

Sarswati Devi Vs. Assistant General Manager State of Bank of India and Ors

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Court : Jharkhand

Decided On : Aug-11-2017

Appellant : Sarswati Devi

Respondent : Assistant General Manager State of Bank of India and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 2774 of 2016

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Sarswati Devi, wife of late Kishore Kumar Gope, resident of Anantpur, P.O. & P.S. Doranda, Distt. Ranchi. Petitioner VERSUS1 The Assistant General Manager, State Bank of India, Administrative Office, P.O. G.P.O., P.S. Kotwali, Ranchi.

2. The Deputy General Manager, JH-1, State Bank of India, Administrative Office, P.O. G.P.O., P.S. Kotwali, Ranchi.

3. The Chief Manager, State Bank of India, A.G. Office Complex Branch, Doranda, Ranchi. ... Respondents.

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For Petitioner : Mr. R. Krishna, Advocate Ms. Neeta Krishna, Advocate Mr. Jai Shankar Tiwary, Advocate For Respondents : Mr. Rajesh Kumar, Advocate Mr. Amit Kumar, Advocate Mr. M. K. Sihna, Advocate

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CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK C.A.V. on 05.05.2017
Pronounced on 11/08/2017. Dr. S.N. Pathak, J.

Heard learned counsel for the petitioner and learned counsel for the respondents.

2. The petitioner has approached this Court with a prayer for quashing the order dated 06.01.2016 (Annexure-8) issued under the signature of Regional Manager, State Bank of India whereby the claim of the petitioner for appointment on compassionate ground has been rejected by the respondent- authorities on the same and identical ground on which the claim of the petitioner for her appointment on compassionate ground had been rejected earlier. Further prayer has been made to immediately and forthwith provide compassionate appointment to the petitioner on account of the fact that husband of the petitioner, working as Messenger in State Bank of India, AGO Complex Branch, died in harness on 01.05.2003 leaving behind his wife and three minor children. 2 FACTUAL MATRIX3 The petitioner is the widow of late Kishore Kumar Gope, who was working as Messenger in the State Bank of India, AGO Complex Branch, Ranchi and died in harness on 01.05.20013. After the death of her husband on 01.05.2003, petitioner made an application to the Chief Manager, State Bank of India, AGO Complex Branch Ranchi on 08.12.2003 for providing her compassionate appointment on account of the fact that after the death of her husband, their financial condition has become very penurious and in such condition, it is very difficult for her to look after her three daughters. It is the further case of the petitioner that when no action was taken on her application dated 08.12.2003, the petitioner again gave an application to the concerned- respondent authority on 02.08.2004 to consider her case for compassionate appointment. Thereafter, the case of the petitioner for compassionate appointment was taken into consideration by the respondent-authorities and the same was rejected on the ground that her husband was awarded punishment, after conclusion of departmental proceeding initiated against him during his service tenure, though the punishment was minor one and there was no such provision debarring the dependent from the benefits of compassionate appointment. Hence, this writ petition has been filed challenging the order of rejection for compassionate appointment.

4. Mr. R. Krishna assisted by Ms. Neeta Krishna and Mr. Jai Shankar Tiwary, learned counsels appearing for the petitioner, strenuously urges that the grounds

taken by the respondent-authorities while rejecting the claim of the petitioner for compassionate appointment is not tenable inasmuch as neither earlier policy/scheme dated 13.06.2002 of the compassionate appointment was in existence when the death of the petitioners husband took place nor current policy of compassionate appointment contains any of such provisions. Neither the policy provide provision that if any punishment is awarded to the deceased employee for any of the act/omission committed by him during his service tenure, his dependent will not be eligible for compassionate appointment. The husband of the petitioner expired on 01.05.2003 and at that relevant time, the scheme dated 13.06.2002 was in existence, in which there is no such condition stipulated, as mentioned in letter dated 07.04.2003, as referred in the rejection order dated 14.02.2005. Learned counsel further submits that there is no stipulation of such condition in the existing policy at the relevant time when the husband of the petitioner died in harness and in absence of any condition in the scheme issued on 13.06.2002, the application for compassionate 3 appointment cannot be rejected on frivolous ground as mentioned in letter dated 07.04.2003 along with rejection order dated 14.02.2005.

