ petition is directed against the order dated 21.3.2006 passed by the respondent-Bank rejecting the claim of petitioner for appointment

on compassionate basis on the ground that the assets and financial condition of petitioner does not warrant such appointment since it cannot be

said that the family is in penury.

3. Sri Singh contended that the deceased employee working as Clerk in the Bank died on 18.11.2001 due to blood cancer and his family incurred

medical expenses to the tune of more than Rs. 10 lacs for which the family also borrowed a substantial amount from relations, friends etc. He said

that the elder son of the deceased is living separately doing his own business though his income is also negligible and is inadequate to maintain even

his family consisting of his wife and children. The deceased, besides the elder son, Sri Sandeep Gupta, has left an unmarried daughter, Km. Sima

Gupta and the petitioner. The family is residing in a rented house and, therefore, the findings recorded by the Bank that the family is not in penury

and has a better financial status disentitling the petitioner for compassionate appointment is incorrect and deserves to be set aside. He also relied

upon a single Judge judgment of this Court in Dhiraj Kumar Dixit Vs. General Manager (Personnel), UCO Bank and Others, and the Apex

Court's decision in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and contended that the lump sum payment made to the

family of the deceased employee towards gratuity, leave encashment, provident fund, insurance etc. could not have been taken into account to

consider the assets and financial status of a family.

4. However, I do not find any force in the submission.

5. From the record it does appear that the heirs of deceased employee were paid after deducting the Bank dues a sum of Rs. 9.74 lacs. Besides,

the petitioner's family also have a residential house which had been constructed/purchased out of loan amount from the Bank. So far as the

medical expenses are considered the deceased employee was entitled for reimbursement of the medical expenses and from Annexure-CA-1 to the

counter-affidavit it appears that the total bill towards medical expenses submitted by the petitioner were for. a total sum of Rs. 2,20,298.85 out of

which a sum of Rs. 1,62,335.85 was sanctioned vide order dated 6.2.2002 and the said amount was paid to the family of the deceased employee.

It is not the case of the petitioner that they submitted bills of medical expenses for some further amount but the same has been detained or not paid

by the Bank illegally.

6. Besides, there is nothing on record to show that sanction of Rs. 1,62,335.85 against the bills submitted for Rs. 2,20,298.85, the petitioner or

the family felt aggrieved and submitted any appeal to the Bank claiming balance amount. Thus, it is evident that they were satisfied with the

reimbursement made by the Bank. The submission, therefore, that the petitioner had incurred expenses towards treatment of the deceased

employee to the extent of Rs. 10 lacs is incorrect.

7. The statement that the petitioner's family is residing in a rented house is also not acceptable since learned Counsel for the petitioner could not

dispute that a residential accommodation was purchased/constructed out of the loan taken from the Bank. In the circumstances how and for what

reason the petitioner's family is residing in a rented house is not clear. Either the petitioner's family might have rented their own residential house

for some higher rent or may be for any other reason, but the fact remains that they have a fixed asset in the form of immovable property consisting

of a residential house.

8. It also appears from the record that the deceased employee did not opt for general provident fund and pension/family pension and, therefore,

probably the petitioner's family is not getting family pension.

9. In the above facts and circumstances now the question up for consideration is whether the amount received by the family of the deceased

employee in the form of retiral or post death dues benefits can be taken into account for determining the financial status of the legal heirs to find out

whether the family is in penury attracting the scheme of compassionate appointment or not.

10. This question is no more res integra having been considered and decided by the Apex Court in catena of decisions some of which are as

under.

11. In General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, the scheme for compassionate appointment provided to consider

the following amounts in order to determine the financial condition of the family, (1) family pension, (2) gratuity amount received, (3)

employees/employers contribution to provident fund, (4) any compensation paid by the Bank or its welfare funds, (5) profits of L.I.C. policy and

other investments of the deceased employee, (6) income of family from other sources, (7) employment of other family members, (8) size of the

family and liabilities, if any etc. The Apex Court held that the matter of compassionate appointment considered in the light of the above scheme

cannot be said to be erroneous. It further held that in the light of the above items when the case of Kunti Tiwary was considered it was found that

the family of the deceased employee was not in penury or without any means of livelihood and this finding cannot be said to be erroneous. The

case pertains to the scheme formulated by the State Bank of India.

