SUPREME COURT OF INDIA

Indian Bank

Vs.

Promila

C.A.No.2798 of 2010

(Sanjiv Khanna and K.M.Joseph,JJ.,)

08.01.2020

JUDGMENT

Sanjay Kishan Kaul,J.,

1. One Jagdish Raj, husband of respondent No.1 and father of respondent No.2, was appointed as a Clerk-cum-Shroff in the appellant- Bank, where he continued to work till his unfortunate demise on 15.1.2004. He was drawing a gross monthly salary of Rs.16,486.60 at the time of his demise. Consequent to his death, the benefits available for the family of Jagdish Raj were calculated and sanctioned to the tune of Rs.5,45,872, but on account of deductions for staff housing and vehicle loans, post adjustment, a net payment of Rs.2,99,672 was made to the family, apart from the grant of a monthly pension of Rs.5,574.12. An issue has been raised about the amount being paid less to the family of Jagdish Raj, but that has really not been debated before us.

2. Late Shri Jagdish Raj was survived by his wife and three minor children. As it transpires, respondent No.1 was already employed and earning a salary at the time of the demise of her husband, which information came to the knowledge of the appellant-Bank, later. The cause for the present dispute arises from an application made on behalf of the son (respondent No.2 herein) seeking compassionate employment on account of demise of Shri Jagdish Raj. We may add at the threshold that this application was made on 24.1.2004, on which date the son was a minor. Needless to say that any such request for compassionate employment had to be in terms of the prevalent scheme at that time. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in *Canara Bank & Anr. v. M. Mahesh Kumar*[1] qua what would be the cut-off date for application of such scheme. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult

times and, thus, the relevancy is at that stage of time when the employee passes away. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.

3. On the relevant scheme being placed before us, what emerges is that vide Circular No.56/79, a scheme was brought into force for compassionate appointment on 4.4.1979. This is the scheme which was applicable on 15.1.2004, i.e. on the date of the death of Shri Jagdish Raj. A provision was made for compassionate appointment, but subject to the terms & conditions of the scheme. Para 7 of the scheme reads as under:

> "7. According to an agreement with the Union, the dependant will either be paid gratuity as if the deceased employee has served the full term of service, which will be calculated as per gratuity rules on the basis of his/her last drawn pay at the time of his/her death or given the option for appropriate employment for one dependent subject to the rules framed for appointment under compassionate grounds. It is therefore, obvious that appointments under compassionate grounds will be open only to dependents who do not opt for payment of gratuity for the full term of service of the employee who died while in service."

The aforesaid paragraph, thus, makes it clear that either gratuity or compassionate appointment can be availed of by the dependents. The result is that if the dependents opted for payment of gratuity for the term of service of the employee who died while in service, no compassionate appointment could be granted. The admitted position is that the benefit of gratuity was availed of by the dependents in the present case.

4. Another relevant paragraph of the scheme is para 8, which reads as under:

> "8. No person or dependent can claim, as a matter of right, employment in the Bank under this Scheme and appointments will be considered purely at the sole discretion of the Bank. The Bank reserves to itself the right to modify, suspend, or withdraw the scheme at any time at its sole discretion and the Bank's decision in this regard will be final and cannot be called in question."

The aforesaid paragraph makes the consideration for appointment on compassionate grounds at the discretion of the Bank, and not as a matter of right. This really only emphasizes the settled position of law, discussed aforesaid.

5. A new Scheme was promulgated on 5.11.1985, but para 4 of the Scheme clarifies as under:

> "the norms prescribed under scheme for appointment in the Bank of a dependent of a confirmed employee who dies while in service remains unchanged."

Thus, though this may be a new Scheme, it, in effect, continued the older Scheme, and that is the reason the terms of that Scheme applied on the date of death of Shri Jagdish Raj, on 15.1.2004.

6. The first communication was addressed by respondent No.1, on 24.1.2004, to the CMD of the appellant-Bank, seeking compassionate appointment for her son, respondent No.2. The aforesaid arrangement, thus being applicable even at that time.

7. A development post the demise, and this application, was a new Scheme being brought into force through a Board meeting of the appellant- Bank w.e.f. 27.4.2004, by way of Circular No. PRNL/09/2004-05, in supersession of the previous Scheme. However, the qualification for such Scheme was the death of an employee on account of injury sustained while performing official duty, with a second condition that the monthly income of the family (including terminal benefits, insurance claims, investments, etc. as well as pension and spousal income) was less than 60% of the last drawn gross salary, net of taxes, of the deceased employee and that the application for such compassionate appointment had to be submitted within three (3) months from the demise of such deceased employee. There was also an option to provide ex gratia compensation with the same second qualification as aforesaid, if such application is made within three (3) months from the demise of the deceased employee. The Scheme also refers to a lumpsum compensation, even where this 60% bar is crossed, and for Clerks like Shri Jagdish Raj, the amount specified is Rs.2 lakh.