5. Mr. R. Krishna further argued that in letter dated 07.04.2003, there is no stipulation regarding any condition relating to debarring the dependent of an employee from getting the compassionate appointment, if any punishment was imposed for any act or omission committed by him during his service tenure. The rules governing the service condition of the employee of the Bank under Clause 10.6.4 speaks that in case of providing employment to the dependent of an employee, who has been awarded same punishment, the appointment can be made after obtaining concurrence from the government. The aforesaid rules are statutory in nature having the force of law which has not been taken into consideration while passing the rejection order.

6. Mr. R. Krishna further argued that the scheme of which the respondents are relying has never seen the light of the day. In order to strengthen his argument, learned counsel relied on the reported judgment of Honble Apex Court in the case of Sethi Auto Service Station & Anr. Vrs. Delhi Development Authority & Ors., reported in (2009) 1 SCC180 and submitted that the scheme on which the

respondents are harping was never notified, so it cannot be taken into account. Para-14 of the aforesaid judgment is reproduced herein below:-

14. It is trite to state that notings in a departmental file do not have the sanction of law to be an effective order. A noting by an officer is an expression of his viewpoint on the subject. It is no more than an opinion by an officer for internal use and consideration of the other officials of the department and for the benefit of the final decision-making authority. Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department; gets his approval and the final order is communicated to the person concerned

7. Learned counsel further submits that statutory rules cannot be suppressed by any guidelines.

8. Per contra, counter affidavit has been filed by the respondents. Mr. Rajesh Kumar assisted by Mr. Amit Kumar and Mr. M. K. Sinha, learned counsels appearing for the respondents, submits that since the petitioners husband was punished departmentally during his service tenure and due to this, it was rightly communicated to the petitioner that due to the punishment of her husband, her claim for compassionate appointment was rejected. Petitioners 4 argument was that her husband was awarded minor punishment has no leg to stand because as per para 5(f) of the relevant scheme, punishment is punishment, whether it is minor or major. It was as per scheme and para-5 (f) thereof which says that The dependent of an employee who has died or has retired on health grounds and whose service record was blemished on account of disciplinary action having taken against him will be ineligible for compassionate appointment in the Bank. Admittedly, the petitioners husband was punished departmentally and thus, he cannot be said to be having an unblemished service career and as such, question of compassionate appointment to the petitioner does not arise and accordingly, a very correct decision was taken by the respondent-authorities and communicated to the petitioner.

9. Learned counsel for the respondents further submitted that letters which have been referred by the petitioner have already been quashed and set aside by the Honble Court vide its order dated 22.05.2015 passed in W.P.(S). No. 4151 of 2010. On 24.01.2003, the Executive Committee/ Central Board at its meeting approved the following amendment in the Banks Scheme for compassionate appointment:- Sl.No. New provisions Note (a) The dependent of an employee who has Inserted as died or has retired on health grounds and new para 5(f) whose service record was blemished on account of disciplinary action having taken against him will be ineligible for compassionate appointment in the Bank. (b) As regard an employee whether working in Circle or Corporate Centres/ its establishment, subsidiaries who has died or who has retired on health grounds but was facing disciplinary action at the time of death/retirement, that compassionate appointment of a dependent will be considered by MD & GE (NB) only if an evaluation of evidence available with the Bank, it is clearly established by an authority designated for the purpose that the evidence is not sufficient to establish the charges and the decision of the MD & GE (NB) in this regard will be final. 5 10. The above amended provisions goes to prove that the petitioner is harping on a non-existing scheme of the Bank as her husband died on 01.05.2003 and the above amendment in the scheme came into force w.e.f. 11.03.2003 and admittedly, the petitioners husband was not having an unblemished service career as he was departmentally punished and thus, the petitioner is ineligible for any compassionate appointment but despite the same, she is trying to mislead this Honble Court with the help of revised scheme dated 13.06.2002 and only for this reason, the Honble Court remanded the matter back for taking proper decision in the matter. The petitioner is trying to take the favour of the Court harping on an amended scheme (revised scheme dated 13.06.2002) of the Bank but in fact her case falls in the amended scheme which came into force w.e.f. 11.03.2003 and thus, order of rejection does not warrant any interference.

