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Court : Orissa

Decided On : Jun-29-2009

Reported in : 2009(II)OLR279

Judge : B.P. Das and; B.P. Ray, JJ.

Appellant : Himansu Kumar Kar

Respondent : Chief General Manager, State Bank of India and anr.

Advocate for Pet/Ap. : Mr. J. Pal, Mr. Pal

Disposition : Petition allowed

Judgement :

B.P. Das, J.

1. The circumstances under which the petitioner has approached this Court seeking a direction on the authorities of the State Bank of India (Bank, hereinafter) to consider his case for employment on compassionate ground is pitiable.

The petitioner, who is aged about 21 years, is the son of Dinesh Chandra Kar, who while serving as a Messenger in the Bank at its Balichandrapur Branch in the district of Jajpur, died on 1.3.1996 being affected by AIDS. After the death of the father of the petitioner, his mother approached the Bank authorities to provide her employment on compassionate ground. The Management of the Bank considering

her case intimated her by letter dated 13.9.1996 (Annexure-2) to appear at the interview. Thereafter, by communication dated 28.9.1996 (Annexure-3) the Management intimated her that the Bank had decided to appoint her as a Messenger in its Naya Bazar Branch, Cuttack, subject to satisfactory medical report. On 24.10.1996, the Bank issued a letter of request to the Superintendent of S.C.B. Medical College & Hospital, vide Annexure-5, for providing AIDS test report of the petitioner's mothers, to which the S.C.B. Medical College expressed its inability. Thereafter, his mother was requested by the Bank authorities to get her tested either in Capital Hospital's Blood Bank, Municipal Hospital Blood Bank or Apollo Nursing Home at Bhubaneswar. Ultimately, on 17.1.1998 the bank issued a letter to the petitioner's mother, vide Annexure-8, to undertake HIV test at CDR Hospital, Bhubaneswar. Petitioner's mother accordingly got herself examined at C.D.R. Hospital, Bhubaneswar, obtained the test report and submitted the same before the Branch Manger of Naya Bazar Branch. After having failed to receive any communication from the Bank, she addressed a letter dated 13.9.2000 (Annexure-9) to the Branch Manager of Naya Bazar Branch indicating that since she could not know whether she was eligible to join in her place of posting and in case she was taken to be physically unfit for the job, her first son, i.e., .the petitioner, may be appointed in her place so that the distressed family members could be saved. On 18.7.2001 she died of Cerebral Malaria at S.C.B. Medical College and Hospital. On 27.9.2001, i.e., barely two months after the death of his mother, the petitioner Submitted an application to give him appointment on compassionate ground but despite several reminders by the petitioner, no action had been taken by the Bank authorities in that regard.

Mr. J. Pal, learned Counsel for the petitioner, submitted that the father of the petitioner died in harness leaving behind his wife and three sons and after the death of his mother, the petitioner and his two brothers are unable to meet their day-to-day expenses and are passing through a great financial hardship and are totally in a distressed condition. Though the application of the petitioner's mother for rehabilitation was considered, actually no letter of appointment was given to her and she was made to run from pillar to post till her death. According to the petitioner, as the father of the petitioner died in harness being affected by AIDS, the Bank authorities were determined not to give any employment to the family

members of the deceased employee.

2. A counter affidavit has been filed by the O.P.-Bank indicating. therein that though the mother of the petitioner was directed to produce the Western Blot Test report as suggested in the Serology investigation report of C.D.R. Hospital, till her death, she could not produce the same. A further stand has been taken that the petitioner has filed this writ petition claiming compassionate appointment five years after the death of his mother. It is also submitted that consideration for such compassionate employment is not a vested right, which can be exercised at any time in future. It is also stated that the petitioner's mother did not fulfil the norms of the medical examination as prescribed by the Bank and she failed to produce the Western Blot Test report.