8. The appellant-Bank, thus, in response to the application for compassionate appointment, sent a communication to respondent No.1, asking her to submit a fresh application under the new Scheme within a month, i.e., by 9.8.2004. The intent, really, was that only cash compensation could be made available. This period, for tendering an application seeking cash compensation, was further extended repeatedly, but it appears that the respondents did not apply for the same as they appeared to be only interested in compassionate appointment.

9. A Circular No. PRNL/72/2005-06 dated 30.8.2005 was issued whereby the benefit of compassionate appointment was denied to a dependent of an employee who died in harness. Thus, only cash compensation was the benefit which would accrue. The norm of 60% eligibility criterion was still made applicable and the application had to be preferred within six (6) months from demise. This Scheme came into force from 10.8.2005.

10. Respondent No.1 made available her gross salary declaration of Rs.15,912 only on 17.2.2006, which crossed the benchmark of 60% and, thus, the respondents were informed vide letters dated 10.5.2006 and 30.6.2006 that even cash compensation was not available to the family, and that there could be no question of compassionate appointment.

11. It is in the aforesaid circumstances that the respondents filed CWP No.17105/2006 on

27.10.2006, seeking consideration of compassionate appointment under the 2004 Scheme, upon respondent No.2 attaining age of majority. Ex gratia benefits, which were held back, were also sought, along with interest.

12. The High Court of Punjab & Haryana vide impugned order dated 11.8.2008, granted Rs.2 lakh ex gratia payment, while leaving it open to the respondents to make an appropriate application regarding any terminal benefits, if not paid. This Rs.2 lakh benefit is in consonance with the subsequent Schemes of 2004 and 2005 which had come into force, and appears to have been so done more out of sympathy than any other factor.

13. The appellant-Bank aggrieved by this order filed a Special Leave Petition and interim order of stay was granted on 16.1.2009. Leave was granted subsequently and the interim order was made absolute.

14. We have examined the aforesaid factual matrix and the contentions raised by learned counsel for the parties.

15. The question of applicability of any subsequent Scheme really does not apply in view of the judgment of this Court in *Canara Bank*[2]. Thus, it would not be appropriate to examine the case of the respondents in the context of subsequent Schemes, but only in the context of the Scheme of 4.4.1979, the terms of which continued to be applicable even as per the new Scheme of 5.11.1985, i.e. the Scheme applicable to the respondents. There is no provision in this Scheme for any ex gratia payment. The option of compassionate appointment was available only if the full amount of gratuity was not taken, something which was done. Thus, having taken the full amount of gratuity, the option of compassionate appointment really was not available to the respondents.

16. We may also notice that though the subsequent Schemes were not applicable, even if benefit was sought to be given of those Schemes, initial non-disclosure and subsequent disclosure by respondent No.1, of her employment and her emoluments would disentitle her under those Schemes, too. Thus, when the appellant was calling upon the respondents to apply under the subsequent Schemes, that could have been beneficial to the (supra) respondents only if they were entitled to any of the benefits under that Scheme. That could not happen because the benchmark provided in those subsequent Schemes took the emoluments of respondents beyond the prescribed limit, so as to disentitle them from both, compassionate employment and ex gratia payment.

17. We have to keep in mind the basic principles applicable to the cases of compassionate employment, i.e., succor being provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, though, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in view of

the judgment of this Court in *Canara Bank*[3]. It is not for the Courts to substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasized by this Court in *State of Himachal Pradesh & Anr. v. Parkash*[3] (supra)
Chand[4].

18. We may have sympathy with the respondents about the predicament they faced on the demise of Shri Jagdish Raj, but then sympathy alone cannot giveremedyto the respondents, more so when the relevant benefits available to the respondents have been granted by the appellant-Bank and when respondent No.1, herself, was in employment having monthly income above the benchmark.

19. We have, thus, no option but to reluctantly set aside the impugned order and dismiss the writ petition originally filed by the respondents.

20. The appeal is accordingly allowed, leaving the parties to bear their own costs.

Judgment Referred.

[1]*(2015) 7 SCC 0412*