
(2007) 11 KAR CK 0019

Karnataka High Court

Case No: Writ Petition No. 18414 of 2005

C. Umamaheswari

APPELLANT

Vs

Vijaya Bank

RESPONDENT

Date of Decision: Nov. 26, 2007

Acts Referred:

- Constitution of India, 1950 - Article 14, 16 (1), 21

Citation: (2008) 116 FLR 967 : (2008) ILR (Kar) 142 : (2008) 1 KarLJ 511 : (2008) 1 KCCR 8 SN

Hon'ble Judges: N.K. Patil, J

Bench: Single Bench

Advocate: M.N. Prasanna, for P.S. Rajagopal, for the Appellant; Pradeep S. Sawkar, for Sundaraswamy Ramdas and Anand, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

N.K. Patil, J.

The petitioner, assailing the correctness of the impugned communication dated 10th September 2001 bearing No. PER:HRD:RCT:C:7872-2001 vide Annexure-G and the order dated 20th April 2006 bearing No PER:HRD:RCT:1428:2005 vide Annexure-L both issued by respondent, has presented this writ petition. Further, petitioner has sought for a direction to the respondent to consider the case of the petitioner and grant her appointment as Clerk or Typist or any equivalent post strictly in accordance with the Scheme notified by the Bank by Circular No. 31/1999 dated 11.2.1999 vide Annexure-D and grant all consequential benefits.

2. The case of the petitioner in the instant writ petition is that, petitioner's husband Sri. C. Srinivasulu was working as Sweeper in the respondent-Bank and he died in harness while in employment on 19.3.2001. On account of the death of her husband Sri. C. Srinivasulu, petitioner has filed an application for appointment on compassionate grounds as per the then existing Scheme dated 11.2.1999 vide Circular No. 31/1991 regarding appointment on compassionate grounds to a

member of the employee dying in harness and under the said scheme the appointment were to be made in clerical or sub-ordinate staff cadre. Further, it is the case of the petitioner that, her husband died on 19.3.2001 leaving behind him, petitioner and two minor children. Thereafter, petitioner has submitted her application on 16.5.2001 seeking appointment for self on compassionate grounds on account of the death of her husband and the same was duly registered by the bank as 16/01 dated 26.5 2001. Instead of considering the request of the petitioner for appointment on compassionate grounds, respondent-Bank has issued the communication dated 10th September 2001 vide Annexure-G, intimating the petitioner that, the existing Scheme for appointment on Compassionate Grounds is under revision and as and when the existing scheme is revised, the case of the petitioner will be examined and she will be informed of the decision. Thereafter, petitioner has submitted two more representations/requests seeking an appointment on compassionate grounds. Instead of considering her request as per the existing Scheme for Appointment on Compassionate Grounds, the respondent-bank has rejected the request of the petitioner on an untenable ground and issued the impugned communication dated 20th April 2005 vide Annexure-L informing the petitioner that, there is no scheme for providing employment on compassionate grounds and as such, they are unable to consider the request of the petitioner. Further it is stated that, the Bank has formulated a scheme providing for Ex-gratia/relief in lieu of appointment on compassionate grounds and if petitioner is interested she can submit her application. Being aggrieved by the impugned communications issued by respondent-Bank, as referred above and seeking appropriate relief, petitioner felt necessitated to present this writ petition.

3. I have heard learned Counsel appearing for petitioner.

Learned counsel appearing for petitioner at the outset submitted that, the impugned communications issued by respondent-Bank as referred above are liable to be set aside, on the ground that, respondent-bank intentionally and deliberately has not considered the request of the petitioner for an appointment on compassionate grounds, on account of the death of her husband Sri. Sri. C. Srinivasulu, who was working as Sweeper in the respondent-bank. The deceased employee of the respondent-bank has left behind the petitioner and her two minor children and salary of the petitioner's husband is their only source of income for survival and to meet the day today expenses. Learned Counsel appearing for petitioner has specifically taken me through the relevant Scheme which was existed as on the date of the death of the deceased husband of the petitioner i.e. Circular No. 31/1999 of the respondent-bank and submitted that, the object of the said Scheme is to offer compassionate appointment to a member of the employee dying in harness and the same has not been made applicable to the petitioner's case and on the contrary, respondent-Bank has informed the petitioner that the existing Scheme for Appointment on Compassionate Grounds is under revision and hence, no decision is taken and as soon as the existing Scheme is revised, the petitioner's