11. In support of his contention, learned counsel for the respondents relies on the judgment of Honble Apex Court in the case of General Manager, State Bank of India & Ors. Vs. Anju Jain, reported in (2008) 8 SCC475 paras-25 and 26 of which is reproduced herein below:-

25. In our opinion, the submission is well-founded and must be upheld. The learned counsel for the State Bank also referred to the scheme for compassionate appointments as framed in 1979 and amended in 1998 which was further amended in 2003. The said scheme reads as "Scheme for compassionate appointments amendments in respect of cases where the deceased employee/employees retired on health grounds had been involved in major/gross misconduct.

26. Certain new provisions were added in the scheme for compassionate appointments. A clause relating to 'exclusions' was inserted in para 5 dealing with eligibility. Clause (f) relating to misconduct of an employee who died in harness or retired on health ground which was added, reads as under: (f) The dependents of an employee who has died or who has retired on health grounds and whose service record was blemished on account of disciplinary action having been taken against him will be ineligible for compassionate appointment in the bank. Bare reading of the above clause makes it abundantly clear that the dependent of an employee who had died or retired on medical ground but whose service record was blemished on account of disciplinary action having been taken against him will not be considered eligible for compassionate appointment in the Bank. 6 Learned counsel has also placed reliance on the judgment of Honble Patna High Court in the case of State Bank of India & Ors. Vrs. Shashi Bhushan Prasad Sinha, passed in L.P.A. No. 1359 of 1998, para 7 of which is reproduced herein below:- The circular dated 7.4.1995 generally deals with the effect of a disciplinary proceeding against an employee who was deceased during the pendency of the same and the grant of retiral benefits to the family of the deceased. Their right to receive the retiral dues is a completely distinct issue from their claim to be considered for compassionate appointment. The two cannot be linked and at times may be mutually exclusive if the authorities come to the conclusion that the family of the deceased employee facing disciplinary proceedings was in any event not in destitute and penury for reasons to be recorded. Clause-2(3) of the same circular while recognizing the right to release the retiral dues of the deceased to his legal heirs, nonetheless, contemplates other appropriate actions in law against the family of the deceased as the legal heirs for recovery of the misdemeanors or embezzled amount attributable to the deceased. When the circular dated

25.2.1983 regulating claim for compassionate appointment by the legal heir of such a deceased facing departmental enquiry deceased, during the pendency of the same debars them from consideration on the ground that the deceased shall be deemed not to be a person with an unblemished service record, the Court cannot give any directions contrary to the policy to consider compassionate appointment.

12. Be that as it may, having gone through the rival submissions of the parties, this Court is of the considered view that case of the petitioner needs consideration. The petitioner had already moved this Honble Court in W.P.(S). No. 4151 of 2010 and the contentions of the learned counsel for the respondents were very much considered on each and every aspects. The main contention of the learned counsel for the respondents regarding non- consideration of the case of the petitioner on compassionate ground was Clause 10.6.4 of the Rules Governing the service conditions of the Banks Employees, which is reproduced herein below:-
10.6.4 Disciplinary Proceedings In cases where disciplinary action had been taken against the employee or disciplinary proceedings were pending or contemplated against him/her, appointment of a dependent on compassionate grounds may be considered only after obtaining prior Government concurrence.

