

SUPREME COURT OF INDIA

General Manager, State Bank Of India

Vs.

Anju Jain

C.A. No. 5224 of 2008 arising out of SLP(C)No. 8765 OF 2007

(C.K. Thakker and D.K. Jain)

25/08/2008

JUDGMENT

C.K. THAKKER, J.

1. Leave granted.

2. The present appeal is filed by the General Manager, State Bank of India ('the State Bank' for short) and others against judgment and order passed by a Single Judge of the High Court of Judicature at Allahabad on March 2, 2006 in C.M.W.P. No. 45006 of 2001 and confirmed by the Division Bench of the said Court on April 25, 2007 in Special Appeal No. 390 of 2006. By the said order, the High Court allowed the petition filed by Smt. Anju Jain, writ-petitioner (respondent herein) and directed the State Bank to provide her appointment on compassionate ground on the death of her husband.

3. Shortly stated the facts of the case are that Mr. Jain, husband of the respondent- writ petitioner was working as Assistant with the State Bank at Karhall Branch, Agra in the State of U.P. In September, 1995, he was placed under suspension and charge-sheeted for having committed gross misconduct of embezzlement/ misappropriation. Departmental inquiry was instituted against him wherein he was found guilty. In 1996, on the basis of findings recorded by the Inquiry Officer and accepted by the Disciplinary Authority, major punishment was imposed on him by which his basic pay was reduced by two stages and five annual future increments were also stopped with cumulative effect. Husband of the writ-petitioner, however, died on January 25, 2000 while in service in the State Bank.

4. The State Bank had framed a scheme for appointment on compassionate grounds for dependents of deceased employees/employees retired on medical grounds with effect from January 01, 1979. It was modified from time to time. At the relevant time, when the husband of the writ-petitioner died (January 25, 2000), the policy as amended with effect from January 01, 1998 was in force.

5. In accordance with the policy of giving employment on compassionate ground to dependents of a deceased employee, the writ- petitioner, as the widow of the deceased applied to the State Bank in March, 2000. The competent authority of the Bank considered the case of the writ petitioner and keeping in view the punishment imposed on the deceased employee, it rejected the prayer of the writ petitioner and informed her that no such appointment could be given to her. A representation was made by the writ petitioner but it was also rejected on July 16, 2001.

6. Aggrieved by the action of the State Bank, the writ petitioner filed a petition in the High Court by invoking Article 226 of the Constitution. A Single Judge of the High Court, after referring to the scheme of giving appointment on compassionate grounds to dependents of deceased employees and also considering the case of the writ-petitioner, allowed the petition holding that the writ petitioner was entitled to the benefit of appointment on compassionate ground as the dependent of the deceased employee. The said right, which had accrued in her favour, could not be taken away by the State Bank only on the ground of misconduct on the part of her husband for which he was punished, observed the Single Judge. Accordingly, a direction was issued by the Single Judge to appoint the writ petitioner.

7. The State Bank, being aggrieved by the said order, approached the Division Bench of the High Court by filing intra-Court appeal but the Division Bench also confirmed the order passed by the learned Single Judge and dismissed the appeal. The said order is challenged in the present appeal.

8. Notice was issued on May 17, 2007 and after hearing the parties, the Registry was directed to place the matter for final hearing on May 01, 2008. We have accordingly heard learned counsel for the parties.

9. The learned counsel for the appellant- Bank contended that the orders passed by the High Court are illegal, improper and contrary to law. It was submitted that appointment on compassionate ground is never considered to be a right of a dependent of deceased employee. It is a benefit granted to a dependent of an employee who dies in harness and is thus an exception to the general rule of 'equality clause' guaranteed by Article 14 of the Constitution. Such appointment, hence, can only be given in accordance with the policy adopted or scheme framed by the employer.

10. It was also submitted that if the employee has committed misconduct for which he was punished, the dependent of such employee cannot claim the benefit of appointment on compassionate ground. According to the counsel, both the Courts were wholly wrong in holding that the writ petitioner was sought to be punished for so called misdeeds of the deceased employee. The counsel submitted that there was no question of punishing the writ petitioner in not granting appointment on compassionate ground. The husband of the writ petitioner had committed misconduct which was proved in the inquiry instituted against him and he was punished. As per the policy, the writ petitioner cannot claim appointment on compassionate ground. There was no accrued right in favour of the writ-petitioner. The order passed by the learned Single Judge and confirmed by the Division Bench, therefore, deserves to be set aside.

