

Nirmala Raikwar Vs. the Chief General Manager

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Court : Madhya Pradesh

Decided On : Oct-30-2012

Appellant : Nirmala Raikwar

Respondent : The Chief General Manager

Advocate for Def. : Shri. Ashish Shrotri

Advocate for Pet/Ap. : Shri. Anubhav Jain

Judgement :

HIGH COURT OF MADHYA PRADESH : AT JABALPUR Writ Petition No :

4767. of 2010 Nirmala Raikwar - V/s - State of MP and Another Present : Honble Shri Justice Rajendra Menon.

----- Shri Anubhav Jain, counsel for the petitioner.

Shri Ashish Shrotri, counsel for the respondents.

----- Whether approved for reporting: Yes / No.

ORDER

30/10/2012 Challenging the order-dated 11.8.2007 passed by the respondent/bank rejecting the claim of the petitioner for grant of compassionate

appointment and granting liberty to the petitioner to seek ex-gratia in accordance to a scheme formulated by the Bank in the matter of granting compassionate appointment vide policy dated 4.8.2005, petitioner has filed this writ petition.

2- Facts in brief, which are relevant, goes to indicate that petitioners husband Late Shri Suresh Kumar Raikwar was working as a Messenger in the State Bank of India, and was posted in Naya Gaon Branch, Jabalpur.

He died in harness on 7.10.2004 at Jabalpur leaving behind the petitioner, minor daughter (No.17 years) and a minor son (No.16 years).Annexure P/2 is the death certificate of Late Shri Suresh Kumar Raikwar.

It is the case of the petitioner that on 6.11.2004, she submitted an application for grant of compassionate appointment in accordance to the scheme and policies prevailing and the said application was forwarded by the Assistant General Manager, for consideration to the competent authority vide his recommendation i.e Annexure P/5 dated 6.7.2005.

In the meanwhile, as no action was taken petitioner approached this Court by filing W.P.No.16063/2005(S).complaining that her case for compassionate appointment has not been considered.

The writ petition was disposed of vide order-dated 14.6.2007 - Annexure P/8, with a direction to the competent authority to consider and decide the claim of the petitioner in accordance to the scheme and rules prevailing.

3- In the meanwhile, even before the writ petition was filed, a new scheme granting ex-gratia in lieu of compassionate appointment was formulated by the Bank, which came into force with effect from 4.8.2005, and when this scheme came into force petitioner has submitted another application, which also was pending consideration when the writ petition was filed.

Even though the Bank informed the petitioner that she cannot be granted compassionate appointment, but her case can be considered under the scheme dated 4.8.2005, for grant of ex-gratia.

It seems that the petitioner did not accept the same and insisted upon claiming compassionate appointment and when the same was rejected, this writ petition has been filed.

4- Shri Anubhav Jain, learned counsel for the petitioner, submitted that when the petitioner staked her claim for grant of compassionate appointment on 6.11.2004, the scheme dated 4.8.2005 had not come into force and when the cause of action accrued to the petitioner for claiming compassionate appointment, as the scheme dated 4.8.2005 was not in existence, her claim should have been processed and decided in accordance to the scheme that was existing on 6.11.2004 and, therefore, rejecting her claim on the ground that she can claim ex-gratia as per the scheme dated 4.8.2005 is said to be unsustainable.

In sum and substance, it is the case of the petitioner that she should be granted compassionate appointment in accordance to the scheme that was existing prior to 4.8.2005 and the scheme dated 4.8.2005 being subsequent to filing of her application cannot be made applicable.

In support of his contentions, learned counsel has placed reliance on a 3 judgment rendered by the Gujarat High Court in the case of General Manager (Admn) and PIO O/o CGMT and another versus Vishal Singh B.

Jadeja and another, Special Civil Application No.7215/2011, decided on 18.7.2011; and, certain observations made by the Supreme Court in SLP(C) No.16270-26280/2010 [State of Gujarat and others versus Jagdish Savji Padaya and another].decided on 19.10.2010, to contend that the scheme for compassionate appointment has to be considered as per the scheme that was existing at the time of death or submission of application and not on the basis of the scheme that came into existence subsequently.

5- Shri Ashish Shroti, learned counsel for the respondents, refuted the aforesaid and submitted that the judgment rendered in the case of Vishal Singh B.

Jadeja (supra) is not applicable in the present case.

That was a case where the application for compassionate appointment was kept pending for years together and it was under such circumstances that the Gujarat High Court directed for consideration of the case on the basis of the scheme prevailing at the time of submitting the application or at the time of death.

It is submitted by Shri Shrotri that in the present case there was no such inordinate delay.

The application was submitted by the petitioner on 6.11.2004 and after its scrutiny in the local office it was forwarded to the competent authority vide Annexure P/5, on 6.7.2005, and within a period of less than one month thereof on 4.8.2005, the scheme underwent change and as the application was pending consideration, the petitioners case should be considered only as per the amended scheme and not as per the scheme which was in existence at the time of death of the employee concerned or at the time of submission of the application.

6- It is further submitted by Shri Ashish Shrotri, learned counsel, that in this case the principle laid down by a Full Bench of this Court in the case of Bank of Maharashtra and another versus Manot Kumar Deharia and another, ILR 201.MP 1876.would apply wherein it has been held by the Full Bench that an application for compassionate appointment has to be considered as per the scheme, 4 policy and rules prevailing in the establishment at the time of consideration and not at the time of death or submission of the application.