case will be examined and she will be informed of the decision. Further, learned Counsel appearing for petitioner has submitted that, respondent-Bank is bound to consider the application filed by the petitioner as per the then existing Scheme and not as per the revised Scheme and the said revised scheme is not applicable to the petitioner's case. To substantiate his submission, he placed reliance on the judgment of the Division Bench of this Court dated 10th June 2005 passed in WA No. 2941/2003 (Vijaya Bank v. R. Shashibhushana) and connected matter and submitted that, the Division Bench of this Court has held that, the Scheme which was in existence as on the date of the death of the deceased should be taken into consideration and the revised Scheme will not be applicable and therefore, the Bank-authority was not justified in refusing the appointment on compassionate grounds. Therefore, learned Counsel appearing for petitioner has submitted that, the respondent-bank was not justified in refusing the appointment on compassionate grounds to the petitioner and except narrating in the objections that, petitioner has not submitted the particulars and that is not the case of the respondent, when it has issued the communication dated 10.9.2001 vide Annexure-G and for the first time, the said contention has been taken by respondent-bank in the statement of objection stating that, petitioner has not submitted all the particulars to find out the actual financial condition of the family of late Sri. C. Srinivasulu. Further, he quick to point out that, petitioner has not received single pai from the respondent-bank regarding pensionary benefits like P.F. or gratuity and the said amount has been adjusted towards the liability of the deceased and that has been accepted and admitted by the respondent-Bank in para-9 of the statement of objection. Therefore, he submitted that, taking all these aspects of the matter into consideration, the respondent-bank is not justified in issuing the said communication contrary to the materials available on file and without considering the case of the petitioner for appointment on compassionate grounds, as per the Scheme existed as on the date of the death of the deceased employee of the respondent-bank Sri C. Srinivasulu. Therefore, learned Counsel appearing for petitioner submitted that, the impugned communications are liable to be vitiate.

4. Per contra learned Counsel appearing for respondent-Bank, has filed statement of objection, inter alia contending that, the impugned communications issued by respondent-Bank is just and proper and no error or illegality as such has been committed by respondent-Bank in issuing the said communications. Further, learned Counsel appearing for respondent-Bank has stated in the objections that, petitioner has submitted her representation 18.5.2001 for settlement of terminal benefits and requesting for appointment on compassionate grounds. The said representation was replied by respondent-Bank on 10.9.2001 vide Annexure-G, informing the petitioner that, since the scheme for appointment on compassionate grounds is under revision, the petitioner's case will be examined after revision of the existing Scheme. Further, learned Counsel appearing for respondent-Bank has stated in the objections that, petitioner has not produced all the necessary

documents to verify the financial conditions of the family of the deceased Sri. C. Srinivasulu and the Bank cannot be faulted for the inaction on the part of the petitioner. Further, it is stated that, petitioner cannot claim appointment on compassionate grounds as a matter of right and it is an exception carved out to the general rule of appointment by open invitation and merit and the primary object for granting compassionate appointment is to help the family of the deceased employee to overcome the immediate financial crisis faced by the family due to the death of the sole bread winner of the family and the petitioner has not made out any grounds for granting the relief claimed. Further, it is stated in the objections that, the averment that the action of the respondent-Bank is unconscionable, arbitrary, discriminatory, high handed, unfair unjust and unreasonable, irrational and that it suffers from non application of mind and contrary to and violative of Articles 14, 16(1) and 21 of the Constitution of India are baseless and denied the same and therefore, petitioner is not entitled to claim the appointment on compassionate ground and nor she has made out any good grounds as such to entertain the relief sought in this writ petition.