12. A similar scheme was formulated by Punjab National Bank and it came up for consideration before the Apex Court in Punjab National Bank

and Others Vs. Ashwini Kumar Taneja, The argument advanced on behalf of the person claiming compassionate appointment was that the

amounts like gratuity, provident fund etc. have no relevance for determining the question whether compassionate appointment is to be made. The

claim found favour with the High Court and the decision when taken in appeal before the Apex Court, reversing the decision, the Apex Court

observed that it is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the

requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee

concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises. It further held

that the appointment on compassionate ground cannot be claimed as a matter of right. Dying-in-harness scheme cannot be made applicable to all

types of post irrespective of the nature of service rendered by the employee. The scheme, if extended to all types of casual or ad hoc employees

including those who worked as apprentices may not be justified on constitutional grounds. Thereafter considering the question as to whether the

retiral benefits can be taken into account to find out the financial status of the family the Apex Court discussed the issue and held:

One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for

compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what

has been held recently in General Manager (D and P.B.) and Ors. v. Kunti Tiwary and Anr. (Civil Appeal 126 of 2004 disposed of on 5.1.2004).

It was categorically held that the amounts have to be taken into consideration.

(Emphasis added)

13. Again a similar scheme in the matter of Union Bank of India was considered in Union Bank of India and Others Vs. M.T. Latheesh, and it held

in para 17 as under:

When an employee dies and any one of the dependent mentioned in Clause 2(c) of the appointment on compassionate ground scheme formulated

by the Bank can forward an application as per the said scheme. Consequently the dependent does not automatically become entitled to get

employment. The right that accrues on the applicant is a right to get preferential treatment against the general principle of appointment, subject to

the discretion of the Bank. Further the possession of relevant qualification does not create any vested right on the applicant to get appointed to a

post specified by the scheme.

14. Thereafter relying on its earlier decisions in Kunti Tiwary (supra) and Ashwini Kumar Taneja (supra) it discussed the various benefits received

by the family of the deceased employee, in paras 25 and 26 of the judgment and upheld the decision of the Bank to decline compassionate

appointment. The judgment in Balbir Kaur (supra) was also considered and distinguished by discussing the same in para 35 of the judgment as

under:

Learned Counsel for the respondent cited the decision in Balbir Kaur v. Steel Authority of India (supra) which also deals with compassionate

appointment. In this case, this Court held that the family benefit scheme assuring monthly payment to the family of the deceased employee was not

a substitute for compassionate appointment and, therefore, compassionate appointment could not therefore, be denied on the ground that the

family benefit scheme was available and that non-payment of gratuity and provident fund to the family at the time of death of the employee runs

counter to the object of the beneficial legislation contained in the Payment of Gratuity Act and the Employees Provident Fund and Miscellaneous

Provisions Act, 1952 and that lump sum payment of provident fund is an insulating factor for the family to cope with the situation arising out of

death of the employees. This Court also held that the socialistic pattern of society as envisaged in the Constitution has to be attributed its full

meaning and that the law courts cannot be a mute spectator where relief is denied to the horrendous sufferings of a family which has lost its bread

winner and the constitutional philosophy should be allowed to become part of every man's life and then only the Constitution can reach everyone.

This is a general observation made by this Court in the context of compassionate appointment. The above judgment, in our view, is distinguishable

on facts and on law. This apart the case on hand is directly covered by the scheme formulated by the Bank in regard to the compassionate

appointment.

(Emphasis added)

15. The Apex Court very clearly said that no one can ask to consider his case in a manner not provided in the scheme for compassionate

appointment. It is incumbent upon the authorities concerned to consider the claim of compassionate appointment strictly in accordance with the

relevant parameters provided in the scheme or the rules and regulations applicable in this regard. The Court in paras 36 and 37 of M.T. Latheesh

(supra) held:

36. In the present case, by declining the application submitted by the respondent after the proper consideration of the same in the light of the

relevant parameters the appellant-Bank cannot be said to have acted in an arbitrary manner regardless of the constitutional principles.

