Court No. 22

22.8.2022

(Item No. 2)

(AB)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

W.P.A. 30558 of 2016
+
CAN 1 of 2017 (old No. 3764 of 2017)
+
CAN 4 of 2021

Mousumi Sinha
VS
The Union of India & Ors.

Ms. Mousumi Sinha
…… the petitioner **in person**
Mr. Soumen Das
…… For respondent Bank
Ms. Rama Ghosh Dastidar
…. For Union of India

The writ petitioner is the daughter of the deceased bank employee who suffered an untimely death while in his employment.

On November 24, 2011 the mother of the writ petitioner being the widow namely Minati Sinha applied before the employer bank requesting for Ex-Gratia payment on compassionate grounds as per the Bank's Scheme dated November 7, 2007 (for short, 2007 Scheme). The father of the petitioner died during his employment on October 14, 2011.

Immediately after the demise of the father the mother of the petitioner on May 8, 2012, ***Annexure P-4 to the writ petition*** applied for a compassionate appointment for the petitioner while the petitioner was pursuing her Bachelor of Arts (B.A., 2nd year). Subsequently, on July 18, 2016, ***Annexure P-5 to the***

writ petition the petitioner applied for compassionate appointment and such request was rejected by the employer bank by its communication dated July 19, 2016, ***Annexure P-6 to the writ petition,*** informing that as per the extant guidelines of the bank she was not eligible to receive any compassionate appointment. Lastly, the petitioner through his advocate's notice dated August 3, 2016, ***Annexure P-7 to the writ petition*** further demanded a compassionate appointment. Such demand was also rejected by the bank by its communication dated August 23, 2016, ***Annexure P-8 to the writ petition*** informing that as per the extant guidelines of the bank and the scheme prevailing upon, the petitioner was not eligible for such compassionate appointment.

Being aggrieved with such refusal to obtain a compassionate appointment, the instant writ petition was filed.

The writ petitioner appeared in-person and submitted that, her prayer for compassionate appointment was wrongfully refused by the bank. She referred to a scheme for compassionate appointment containing the consolidated instructions on such appointment issued by the Government of India, Ministry of Personnel, Public Grievance and Pensions (Department of Personnel & Training) dated

January 16, 2013 and referring to clause 9 there of she submitted that there was a specific provision made in the scheme for considering compassionate appointment in respect of the belated request. She submitted that, her case was covered within the said clause of the said Central Government scheme dated January 16, 2013 and as such the writ petition may be allowed.

Mr. Soumen Das, learned counsel appearing for the respondent bank placed reliance on a report in the form of an affidavit affirmed on April 19, 2021, pursuant to the direction of a co-ordinate bench dated April 8, 2021.

Referring to ***Annexure R-1 to the said affidavit report***, Mr. Das submitted that, the widow being the mother of the petitioner applied for Ex-Gratia payment on compassionate ground strictly in terms of the said 2007 scheme. He submitted that, the petitioner and her mother were aware of the situation that, there was an independent scheme of the concerned bank prevailing upon the issue under which neither the mother of the petitioner being the widow of the deceased employee nor the petitioner was eligible to receive such compassionate appointment. Referring to ***Annexure R-3 to the said affidavit report*** he submitted that the scheme dated

November 7, 2007 was relevant on the issue. He submitted that under the said revised scheme for payment of Ex-Gratia amount was in lieu of appointment of compassionate grounds and appointment of dependents of deceased employee on compassionate grounds. He then referred to clauses 3 and 4 from the said 2007 revised scheme of the bank, the same are reproduced herein below:

"3. Short Title of the Scheme:

(A) The Scheme for grant of ex-gratia will be applicable in the following cases of employees:

i) Employee dying in harness (other than due to injury sustained while performing official duty as a result of violence, terrorism, robbery or dacoity).

ii) Employee dying due to injury sustained while performing official duty within or outside office premises (other than due to violence, terrorism, robbery or dacoity and excluding travel from residence to place of work and back).

iii) Employee seeking premature retirement due to incapacitation before reaching the age of 55 years.

(B) The Scheme of Compassionate Appointment will be applicable in the following cases:

i) Employee dying while performing his official duty, as a result of violence, terrorism, robbery or dacoity;

ii) Employee dying within five years of his first appointment or before reaching the age of 30 years, whichever is later, leaving a dependent spouse and/or minor children.

4. Ex-gratia Payment:

i) In the cases as in para 3(A), ex-gratia amount will be paid to the family of the deceased employee if eligible and if

> ***requested for within six months from the date of the death of the employee. The family shall be in indigent or penurious circumstances.***
>
> ***ii) Ex-gratia may be granted to the family of the employee in the manner and subject to the ceiling specified below, if the monthly income of the family from all sources is less than 60% of the last drawn salary (net of taxes) of the deceased employee."***

Mr. Das, learned advocate drew attention of this Court to ***Annexure R-5 to the said affidavit report*** which was a circular dated September 29, 2014 and referring thereto, he submitted that, the policy of the bank was to consider pending applications/cases where death occurred prior to August 5, 2014, would be dealt with in terms of the said 2007 revised circular. He submitted that, in terms of the said revised circular the case of the petitioner was not covered there under and as such the bank by its written communication both dated July 19, 2016, ***Annexure P-6 to the writ petition*** and August 23, 2016 ***Annexure P-8 to the writ petition*** duly rejected the claim of the petitioner.