Inviting my attention to the principle laid down in paragraph 33 of the aforesaid judgment, Shri Shrotri submits that in this case there is no inordinate delay, the application was under scrutiny and during that time as the claim was rejected for reasons indicated in Annexure P/1, there is no illegality in the order.

7- I have heard learned counsel for the parties at length and perused the records.

8- As far as the factual assertions made are concerned, there is no dispute between the parties.

The principle for considering an application and the scheme and policy which has to be made applicable has been considered by the Full Bench in the case of

Manot Kumar Deharia (supra) and after taking note of various judgments of the Supreme Court, it has been held that grant of compassionate appointment is not a vested legal right, it is benefit granted under certain special circumstances, which amounts to recruitment to an establishment dehors the normal rules of appointment and it has also been held that appointment of such a nature, which is dehors the recruitment rules, has to be made on the basis of the appropriate policies and scheme, which are prevailing at the time of consideration.

9- In paragraphs 33(a) and 33(b) of the judgment rendered in the case of Manot Kumar Deharia (supra).the following principle have been laid down: 33(a) The grant of compassionate appointment is not a vested legal right.

It is only a benefit granted in certain circumstances dehors the normal rule of appointment and when the employer has a right to evolve an appropriate policy after considering various factors for granting such a benefit, the considerations have to be made in accordance with the Policy that is prevailing at that point of time.

(b) When it is held that compassionate appointment is not a vested right and when grant of such appointment is governed by the Rules and Policies prevailing in an establishment, then 5 consideration as per the Rules existing is required to be made and consideration on the basis of a Policy, which is given up by the employer and which has no application at that point of time cannot be insisted upon.

Finally, the principle applicable in the present case is laid down in the following manner in paragraph 33(c).(c) Having regard to the exceptional nature of this appointment and taking note of the fact that it is granted under a special Scheme carved out dehors the normal mode of recruitment, the same has to be governed as per the Policies or Provisions governing such appointment prevalent at a particular point of time when consideration is to be made, and not on the basis of a Policy which was in vogue and has been given up by the employer due to changed circumstances.

(Emphasis supplied) 10- It is, therefore, clear that the normal rule is that compassionate appointment is an exceptional nature of appointment and it has to be granted in accordance to the policies governing such appointment prevalent at a particular point of time.

In paragraph 33(g).the Full Bench has also indicated that it would be obligatory for the employer to deal with the application with immediate promptitude so that distress of the family is reduced.

It is, therefore, clear from the principle laid down by the Full Bench that in the matter of grant of compassionate appointment, consideration has to be made in accordance to the policy and scheme which is prevailing on the date of consideration and a scheme which has been superceded, outlived its utility due to coming into force of a subsequent scheme, cannot be made the basis for grant of compassionate appointment.

11- However, in extreme exceptional case when it is found that the employer has slept over the matter for a long period of time thereby frustrating the right of an employee or the legal representative, direction can be given for consideration as per the scheme which was in existence 6 at certain point of time, but this is not a normal rule.

It is only an exception to be applied in the peculiar facts and circumstances of the given case.

12- If the case in hand is evaluated in the backdrop of the aforesaid legal principle, it would be seen that this case will not fall in the category of an exceptional case where it can be held that the employer has slept over the matter and has caused inordinate delay in process the claim thereby resulting in depriving certain right of the petitioner.

In this case the employee died on 7.10.2004, the application was submitted on 6.11.2004 and within a period of about seven month after processing of the claim in the local office the same was forwarded to the Head Office vide Annexure P/5 on 6.7.2005 and when the same was being processed the scheme underwent

change.

13- It is not a case where the department has slept over the matter for a long period of time or had caused any delay in dealing with the matter.

It is a case where the department has promptly processed the claim within reasonable time and it is not in the fitness of things to consider it as an exceptional case and hold it to be one where the department has slept over the matter.

If the case relied upon by Shri Jain, decided by the Gujarat High Court, it taken note of, it is seen that it was a case where the matter was kept pending for years together and during the pendency of the matter for all these period the policy underwent a change on account of which the Gujarat High Court directed for consideration in accordance to the scheme prevailing at the time of submission of the application.

14- In the present case, the aforesaid principle cannot be brought into force because it is not a case where the application was kept pending for an inordinately long period of time.

On the contrary, it is a case where the application was being processed in accordance to the requirement of the scheme and in the said process when the scheme itself underwent change, the petitioner was offered the benefit under the changed circumstances, which for reasons better known to her, the petitioner refused.

Accordingly, I am unable to accept the contention put forth by Shri Anubhav Jain to the effect that as the application of the petitioner was submitted before amendment of the scheme vide circular dated 4.8.2005, the case should be processed in accordance to the scheme prevailing at the time of date of submission of the application.

The same cannot be permitted in the facts and circumstances of the case in view of the law laid down by the Full Bench in the case of Manot Kumar Deharia (supra).15- As the respondents have agreed to process the claim of the petitioner in accordance to the scheme dated 4.8.2005, I see no reason to interfere into the

matter.

The order passed by the respondents is in accordance with law.

16- If the petitioner is interested, the petitioner may approach the respondents for getting the benefits in accordance with the scheme dated 4.8.2005.

17- With the aforesaid liberty to the petitioner, this petition stands dismissed.

(RAJENDRA MENo.) JUDGE Aks/-

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