11. Alternatively, it was submitted that even if a dependent of the deceased employee is held eligible to get an appointment on compassionate ground, it is well settled law that mandamus can be issued against the employer limited to ordering him to consider the case of such applicant. No direction can be issued to appoint the writ-petitioner on compassionate ground. Even on that count, the orders are liable to be set aside.

12. The learned counsel for the writ petitioner, on the other hand, supported the order passed by the learned Single Judge and confirmed by the Division Bench. It was submitted that for the so called misconduct, the husband of the writ petitioner was already punished. The matter, therefore, ended there. Thereafter, it was not open to the Bank in the light of the policy in vogue to refuse appointment on compassionate ground to deprive the writ petitioner of such appointment. The learned Single Judge was, therefore, right in allowing the petition. And the Division Bench was not wrong in not interfering with the said order.

13. The counsel conceded that normally, a writ Court will direct the employer only to consider the case of the dependent of deceased employee for appointment on compassionate ground. He, however, submitted that on the facts of the case, the only ground which weighed with the Bank was that the husband of the writ petitioner was punished and, hence, his widow could not be granted the benefit under the scheme. If in the light of the said fact, an order was passed to appoint the writ petitioner, it could not be said that by issuing such direction, the learned Single Judge had exceeded his jurisdiction. The Division Bench was, therefore, right in dismissing the appeal and no interference is called for in exercise of discretionary jurisdiction under

Article 136 of the Constitution.

14. Having heard learned counsel for the parties, in our opinion, the appeal deserves to be allowed by setting aside the order passed by the learned Single Judge and confirmed by the Division Bench.

15. It is an admitted fact that the husband of the writ petitioner was serving with the appellant Bank. He indulged in illegalities and committed misconduct for which departmental proceedings were initiated against him. An Inquiry Officer was appointed, who after giving opportunity of hearing to the deceased employee, recorded a finding that the charges levelled against the employee were proved. A report was submitted by the Inquiry Officer to the Disciplinary Authority. The Disciplinary Authority, after following the principles of natural justice and affording opportunity of hearing to the employee by supplying a copy of the Inquiry Officer's report, agreed with the findings and imposed major penalty by reducing basic pay of the delinquent by two stages and stoppage of five annual future increments with cumulative effect. The said order had attained finality.

16. It is also not in dispute that in January, 2000, the employee expired and an application for appointment on compassionate ground was submitted by his widow, the writ petitioner. At that time, the appellant Bank was governed by scheme which was in force with effect from January 01, 1978 as amended up to January 01, 1998.

17. The counsel for the State Bank invited our attention to the scheme for appointment on compassionate grounds for dependents of deceased employees. As per the policy, such benefit could be granted in certain cases. Para 6 of the scheme laid down 'Method of appointment'. Clause (d) of the said para dealt with cases where disciplinary actions had been taken against an employee. The said clause read as under:

(d) In cases where disciplinary action had been taken against the employee or disciplinary proceedings were pending/ contemplated against him/her, appointment of a dependent on compassionate grounds may be considered only after obtaining prior Government concurrence.

18. Since the disciplinary proceedings against the deceased employee culminated in major punishment and an application was made by his widow for appointing her on compassionate ground, the Bank referred the matter to the Government of India. The matter was considered by the Government but it was remitted to the Bank to take an appropriate decision in accordance with law.

19. The Bank again considered the proposal for appointment on compassionate ground of the writ-petitioner but declined to grant such benefit in view of punishment imposed on her husband.

20. In para 3 of the communication, dated January 29, 2001, the Managing Director of the appellant Bank stated;

"In this connection, we have to advise that although our scheme for compassionate appointments does not explicitly state that the deceased employee should have had unblemished service, this is implied: In view of the gross misconduct of late D.K. Jain, the competent authority at this office has declined the proposal for compassionate appointment of his wife Smt. Anju Jain in the Bank".

21. It was submitted on behalf of the Bank that if the services of the employee were not fully satisfactory and he was found guilty at the departmental inquiry and was punished for misconduct, it was open to the employer not to grant the benefit of appointment on compassionate ground to the dependent of such tainted employee after his death. If on that ground, an order is passed, it cannot be objected on the ground that no such action could have been taken.

22. 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".

23. 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.

24. 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.

25. As observed earlier, the writ petitioner approached the High Court relying on the scheme for compassionate appointment of 1979 as amended with effect from January 01, 1998. It was submitted by her that her husband was an employee of the Bank, departmental proceedings were initiated and he was punished. It was, thereafter, not open to the appellant Bank to refuse appointment to her on compassionate ground as she could not be punished for misdeeds alleged to have been committed by her husband.

