2023 STPL(WEB) 36 SC
SUPREME COURT OF INDIA

(B.V. NAGARATHNA AND MANOJ MISRA, JJ.)

BANK OF BARODA AND OTHERS

Appellant

VERSUS

BALJIT SINGH

Respondent

Civil Appeal No(s). 624 of 2017-Decided on 21-06-2023

Service Law - Compassionate appointment direction cannot be against policy

Cases Referred
Balbir Kaur and Another vs. Steel Authority of India Ltd. reported in (2000) 6 SCC 493
General Manager (D&PB) and Others vs. Kunti Tiwary reported in (2004) 7 SCC 271
Indian Bank vs. Promila reported in (2020) 2 SCC 729
Mohd. Farooq Bhati vs. S.B.B.J. reported in (2009) 2 SCT 353
N.C. Santhosh vs. State of Karnataka reported in (2019) 7 SCC 617
State of Himachal Pradesh vs. Parkash Chand reported in (2019) 4 SCC 285
State of Himachal Pradesh vs. Shashi Kumar reported in (2019) 3 SCC 653

Advocate(s): Ms. Praveena Gautam, Advocate, Mr. Pawan Shukla, Advocate, Ms. Indira Goswami, Advocate, for the Appellant;
Mr. Himanshu Sharma, Advocate, Ms. Aditi Sharma, Advocate, Mr. Rahul Jasoria, Advocate, Mr. Ram Nivas Sharma, Advocate, Mr. Arun Raghav, Advocate, Mr. Nitin Sharma, Advocate, Mr. Digvijay Raghav, Advocate, Mr. Rajesh Srivastava, Advocate, for the Respondent.

JUDGMENT

1. This appeal arises out of a judgment and decree passed by the High Court of Punjab and Haryana in RSA No.338 of 2011 dated 11.12.2015. By the said judgment, the High Court has set aside the judgment of the First Appellate Court dated 16.12.2009 passed in C.A. No.75 of 2008 and has restored the judgment of the Trial Court passed in Original Suit No.201 of 2005. Consequently, the relief sought for by the respondent in the suit, i.e., declaration and mandatory injunction vis-a-vis his appointment in the appellant-Bank on compassionate basis has been granted.

2. Briefly stated, the facts of the case are that the respondent's father who was working in the appellant-Bank, died in harness on 16.05.1999. As on that date, the appellant-Bank had a Scheme in place for appointment of dependents of the deceased employees on compassionate grounds which was issued on 18.08.1998.

3. It is the case of the respondent herein that on the death of the respondent's father in harness, his mother made an application for appointment of the respondent on compassionate grounds to the post of Peon under the 1998 Scheme. The said application for compassionate appointment was filed on 21.02.2000. During the pendency of the said application under consideration, the appellant-Bank announced another Scheme for appointment of the dependents of deceased employees on compassionate grounds on 10.03.2004. Be that as it may, four years subsequent to the death of his father, another representation on behalf of the Respondent was made to the appellant-Bank on 25.03.2004 in order to bring to the notice of the Bank the fact that he had completed his matriculation

in March 2004. Subsequently, the Bank considered the application of the respondent and on 08.06.2004 rejected the same. Being aggrieved, the respondent filed the Original Suit seeking the relief of declaration and mandatory injunction against the Bank. In the said suit, the appellant-Bank filed its written statement and after trial, the learned Trial Judge decreed the suit and directed that the respondent be appointed on compassionate grounds.

4. Being aggrieved by the judgment and decree dated 16.10.2008, the appellant-Bank filed an appeal before the Court of the Additional District Judge, which by its judgment dated 16.12.2009 allowed the appeal and set aside the decree of the Trial Court. The respondent, thereafter, filed a Regular Second Appeal before the High Court of Punjab and Haryana assailing the judgment of the First Appellate Court. The High Court, while considering the Second Appeal formulated two questions of law but while answering the same in substance, considered the questions of law together and by the impugned judgment dated 11.12.2015 set aside the judgment of the First Appellate Court and restored the judgment and decree of the Trial Court. Hence, this appeal by the appellant-Bank before this Court.

5. We have heard Ms.Praveena Gautam, learned counsel for the appellant-Bank and Mr.Himanshu Sharma, learned counsel for the respondent and perused the material placed on record.

6. Learned counsel for the appellant made a two-fold submission while assailing the judgment of the High Court. In the first instance, she submitted that the High Court was not right in answering the second question of law in favour of the respondent without appreciating the factual aspects of the matter. Elaborating the said contention, she drew our attention to various clauses of the Scheme dated 18.08.1998 which had been issued by the Bank by way of a Circular, to contend that the respondent did not fulfill the criterion regarding financial status of a candidate, within clause (c) of 'Important points', which gives the formula to be applied in order to consider the case of a candidate for appointment on compassionate basis. In this regard, she drew our attention to the application made by the respondent disclosing the income of his deceased father as well as the income of the family. She submitted that having regard to the true position of the income of the family, the respondent was not at all eligible to be considered for appointment on compassionate basis.