3. During the course of hearing, our attention was drawn to Annexure-9, i.e., letter written by the mother of the petitioner to the Bank authority, which reads as follows:..With reference to the letter and subject cited above I have the honour to inform you that as in strained I have been medically examined in CDR Hospital, Bhubaneswar and the report submitted to you. In between and year passed but no information has yet been received from you. I could not know whether I am eligible to join in my place of posting or not. In case I am taken to be physically unfit to get my appointment, then my first son Himansu Sekhar Kar (aged about 16) may kindly be allowed to get appointment in my place so that the distressed family members can able to get their daily bread.

But the said letter went un-answered by the O.Ps.

The sum and substances of the case of the O.P.-Bank is that the Bank has not caused any harassment to the mother of the petitioner as his mother failed to produce the Western Blot Test report, for which she could not join.

4. In case of People Leaving With HIV/AIDS (PLWHAs), law is very clear that they cannot be discriminated and they should not be discriminated in the matter of employment only because they are HIV-positive and to do so would be violative of Articles 14 and 21 of the Constitution. Should a person be impaired by his ailment then a reasonable alternative should be provided. Moreover, State and public

employers cannot take the stand that they will not hire someone in a permanent post unless they are satisfied that the person will serve the entire term of their service (see- *MX of Bombay, Indian Inhabitant v. ZY and Anr.* : AIR 1997 Bom 406).

It is also the settled principle of law that PLWHAs could not be denied employment only on the ground that they are HIV positive despite the fact that they are otherwise fit, since to do so would be discriminatory and violative of the principles laid down in Articles 14, 16 and 21 of the Constitution.

But the case of the petitioner stands on a much better footing than the case, which we have referred to above. On the death of the petitioner's father, the mother was given an appointment but in the guise of non-production of Western Blot Test report, she was not allowed to join and ultimately, she also died, as stated by the petitioner, not by AIDS but Cerebral Malaria. From the record, we find that the petitioner immediately after his mother's death applied to the bank for compassionate appointment. No convincing reason has been indicated in the counter affidavit as to why the petitioner will be denied compassionate appointment. From the facts narrated in the writ petition, it appears that the petitioner has lost his parents at young age and now he is 21 years of age and also unemployed. If the aforesaid circumstance is not taken as distressed condition, as claimed by the learned Counsel for the Bank, then the purpose for which the Rehabilitation Assistance Scheme is floated, shall be frustrated. As the petitioner is still in distress, the stand of the Bank that the petitioner has come at a belated stage cannot be accepted. From the writ petition, we find that the petitioner has approached the Bank soon after his mother's death.

Not allowing the petitioner's mother to join in the Bank is discriminatory so also non-consideration of the petitioner's case for compassionate appointment. The reason, as stated by the learned Counsel for the petitioner, is that the Bank is apprehensive that the petitioner's family members might have been affected by HIV/AIDS. If this be so, then it is unfortunate and can be said to undermine the dignity of the petitioner, which constitute unfair discrimination.

5. We may now refer to the decision of the apex Court, which was relied upon by the O.Ps. In *Umesh Kumar Nagpal v. State of Haryana and Ors.* : (1994) 4 SCC 138, it was held that the object being to enable the family to get over the financial crisis which it faces at the time of death of the sole bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. This ratio *disi dendi* of the case does not fit into the facts of the present case because the circumstances under which the parents of the petitioner died, show that after the death of the bread winner and the O.Ps. refused to give an employment to the petitioner's mother and after the death of his mother, the petitioner immediately approached the Bank and the distress of the petitioner is still continuing, as Mr. Pal, learned Counsel for the petitioner, stated that the petitioner is virtually living on the mercy of his relatives.

In our considered opinion, it is a fit case where the prayer of the petitioner should be allowed. Accordingly, we allow the writ petition. The O.Ps. are directed to provide an employment to the petitioner in a post suitable to his qualification. This exercise shall be completed within three months from the date of communication of this judgment.

B.P. Ray, J.

6. I agree.