Mr. Das then placed reliance upon a recent judgment of the Hon'ble Supreme Court ***rendered on August 3, 2022 in Civil Appeal No. 511 of 2022 (arising out of SLP (C) No. 19757 of 2021),*** in the matter of: ***Central Bank of India Vs. Nitin*** and referring thereto in support of his contention, he submitted that, to obtain a compassionate appointment is not a matter of right and it depends upon the specific policy framed by the State or the respective employer of the deceased employee. In the instant case the 2007 scheme was introduced by the employer bank concerned and the same governed the bank. Since the petitioner did not qualify the criteria under the said 2007 scheme, her claim for compassionate appointment was lawfully rejected by the employer bank.

After hearing the submissions made on behalf of the parties and on perusal of records, it appears to this Court that, the guidelines for granting compassionate appointment was specifically provided under the 2007 guidelines of the bank. From a close scrutiny of clauses 3 and 4 of the said 2007 scheme, it appears to this Court that, the deceased employee had not died under the situation, facts and circumstance as enumerated under the said Rule 3 of the 2007 scheme which gave a right to obtain compassionate appointment. As such the rejection for granting compassionate appointment to the petitioner or to her mother was just and lawful.

From a close scrutiny of clause 4 of the said 2007 guidelines it appears that, Ex-Gratia may be granted to the family of the employee in the manner and subject to the ceiling specified that, if the monthly income of the family from all the sources is less than 60% of the last drawn salary (net of taxes) of the deceased employee. It appears from the disclosures made through the said affidavit report, **Annexure R-2** thereto, the calculation for Ex-Gratia as per the said 2007 scheme showed that, the petitioner or her mother also did not qualify the criteria as enumerated under clause 4 of the said 2007 scheme to become eligible for such Ex-Gratia payment and as such the same was also rejected by the bank through its written communication dated May 18, 2013.

The Hon'ble Supreme Court in the matter of the said ***Central Bank of India (supra)*** had observed as under :

> "**15.** The High Court referred to the judgments of this Court in **Canara Bank & Anr. vs. M. Mahesh Kumar** reported in (2015) 7 SCC 412; **Balbir Kuar & Anr. vs. Steel Authority of India Ltd. & Ors.** reported in (2000) 6 SCC 493; and **Yogesh Nagraoji Ugale vs. State of Maharashtra through Principal Secretary & Ors.** reported in (2020) 19 SCC 426 cited on behalf of the respondent-writ petitioner to contend that the right of the respondent-writ petitioner to be inducted in employment of the appellant-Bank on compassionate grounds could not be defeated merely because the family was indigent.
>
> **16. Canara Bank** (supra), is not an authority for the proposition that financial criteria cannot be the ground for rejection of a claim for compassionate appointment. Rather, this Court quoted with approval the following paragraph in the earlier judgment of this

Court in **Umesh Kumar Nagpal vs. State of Haryana** reported in (1994) 4 SCC 138 :-

"2. … The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased mployee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.'

* * *

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

17. In **Balbir Kaur** (Supra), this Court held on facts that a family benefit scheme assuring monthly payment to the family of a deceased employee was not a substitute for compassionate appointment. The finding was rendered in the context of the applicable circular pertaining to appointment on compassionate grounds.

18. In U**mesh Naraoji Ugale** (supra), the compassionate appointment was declined on the ground of a ban on compassionate appointment imposed on 22.08.2005 which was continued by a resolution dated 22.03.2012. This Court, however, found on facts that a relaxation had initially been granted for persons on the wait list till 31.12.2011. Thereafter, by a resolution dated 01.03.2014, the Government of Maharashtra had decided to increase the recruitment of Group 'C' and 'D' posts on compassionate ground from 5% to 10?% of vacant posts of Class 'C' and 'D' from 2012. The Court, therefore, concluded that the Government was continuing to make appointments on compassionate ground despite ban of 2005. The question of financial criteria for grant of compassionate appointment was not at all in issue in **Yogesh Nagraoji Ugale** (supra).

20. It is well settled that compassionate appointment is an exception to the rule of equality, which enables the dependent family members of a medically incapacitated employee who has no option, but to retire, or a deceased employee, to tide over the immediate crisis caused by the incapacitation or death of the breadwinner. Compassionate Appointment excludes equally or more meritorious candidates, much in need of a job, from the zone of consideration. Consideration for compassionate appointment must, therefore, be strictly in accordance with the prevalent rules for compassionate appointment applicable to the deceased/prematurely retired employee.

21. In this case, there is a financial criteria of eligibility for compassionate appointment under the Compassionate Appointment Scheme. Rules which provide for a financial criteria for appointment on Compassionate ground are valid and lawful rules which have to be construed strictly, as otherwise the quota reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress."

In the facts of this case it is clear that, the policy decision for granting compassionate appointment or Ex-Gratia to the family of a deceased employee of the concerned bank is governed only under the said 2007 scheme framed by the bank. In as much as, the bank also had not adopted the said Central Government scheme which was introduced on January 16, 2013 as discussed above. Since the petitioner did not qualify and met the criteria under the said 2007 scheme either for receiving Ex-Gratia or for compassionate appointment, as discussed above, this Court is of the considered view that, her claim was rightly and lawfully rejected by the employer bank and said decisions deserved no interference by this Court.

In view of the foregoing discussions and reasons the writ petition being ***WPA 30558 of 2016*** stands dismissed.

Consequently ***IA No. CAN 1 of 2017 (old No. CAN 3764 of 2017)*** stands disposed of.

Similarly ***IA No. CAN 4 of 2021*** also stands disposed of.

There shall, however, be no order as to costs.

Urgent certified photo copy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Aniruddha Roy, J.)