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 fact 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." 16. In *State Bank of*

India and Another Vs. Somvir Singh, it has been said that receipts of funds and income from all sources have to be taken into consideration to

determine the financial status of the family. It further says that mere hardship does not entitle the legal heirs of the deceased employee for

compassionate appointment unless it is provided under the scheme or the Rules. The compassionate appointment can be made applicable only

strictly in accordance with the scheme and not beyond that.

17. In *Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others*, the Court held that now a well-settled principle of law is that

appointment on compassionate ground is not a source of recruitment. The reason for making such a benevolent scheme by the State or public

sector undertakings is to see that the dependants of the deceased are not deprived of the means of livelihood. It only enables the family of the

deceased to get over sudden financial crises. Noticing that the appellant Mulani was receiving family pension and also own certain immovable

properties, relying on its earlier decisions in *Kunti Tiwary (supra)* and *Ashwini Kumar Taneja (supra)*, the Apex Court distinguished the judgment

in *Govind Prakash Verma v. L.I.C. of India* 2005 (10) SCC 289. by observing that it, however, does not appear that therein the earlier binding

precedents of this Court had been taken notice of. The Court ultimately upheld the decision of the authority concerned declining the compassionate

appointment to Smt. Mulani.

18. In the case in hand, it is not disputed by learned Counsel for the petitioner that in the respondents-Bank also the scheme available for

compassionate appointment provides for taking into consideration the various retiral benefits to determine the financial status of the family and the

Bank has taken decision consistent to the said policy. However, what he submits that the retiral benefits as a matter of principle of law cannot be

allowed to be taken into consideration to determine the financial status as held by the Hon'ble single Judge of this Court in *Dhiraj Kumar Dixit*

(*supra*) where relying on the Apex Court's decision in *Balbir Kaur (supra)* this Court observed that the provident fund and gratuity cannot be

included to calculate the income of the family of the deceased. It also held that even the amount received due to compulsory insurance or leave

encashment cannot be deemed to be income. However, from the judgment it appears that the validity of the scheme itself was challenged before

this Court in so far as it provides for considering the amount of provident fund, gratuity, family pension, group insurance or insurance policy etc. for

determining the financial or family income of the deceased employed for considering the claim for compassionate appointment and while striking

down the Clauses 7 and 8 of the scheme which provided for the said factors this Court held that the said amount cannot be taken into

consideration at all. However, the decision was rendered in 2002 and thereafter as noticed above in catena of decisions, considering similar

scheme, of various Banks, the Apex Court has held that the compassionate appointment can be considered only in accordance with the scheme

formulated by the employer and not otherwise. In the case in hand the scheme itself is not under challenge, therefore, considering the issue in the

light of the scheme as available in the respondents-Bank I do not find any fault in the order impugned in the writ petition where the Bank has

declined the claim of petitioner for compassionate appointment on the ground of financial status of the family by taking into consideration various

factors which included the benefits received by the family of the deceased employee towards provident fund etc.

19. Besides, the deceased employee died in 2001 and petitioner's family is maintaining itself till date and 8 years have already elapsed. The

purpose of compassionate appointment is not for providing a post against post. It is not reservation in service by virtue of succession. If the family

is not in penury and capable to maintain itself for a long time, no mandamus would be issued after a long time for providing compassionate

appointment to a legal heir of the deceased employee. Recently in Santosh Kumar Dubey Vs. State of U.P. and Others, and Eastern Coalfields

Ltd. Vs. Anil Badyakar and Others, the Apex Court has declined to issue any mandamus after expiry of a long time. In Santosh Kumar Dubey

(supra) after considering the U.P. Recruitment of Dependents of Government Servants Dying in Harness Rules, 1974 the Apex Court said that

after five years if family of the deceased has been able to survive, no mandamus or direction should be issued for giving compassionate

appointment.

20. In the circumstances, I do not find any reason to interfere in this matter particularly when the facts stated in the impugned order have not been

shown to be perverse and/or illegal. The writ petition, therefore, lacks merit. Dismissed. No costs.