26. The submission weighed with the learned Single Judge who allowed the petition and observed;

"I have heard learned Counsel for the parties at length and looked into the record of the case as well as the authorities cited by the learned Counsel for the petitioner and I find that at the time when the petitioner applied for compassionate appointment on the death of her deceased husband, the earlier Scheme was applicable to the petitioner's case and the amended Scheme came into force from May, 2002. I am of the view that the inapplicable provisions of the clauses of the amended Scheme could not be taken resort to by the respondents as a ground to deprive/scuttle the rightful benefits that accrued to the petitioner only due to some charges of misconduct of the deceased husband of the petitioner for which he had already been penalized. No past acts of misconduct of the employee who dies in harness can be taken into account while considering the case of a family member for employment on compassionate ground, as it is not a benefit provided to the deceased employee but for providing immediate succor to its dependents to survive. The decision of the respondents is impermissible in the eye of law being in violation of the principles of natural justice".

27. The Single Judge, hence, issued the following directions;

"In the result, the petition succeeds and is allowed and the impugned orders dated 21.05.2001 and 16.07.2001 (Annexures No. 2 and 4 to the writ petition) are hereby quashed. Accordingly the respondent-Bank is directed to provide an appointment to the petitioner on compassionate ground on account of the death of her husband, in accordance with law and in terms of the earlier scheme, which was in force at that time within one month from the date a certified copy of this order is placed before the concerned authority-respondent Bank. There will be no order as to costs."

28. When the appeal was filed by the State Bank against the order passed by the Single Judge, the Division Bench held that the learned Single Judge was right in issuing necessary directions

and there was no infirmity. The Division Bench observed;

"From the record, it is evident that after the death of the said employee, the present appellants have also changed the scheme and introduced clause (1) to appointment on compassionate grounds. Past misconduct of an employee who dies in harness should also be taken into consideration while considering the application for compassionate employment of his dependent. However, the said amendment in the policy does not operate retrospectively and the learned Single Judge has rightly held that past act of misconduct of the said employee could not have been taken into consideration".

29. We are of the view that both the Courts were wrong in granting relief to the writ petitioner. Appointment on compassionate ground is never considered a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-Government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Article 14. Normally, therefore, State or its instrumentality making any appointment to public office, cannot ignore such mandate. At the same time, however, in certain circumstances, appointment on compassionate ground of dependents of deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel source of employment.

30. In our opinion, therefore, if disciplinary proceedings have been initiated against an employee and the charges leveled against such employee are proved and he is punished, it is indeed a relevant consideration for not extending the benefit to dependent of such employee on the ground that he was punished. To us, it cannot be said that it is a case of double jeopardy or a dual punishment. Compassionate appointment is really a concession in favour of dependents of deceased employee. If during his carrier, he had committed illegalities and the misconduct is proved and he is punished, obviously his dependents cannot claim right to the employment. With respect, the learned Single Judge was wholly wrong in observing that such an action would be violative of principles of natural justice.

31. To us, the observation of the learned Single Judge that "no past acts of misconduct of the employee who dies in harness can be taken into account while considering the case of a family member for employment on compassionate ground" is not in consonance with law. Past conduct of an employee is undoubtedly an important consideration. We are also of the view that the State Bank was right in rejecting the prayers of the wife of the deceased employee vide its letter dated January 29, 2001 observing therein that "unblemished service record is implicit".

32. The learned counsel for the Bank invited our attention to a decision of the High Court of Delhi

in *Suman Lata Yadav v. Union of India & Anr.*, (2004) 113 DelLT 152. In that case, widow of a deceased employee sought employment on compassionate ground following death of her husband. The request was declined. The widow approached the High Court by filing a writ petition. A counter affidavit was filed by the Union of India stating therein that on account of disciplinary proceedings and punishment meted out to the deceased, the request of the widow for appointment on compassionate ground was turned down.

33. It was contended on behalf of the widow that the action of the Union of India was illegal and appointment on compassionate ground could not be denied.