7. She further submitted that the first question of law has not at all been considered by the High Court in the context of the eligibility of the respondent. Further, our attention was drawn to clause 'A' regarding the educational qualification of the candidate and it was submitted that the respondent had not completed his matriculation within a period of four years from the date of death of his father and hence, was not entitled to be considered for the appointment on compassionate basis as a clerk and was over qualified to be appointed as a Peon.

8. In the above backdrop, learned counsel for the appellant drew our attention to certain judgments of this Court, namely, General Manager (D&PB) and Others vs. Kunti Tiwary reported in (2004) 7 SCC 271, Balbir Kaur and Another vs. Steel Authority of India Ltd. reported in (2000) 6 SCC 493 and N.C. Santhosh vs. State of Karnataka reported in (2019) 7 SCC 617 which is a judgment of a Three Judge Bench of this Court, to buttress the submission in support of the proposition that compassionate appointment is an exception to recruitment and that no vested right is available to a party to seek compassionate appointment as a matter of right. She also submitted that in fact, the suit seeking the relief of declaration and mandatory injunction as against the appellant-Bank was not maintainable.

9. Per contra, learned counsel for the respondent supported the judgment of the High Court which has restored the judgment of the Trial Court and had directed the appellant-Bank to consider the case of the respondent on compassionate grounds. He brought to our notice, the fact that as on the date of the respondent's father's death i.e., 16.05.1999, the respondent had already passed 8th Standard and thereafter, he also acquired his matriculation and intimated to the Bank that he had the eligibility to be considered for compassionate appointment. He further submitted that the application which was filed oncompassionate basis was filled up by the Bank itself and the details stated in the said application were not accurate and that the respondent was entitled to be considered for an appropriate post in the appellant-Bank.

10. Learned counsel further submitted that the delay in consideration of the respondent's application, coupled with the fact that the rejection of the application without any reasoning had caused prejudice to the respondent and that there is no merit in the appeal and, therefore, the same may be dismissed.

11. Having heard the learned counsel for the respective parties, we find that the following points would arise for our consideration: -

(1) Whether the High Court was justified in setting aside the judgment of the First Appellate Court and restoring the judgment and decree of the Trial Court while answering the questions of law in favour of the respondent and against the Bank?

(2) What order?

12. It is necessary to reiterate that the appointment of a candidate on compassionate basis does not create any vested right and that it is only when a candidate is covered under all clauses of the Scheme applicable at the relevant point of time that he/she could be considered for compassionate appointment.

13. In Balbir Kaur vs. Steel Authority of India Ltd., (supra)it was observed that the family benefit scheme assuring monthly payment to the family of deceased employee on the facts therein was not a substitute for compassionate appointment by the Steel Authority of India - Respondent in the said case. The said case proceeds on its own facts. The said judgment can be distinguished from the facts of the instant case as the 1998 Scheme specifically disentitles a candidate for compassionate appointment benefit on the application of the formula for calculation of monthly income if the same is less than 60% of the total emoluments which the deceased was drawing at the time of his death. The object is that it is only when a deceased employee's family is in penury and without any source of livelihood when the employee died in harness, compassionate appointment can be considered. Since appointment on compassionate basis is an exception to the general rule for appointment by an open invitation, the exception has to be resorted to only when the candidate and his family is in penury so as to provide immediate succor on the death of the employee in harness. The same has been observed in General Manager(D&PB) vs. Kunti Tiwary (supra). In N.C.Santhosh vs. State of Karnataka(supra) a three Judge Bench of this Court reiterated that appointment on compassionate basis is a concession and not a right and the criteria laid down in the Rules and Schemes applicable must be satisfied by all aspirants. Therefore, the case for compassionate appointment has to be considered in accordance with the prevalent Scheme. Similarly, in State of Himachal Pradesh Vs. Shashi Kumar, (supra), this Court has observed that compassionate appointment being an exception to the general rule, the dependents of deceased government employee are made eligible by virtue of the policy of compassionate appointment and they must fulfil the terms of the policy which are framed by the States/Employers.

14. It is to be noted that in the instant case, the respondent filed a suit for declaration and mandatory injunction seeking appointment on compassionate basis which was decreed by the Trial Court and upheld and affirmed by the High Court. In State of Himachal Pradesh vs. Parkash Chand reported in (2019) 4 SCC 285, it has been categorically held that a direction by a High Court to consider cases for compassionate appointment dehors the terms of the policy is impermissible as it would amount to re-writing the terms of the policy. This aspect has been overlooked by the High Court in the instant case. In a similar vein, in Indian Bank vs. Promila reported in (2020) 2 SCC 729, it has been observed that eligibility for compassionate appointment must be as per the applicable scheme and the courts cannot substitute a scheme or add or subtract from the terms thereof in exercise of judicial review. The aforesaid dicta would also apply to a suit filed seeking the relief of compassionate appointment.