5. After having heard learned Counsel appearing for petitioner and the grounds urged by petitioner in the writ petition and the stand taken by respondent-Bank in their statement of objections, it is not in dispute that, the husband of the petitioner-Sri. C. Srinivasulu was working in the respondent-bank as Sweeper and he died while in employment on 19.3.2001. Petitioner has filed her application on 16.5.2001 seeking for an appointment on compassionate grounds, on account of the death of her husband Sri. C. Srinivasulu, and as on the date of the death of the deceased employee, Circular No. 31/1999 for appointment on compassionate grounds to the member of the employee of the bank who died during service was in existence. This fact has not been disputed by respondent-bank and what it has been decided by way of issuing communication dated 10.9.2001 vide Annexure-G is that, the said Scheme is under revision and petitioner's case will be examined on revision of the said Scheme. Thereafter, by applying the scheme which is not applicable to the petitioner i.e. the scheme for ex-gratia in lieu of appointment on compassionate grounds to the dependents of the deceased employee 2004 which has been issued on 20th February 2004 vide Annexure-M. The said scheme cannot be made applicable retrospectively to those employee working in the respondent-Bank who died prior to 20th November 2004. This fact knowing fully well, the respondent-Bank has proceeded and rejected the claim made by petitioner on untenable grounds, without taking into consideration that, the request made by petitioner seeking for an appointment on compassionate grounds and gone to the extent of stating that, respondent-Bank has not received any particulars to know about the financial conditions of the petitioner. The said statement made by respondent-Bank cannot be accepted for the simple reason that, respondent has categorically stated in para-9 of the objections that, Petitioner's family has received a sum of Rs. 17,500/- from LIC of India. However, it is true that the amount of provident fund and gratuity

has been adjusted towards the outstanding liabilities of the deceased employee to the bank under various loans available by him. The fact that, petitioner's husband was working as Sweeper in the respondent-bank and he died leaving behind the petitioner and two minor children and the same has been declared by the petitioner herself in her application filed by her seeking for an appointment on compassionate grounds and if petitioner is well off financially, there is no need for her to file such an application seeking for an appointment on compassionate grounds. This fact has not been looked into nor considered by respondent-Bank and it has taken the decision on the basis of the materials available in the service record of the deceased employee of the respondent-Bank Sri. C. Srinivasulu. Respondent-Bank can get all the requisite information in the service records of the deceased employee, even it has failed to take into consideration the order passed by the Division Bench of this Court dated 10th June 2005 in W.A. No. 2941/2003 and connected matter, where, the respondent-Bank is the appellant has filed an appeal against one Sri. R. Shashibhushana and another, wherein this Court, had directed respondent -Bank to consider their case for appointment on compassionate grounds, specifically pointing out that, the scheme which is in existence as on the date of the death of the deceased employee of the respondent-Bank should be taken into consideration for providing appointment on compassionate grounds. But in the instant case, the scheme applicable to the petitioner is the Circular No. 31/999 which is in existence as on the date of the death of the husband of the petitioner and the same has been revised in the year 2004. This aspect of the matter has not been looked into nor considered by respondent-Bank, as rightly pointed out by learned Counsel appearing for petitioner. Nor the respondent-Bank has whispered a word regarding this aspect of the matter in the statement of objections, except denying the averments made by petitioner in toto.

6. Therefore, having regard to the facts and circumstances of the case as stated above and in the light of the judgment passed by the Division Bench of this Court as referred above, I am of the considered view that, the impugned communications issued by respondent cannot be sustained and they are liable to be set aside.

7. For the foregoing reasons, the writ petition filed by petitioner is allowed in part.

Impugned communication dated 10th September 2001 bearing No. PER:HRD:RCT:C:7872-2001 vide Annexure-G and the order dated 20th April 2005 bearing No PER:HRD:RCT:1428:2005 vide Annexure-L both issued by respondent are hereby set aside.

Matter stands remitted back to the respondent-bank for reconsideration afresh, with a direction to reconsider the application filed by petitioner seeking for an appointment on compassionate grounds, on account of the death of her husband late Sri. C. Srinivasulu who was the employee of the respondent-bank, in the light of the Bank circular No. 31/999 and also taking into consideration the judgment of the Division Bench of this Court as referred above and dispose of the same, after

affording reasonable opportunity to the petitioner, as expeditiously as possible, within three months from the date of receipt of a copy of this order.