

SUPREME COURT OF INDIA

MGB Gramin Bank

Vs.

Chakrawarti Singh

C.A.No.6348 of 2013

(Dr.B.S.Chauhan and S.A.Bobde JJ.)

07.08.2013

ORDER

1. Leave granted.

2. This appeal has been preferred against the impugned judgment and order dated 27.1.2010 passed by the Division Bench of the High Court of Rajasthan at Jodhpur in D.B.Civil Special Appeal (Writ)No.798 of 2009 upholding the judgment and order of the learned Single Judge dated 27.7.2009 passed in Writ Petition No.7869 of 2008 by which the respondent had been directed to be appointed under a scheme for compassionate appointment.

3. Facts and circumstances giving rise to this appeal are that:

A. Father of the respondent who was working as a Class III employee with the appellant Bank died on 19.4.2006 while in harness. The respondent applied for compassionate appointment on 12.5.2006.

B. During the pendency of the application filed by the respondent, a new scheme dated 12.6.2006 came into force with effect from 6.10.2006. Clause 14 thereof provides that all applications pending on the date of commencement of the scheme shall be considered for grant of ex-gratia payment to the family instead of compassionate appointment.

C. As the appointment on compassionate ground was denied to the respondent, he preferred the writ petition before the High Court and the learned Single Judge took the view that as the cause of action had arisen

prior to the commencement of the new scheme, therefore, the case was to be considered as per the then existing scheme i.e. the 1983 Scheme which provided for compassionate appointment and not for grant of ex-gratia payment. The Court directed the appellant not only to consider the case of appointment of the respondent on compassionate grounds but rather directed the appellant to appoint him.

D. Aggrieved, the appellant challenged the said order by filing the Special Appeal which has been dismissed vide impugned judgment and order dated 27.1.2010 concurring with the judgment and order of the learned Single Judge.

Hence this appeal.

4. We have heard learned counsel for the parties.

5. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.

The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

6. In *Umesh Kumar Nagpal v State of Haryana & Ors.*, (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:—

“The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned..... The only ground which can justify compassionate employment is the penurious condition of the deceased’s family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis.” (Emphasis added)

7. An ‘ameliorating relief’ should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

8. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

9. In *A. Umarani v Registrar, Co-operative Societies & Ors.*, AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

10. The word ‘vested’ is defined in Black’s Law Dictionary (6th Edition) at page 1563, as ‘vested’, Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are ‘vested’ when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

11. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570) Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldeep Singh v Government, NCT Delhi AIR 2006 SC 2652)

12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

“14. Date of effect of the scheme and disposal of pending applications:

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme.”

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

14. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside.

15. The respondent may apply for consideration of his case under the new Scheme and the appellant shall consider his case strictly in accordance with clause 14 of the said new Scheme within a period of three months from the date of receiving of application. With these observations, appeal stands disposed of.