13. A Co-ordinate Bench of this Honble Court vide order dated 22.05.2015, passed in W.P.(S). No. 4151 of 2010, after considering each and every aspects of the matter, quashed the order dated 08.02.2005 and 7 14.02.2005 and remitted the matter back to the respondents to take a fresh decision in accordance with law but the respondent-authorities without considering the observation made by the Honble High Court, has passed the order dated 06.01.2016 on the same ground taking into effect Rule 5(f) of the Scheme for appointment on compassionate ground for the dependent of deceased employee/ employee retired on medical ground and held that the dependents of employee, who has died or who has retired on medical ground and his service was blemished having awarded the punishment, the dependents of those employee are not entitled for compassionate appointment and hence, rightly the case of the petitioner was rejected by the respondents.

14. The earlier order of rejection dated 08.02.2005 revolved around the fact that since a departmental proceeding was initiated against the petitioners husband which resulted in infliction of punishment, in such circumstances, the claim of the petitioner for compassionate appointment cannot be considered. The scheme which was in existence at the time of death of the petitioners husband and which has been appended in the main writ application, nowhere speaks that initiation/ contemplation/ finalization of a departmental proceeding resulting in punishment shall debar the dependents of the deceased employee from seeking compassionate appointment. As per Clause-10 of the scheme various factors have to be taken into consideration for determining the financial condition of the dependent family but the earlier order of rejection dated 08.02.2005 and the present order under challenge does not reveal that Clause 10 of the Scheme has been taken into consideration and that Clause 11- A has also been properly considered in refusing the plea of the petitioner for compassionate appointment.

15. Since it was held by a Co-ordinate Bench that order dated 08.02.2005 and subsequent letter dated 14.02.2005 is arbitrary and is shorn of detailed reasoning in terms of the scheme which was in existence at the time of death of the petitioners husband were quashed and set aside, the matter was remanded back for reconsideration but going through the impugned order dated 06.01.2016 it is crystal clear that no consideration was given to the earlier order of this Court dated 22.05.2015. It was clearly mentioned in the order dated 22.05.2015 passed by this Court to take a decision in accordance with law and in accordance with the scheme which was in existence at the time of death of the husband of the petitioner. The said observation of the Honble Court finds support from the judgment of Honble Apex Court in case of Canara Bank & Anr. Vs. M. Mahesh Kumar, reported in (2015) 7 SCC412 8 in which the Honble Apex Court has been categorically held that, . compassionate appointment under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.

16. Earlier also in case of State Bank of India Vrs. Jaspal Kaur, reported in (2007) 9 SCC571 and in case of Bhawani Prasad Sonkar vs Union Of India & Ors, reported in (2011) 4 SCC209 same views taken by the Honble Apex Court which

has been considered in case of Canara Bank & Anr vs M. Mahesh Kumar (supra).

17. Thus, as per the judgment reported in the case Canara Bank & Anr vs M. Mahesh Kumar (supra), the claim cannot be decided as per 2003 Scheme, rather, it ought to have been decided as per the scheme which was prevalent at the time of death of the husband of the petitioner. The right which has accrued to the petitioner cannot be snatched away on wrong interpretation of the rules and guidelines. As already the matter was remanded back to the respondents for taking a fresh decision in accordance with law and in accordance with the scheme which was in existence at the time of death of the petitioners husband, this Court is of the considered view that the case of the of the petitioner needs consideration. The respondents are directed to consider the case of the petitioner for appointment on compassionate ground and pass a reasoned order taking into consideration the scheme which was in existence at the time of death of the husband of the petitioner.

18. As a cumulative effect of the aforesaid observations, rules, guidelines, judicial pronouncements, the impugned order dated 06.01.2016 (Annexure-8) is quashed and set aside. The respondent-Bank is hereby directed to issue letter of appointment to the petitioner within a period of six weeks from the date of receipt of a copy of this order.

19. Resultantly, the writ petition stands allowed. (Dr. S.N. Pathak, J.) kunal/-

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