34. Dismissing the petition and negating the argument on behalf of the widow, a Single Judge of the High Court stated;

"I am unable to accept this submission. While it is true that the prime object is to provide succour and immediate relief, yet the deceased's service record or the factum of disciplinary proceedings and punishment meted out to him, cannot be said to be an irrelevant factor. The possibility of denial of compassionate appointment to the LRs of deceased on account of deceased employee having a tainted service record, would serve as a deterrent to employees from indulging in misconduct. It can act as an incentive for those maintaining discipline and probity. Besides, when the availability of appointment and opportunities is limited, there is nothing wrong in preferring LRs, of those employees with clean record over the LRs, of those, who have had a tainted record."

35. In our opinion, the above observations lay down correct proposition of law and we approve them.

36. To us, therefore, the State Bank was right in refusing appointment on compassionate ground to the widow of deceased employee of the Bank even under the policy in force in year 2000. We see no illegality in the action. We hold that the learned Single Judge as well as the Division Bench were not right in observing that since the deceased employee was punished, the matter ended there and the said punishment would be of no consequence so far as appointment of his dependent on compassionate ground of the deceased employee was concerned.

37. Even on second ground, the submission of the Bank is well-founded. As noted earlier, the learned Single Judge issued direction to the Bank to appoint the writ petitioner-widow of the deceased employee within one month. As per settled law, a writ of mandamus can be issued directing the authority to consider the case of the petitioner for an appointment or promotion as the case may be but no direction can be given to appoint or promote a person.

38. In *State of Mysore & Anr. v. Syed Mahmood & Ors.*, (1968) 3 SCR 363, promotion to the higher post was to be given on the basis of seniority-cum-merit. A was not promoted. He, therefore, filed a petition in the High Court of Mysore by invoking Article 226 of the Constitution claiming promotion. The High Court issued a writ of mandamus directing the Government to promote A. The aggrieved State approached this Court.

39. Allowing the appeal and setting aside the direction of the High Court ordering the State to give promotion, this Court held that at the most, the High Court could have issued mandamus directing the State to reconsider the case of the writ petitioner on the correct principle. It could not have issued a direction to the employer to promote the writ petitioner with retrospective effect. *Syed Mahmood* was followed by this Court in several cases.

40. The learned counsel for the respondent, no doubt, referred to a decision in *State of Bihar v. Dr. Braj Kumar Mishra & Ors.*, (1999) 9 SCC 546 wherein this Court held that normally mandamus can be issued by a writ Court directing the authority to consider the case of the writ petitioner. In exceptional circumstances, however, a positive direction can be issued by granting relief in favour of the writ petitioner if the Court is otherwise satisfied.

41. The Court stated;

"It is true that normally the Court, in exercise of its power under Article 226/227 of the Constitution of India, after quashing the impugned order should remand the matter to the concerned authority particularly when such authority consists of experts for deciding the issue afresh in accordance with the directions issued and the law laid down by it but in specified cases, as the instant case, nothing prevented the Court to issue directions when all the facts were admitted regarding the eligibility of the respondent No. 1 and his possessing of the requisite qualifications. Remand to the authorities would have been merely a ritual and ceremonial. Keeping in mind the lapses attributable to the Commission which had failed to take appropriate action despite recommendation made in favour of the respondent No. 1, the learned Single Judge as also the Division Bench of the High Court felt it necessary to declare the respondent No. 1-promoter with effect from 1.2.1985. We do not find any illegality or error of jurisdiction. Learned counsel appearing for the appellants were apprehensive that if the impugned judgment is not set aside, it may become precedent and in other cases pertaining to the University, such directions may be issued in future also preventing the authorities and the State Government from exercising their statutory powers. The apprehension is misconceived and without any substance. To allay even such apprehension we deem it appropriate to clarify that the impugned judgment has been passed under peculiar circumstances of the case and is no precedent with respect to the subject regarding which the appellants have conceived an apprehension". (emphasis supplied)

42. Apart from the fact that in 'peculiar circumstances', a positive direction was issued by this Court and it was stated that the decision 'is no precedent' with respect to the subject, in our opinion, in the present case, the second stage did not arise at all. As we have held that even under the policy in force in 2000, the appellant Bank was wholly right and fully justified in declining the prayer of the widow of deceased employee in rejecting her prayer for extending benefit of appointment on compassionate ground. The orders passed by both the Courts are, therefore, liable to be set aside on that ground alone.

43. For the aforesaid reasons, the appeal is allowed, the order passed by the Single Judge and confirmed by the Division Bench of the High Court is set aside and the writ petition filed by the widow of deceased employee of the State Bank for getting an appointment as dependent of deceased employee on compassionate ground is ordered to be dismissed.

44. On the facts and in the circumstances of the case, however, the parties are ordered to bear their own costs.