15. In this regard, reference could be made to the judgment of this Court in State of Himachal Pradesh vs. Shashi Kumar reported in (2019) 3 SCC 653 wherein at Paragraphs 18-19 the aforesaid terms have been clearly stated.

16. Therefore, it is necessary to consider the Scheme which is applicable to the respondent in the instant case. It is not in dispute between the parties that the Scheme dated 18.09.1998 which has been issued by way of a Circular is applicable to the case of the respondent. Under the said Scheme, both the educational qualification as well as qualification vis-a-vis the income of the candidate making an application for compassionate appointment have been prescribed and they are to be considered by the employer. In this context, it would be useful to refer the judgment of the High Court which has raised two questions of law which are as follows:

> i) Whether the case of the appellant can be considered for compassionate employment vis-a-vis the Scheme which was in vogue at the time when Balbir Singh died or subsequent to that?
>
> ii) Whether advancement of family pension can be the ground for non-suiting the case of compassionate employment?

17. While answering the second question, the High Court has referred to a judgment of the Rajasthan High Court in Mohd. Farooq Bhati vs. S.B.B.J. reported in (2009) 2 SCT 353 which had relied upon the judgment of this Court in Balbir Kaur (supra) to hold that the objection with regard to the family income cannot be really considered as an objection to deny compassionate appointment. As far as the first question of law is concerned, the High Court has simply stated that the effective date of consideration of the application for compassionate appointment would be the date on which the respondent's father died. The High Court has stated that the 1998 Scheme was in force as on the date when the respondent's father died and, therefore, the said Scheme would be applicable. However, we find that while answering the questions of law, the High Court has erred on both counts.

18. In this regard, we would like to consider the issue regarding the consideration of the financial position of the respondent vis-a-vis the eligibility to be considered for appointment on compassionate grounds. The relevant clause of the Scheme reads as under:

> 'b) Dependent of an employee dying in harness can be considered for compassionate appointment provided the family is without means of livelihood and the condition of the family is penurious.
>
> c) Calculation formula for income:
>
> Following formula would be followed for arriving at the financial position or income of the family:
>
> The total of the following amounts received as Terminal Benefits will form the available resources:
>
> i. Balance of provident fund.
>
> ii. Gratuity.
>
> iii. Additional Retirement Benefits.
>
> iv. Investments made from loan from others.
>
> From the above, following outstanding financial liabilities to be deducted:
>
> i. Housing loan
>
> ii. Vehicle loan
>
> iii. Other loans from bank

iv. Loan from others

After arriving at the net amount remaining with the family, interest @11% be applied to arrive at monthly income of the family by further taking into consideration:

i. Net salary of dependent family members viz., spouse/ son/ daughter/ dependent unmarried brother/dependent unmarried sister.

ii. Pension (monthly)

iii. Income from savings and other investments.

After arriving at the monthly income as above, if the same is less than 60% of the total emoluments (which the deceased was drawing at the time of death) less Tax @ 15% (if the income is more than Rs.10,000/- p.m.) the case for compassionate appointment can be considered.'

19. While applying the said formula to the case at hand, it is noted from the details submitted with regard to the deceased employee and his dependents that the income of the widow of the deceased was Rs.6,845/- per month (basic pay of Rs.4140/- per month) as she was employed in the Health Department of the State Government, and her family pension was Rs.3,478/- per month. Thus, the gross total income of the family per month comes to Rs.10,323/- and the net income is Rs.7,618/- per month. The said figure has been taken into consideration while applying the formula referred to above and after applying the said formula to the case of the respondent, we find that the monthly income so arrived at is not less than 60% of the total emoluments and thus, the case of the respondent cannot be considered on compassionate basis on that score. The total emoluments of the deceased father of the respondent were Rs.3,210/-per month at the time of his death which is lesser than the total net income of the deceased's family. Thus, the total income of the family is not less than 60% of the total emoluments which the deceased was drawing at the time of his death as per the Scheme under consideration. In that view of the matter, the High Court ought to have taken into consideration the factual details rather than just referring to the judgments in answering the questions of law.

20. As far as the first question of law is concerned, it has been clarified during the course of arguments by the learned counsel for the respondent that the respondent was eligible to be considered for the post of Peon as he had passed 8th standard during the life time of his father and thus, was eligible to be considered to the said post as on the date on which he made the said application. We do not think that the said argument would be of assistance to the respondent inasmuch as the respondent is not qualified or is eligible to be considered for said post on compassionate basis having regard to the family income of the respondent.

21. In the circumstances, we are of the view that the High Court was not right in answering the questions of law in favour of the respondent and thereby, setting aside the judgment of the First Appellate Court and restoring the judgment of the Trial Court.

22. In the result, the appeal is allowed and the judgment of the High Court is set aside and the suit of the respondent is dismissed.

23. The Parties to bear their respective costs.

24. Pending application(s), if any, shall stand disposed of.
