

General Manager (D & PB) & Others

v.

Kunti Tiwary & Another

HON'BLE MR. JUSTICE RUMA PAL HON'BLE MR. JUSTICE B.N.
AGARWAL

(Supreme Court Of India)

C. A. No. 126 of 2004 | 05-01-2004

1. Leave granted.

2. Respondent 1 is the widow and Respondent 2 is the son of K. N. Tiwary, an erstwhile employee of State Bank of India. K. N. Tiwary died while in harness on 16-1-1998. About a month after his death Respondent 1 applied to the appellant for appointment of Respondent 2 in the appellant's services by way of compassionate appointment. The Branch Manager wrote to Respondent 1 saying that the application had been registered and that a fresh proposal should be made when Respondent 2, who was a minor then, attained majority. Respondent 2 attained majority on 25-2-2000 and the application for compassionate appointment was revived. The Deputy General Manager of the zone where the late K. N. Tiwary was working, recommended Respondent 2's case for compassionate appointment and the recommendation contained a footnote in the printed format for appointment on compassionate grounds. The printed format inter alia indicated the details regarding the deceased employee, the terminal benefits, immovable property, investments and liabilities as well as pension paid. The provident fund which was received by Respondent 1 on the death of the late K. N. Tiwary was Rs. 3,33,410 (Rupees three lakhs thirty three thousand and four hundred and ten). She also received gratuity of Rs. 1,73,987 and amount of Rs. 1,01,344 by way of leave encashment. The application form also shows that Respondent 1 owned house of an area of 3000 square feet in Sasaram district which was valued at Rs. 4.70 lakhs (approximately). As far as investments were concerned, there was an investment of total amount of Rs. 66,000 in share certificates of SBI, National Saving Certificates and Unit Trust of India Bonds. On the liabilities side, it was shown that there was a housing loan which had been taken as well as festival advance and a consumer loan. The pension which was paid to the respondent was Rs. 5583 inclusive of the

dearness allowance. The heirs of the late K. N. Tiwary were his widow, his two sons (including R-2) and a daughter.

3. In this background the recommendation of the Deputy General Manager was:

"Keeping in view the miserable condition of the family, we are of the opinion that in absence of any employment in the family, the family members will have to face crisis caused by the sudden demise of late K. N. Tiwary and hence we strongly recommended for the employment on the compassionate ground."

4. The matter was placed before the Chief General Manager who, however, rejected the application for compassionate appointment. After noting the assets and liabilities of the late K. N. Tiwary, he was of the view that the financial condition of the family could not be termed as to be penurious.

5. Challenging this order of rejection, the respondent filed a writ petition. The writ petition was rejected by the learned Single Judge holding that the decision of the General Manager could not be said to be irrational or arbitrary. The Division Bench however overturned the decision of the learned Single Judge and allowed the appeal and consequently directed the appellant Bank to appoint Respondent 2 in accordance with its policy.

6. The policy in question was framed by the appellant Bank pursuant to the decision of this Court in *Umesh Kumar Nagpal v. State of Haryana*, (1994 (4) SCC 138) where this Court has said that appointment by way of compassionate appointment is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. This exception was to be resorted to in cases of penury where the dependants of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet.

7. In adoption of this principle, an office memorandum was circulated to all banks on 7-8-1996 emphasising that the observations of this Court would have

to be complied with. The Indian Banks' Association also adopted the directive of this Court in Umesh Kumar Nagpal case in the Scheme which was proposed for appointment of heirs of deceased employees. In that proposal it was recommended that in order to determine the financial condition of the family the following amounts would have to be taken into account:

- (a) Family pension.
- (b) Gratuity amount received.
- (c) Employee's/employer's contribution to provident fund.
- (d) Any compensation paid by the Bank or its Welfare Fund.
- (e) Proceeds of LIC policy and other investments of the deceased employee.
- (f) Income of family from other sources,
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc.

8. This recommendation of the Indian Banks' Association was accepted in the Scheme which was finally formulated on 1-1-1998 where the same criteria for determining the financial condition of the family was laid down. It may be noted that the express language for appointment on compassionate grounds reads as follows:

"Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependants of employees dying in harness and leaving their family in penury and without any means of livelihood."

9. On the basis of the criteria as recommended by the Indian Banks' Association and adopted by the appellant Bank, it could not be said that the family of the late K. N. Tiwary had been left in "penury" or "without any means of livelihood". The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand and to mouth. The Division Bench erred in diluting this criteria of penury to one of "not very well to do".

10. In the circumstances of the case, we are of the view that the learned Single Judge was correct in dismissing the writ application of the respondents. The appeal is accordingly allowed and the decision of the Division Bench is overturned and the order of the learned Single Judge is upheld. There will be no order as to costs.