

Central Bank of India Vs. NITIN

Civil Appeal No. 5111 of 2022 arising out of SLP (C) No. 19757 of 2021
2022-08-03 | Indira Banerjee, J.
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Full judgment text

Central Bank of India Vs. NITIN

[Civil Appeal No. 5111 of 2022 arising out of SLP (C) No. 19757 of 2021]

Indira Banerjee, J.

1. Leave granted.
2. This appeal is against the judgment and order dated 04.08.2021 passed by the Aurangabad Bench of the High Court of Judicature at Bombay, (Division Bench), allowing the writ petition being Writ Petition No. 12352 of 2018 filed by the respondent and directing the appellant to consider the case of the respondent for compassionate appointment as per his seniority in filing the application for compassionate appointment, "but from the date of the petitioner having quit his clerical job with the ICICI Bank Limited".
3. The respondent-writ petitioner's father, Mr. Y.P. Arawade, who was working as Special Assistant in the Kolgaon Branch of the Appellant-Bank in Ahmednagar District, Maharashtra applied for voluntary premature retirement from service on 16.04.2015 on the ground of medical incapacitation.
4. The prayer of the respondent writ petitioner's father for premature retirement on the ground of medical incapacitation was allowed with effect from 26.06.2015.
5. The appellant-Bank has from time to time framed schemes for dependents of deceased employees/physically incapacitated employees in terms of the guidelines issued by the Government of India/Indian Banks Association pursuant to the observations of this Court in Umesh Kumar Nagpal v. State of Haryana reported in (1994) 4 SCC 138.
6. A scheme called 'Scheme for Payment of Ex-Gratia Lump Sum Amount in lieu of Appointment on Compassionate Grounds', hereinafter referred to as "the Scheme", came into force with effect from 14.12.2005. The Scheme provided for payment of an ex-gratia lump sum amount to employees seeking premature retirement on the ground of medical incapacitation.
7. Employees of the appellant-Bank seeking premature retirement due to medical incapacitation, before attaining the age of 55 years, were to be entitled to the benefit of the Scheme, subject to the condition that the total monthly income of the family arrived at, as per the calculation prescribed, was less than 60% of the last drawn gross salary of the employee.
8. By a Circular being CIR/HR/2014-15/532/4 dated 11.08.2014, the Indian Banks' Association circulated a revised scheme for compassionate appointment in Public Sector Banks pursuant to the approval of the Government of India conveyed vide D.O. Letter No.18/2/2013-IR dated 07.08.2014.
9. The scheme as circulated by the Indian Banks' Association was adopted by the appellant-Bank. By a circular dated 08.04.2018, the appellant-Bank notified "The Scheme For Appointment on Compassionate Grounds or Payment of Lumpsum Ex-Gratia Amount ", hereinafter referred to as the 'Compassionate Appointment Scheme'. The Compassionate Appointment Scheme came into effect from 06.08.2014.
10. As recorded above, by an order dated 25.06.2015, the appellant-Bank permitted said Y.P. Arwade, father of the respondent writ petitioner to voluntarily retire from service on the ground of medical incapacitation and he was relieved from duty w.e.f 25.06.2015.
11. On 20.07.2015, the respondent writ petitioner applied for compassionate appointment in place of his father in terms of the Compassionate Appointment Scheme. It appears that at the material time when the respondent writ petitioner applied for compassionate appointment, he had been working as a Clerk in the ICICI Bank Ltd.
12. In his application for compassionate appointment, the respondent writ petitioner suppressed the fact that he was employed in the ICICI Bank. He misrepresented himself as not employed. The respondent writ

petitioner resigned on 02.03.2016, i.e., almost eight months after he submitted his application for appointment of compassionate grounds.

13. On 25th January, 2018 the application of the respondent was considered by a Four Member Committee constituted under the Compassionate Appointment Scheme. The Committee found that the retired employee was earning monthly pension of Rs.25,110/- and had received other retiral financial benefits totalling Rs.27,05,766/-. After adjusting loan liabilities of Rs.12,10,061/-, the net amount received was Rs.14,95,705/-. Further, the family of the retired employee got Rs.3,70,442/- from investments.

The committee rejected the proposal for compassionate appointment of the respondent with petitioner on the ground that the family of the retired employee was not indigent as the family had an estimated monthly income of Rs.36,773/-, which was more than 60% of the last drawn gross salary of Rs.55,978/- of the retired employee. It was a condition of compassionate appointment under the Compassionate Appointment Scheme that the total income of the family should not exceed 60% of the last drawn gross salary of the retired employee.

14. Needless to mention that the monthly income of the family of the retired employee had been estimated without taking into account the monthly salary which the respondent writ petitioner had been receiving from ICICI Bank at the time when his father prematurely retired from service on the ground of medical incapacitation.

15. The High Court referred to the judgments of this Court in *Canara Bank & Anr. vs. M. Mahesh Kumar* reported in (2015) 7 SCC 412; *Balbair Kuar & Anr. vs. Steel Authority of India Ltd. & Ors.* reported in (2000) 6 SCC 493; and *Yogesh Nagraoji Ugale vs. State of Maharashtra through Principal Secretary & Ors.* reported in (2020) 19 SCC 426 cited on behalf of the respondent-writ petitioner to contend that the right of the respondent-writ petitioner to be inducted in employment of the appellant-Bank on compassionate grounds could not be defeated merely because the family was indigent.

16. *Canara Bank (supra)*, is not an authority for the proposition that financial criteria cannot be the ground for rejection of a claim for compassionate appointment. Rather, this Court quoted with approval the following paragraph in the earlier judgment of this Court in *Umesh Kumar Nagpal vs. State of Haryana* reported in (1994) 4 SCC 138:-

"2. 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. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of 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.

The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution.

No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. 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.'

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

17. In *Balbir Kaur (Supra)*, this Court held on facts that a family benefit scheme assuring monthly payment to the family of a deceased employee was not a substitute for compassionate appointment. The finding was rendered in the context of the applicable circular pertaining to appointment on compassionate grounds.

18. In *Umesh Naraoji Ugale (supra)*, the compassionate appointment was declined on the ground of a ban on compassionate appointment imposed on 22.08.2005 which was continued by a resolution dated 22.03.2012. This Court, however, found on facts that a relaxation had initially been granted for persons on the wait list till 31.12.2011.

Thereafter, by a resolution dated 01.03.2014, the Government of Maharashtra had decided to increase the recruitment of Group 'C' and 'D' posts on compassionate ground from 5% to 10% of vacant posts of Class 'C' and 'D' from 2012. The Court, therefore, concluded that the Government was continuing to make appointments on compassionate ground despite ban of 2005. The question of financial criteria for grant of compassionate appointment was not at all in issue in *Yogesh Nagraoji Ugale (supra)*.

19. In our view, the Division Bench patently erred in arriving at the finding that whether the family was indigent or not could not be a ground for refusing compassionate appointment to a candidate who was otherwise eligible for appointment under the Compassionate Appointment Scheme.

20. It is well settled that compassionate appointment is an exception to the rule of equality, which enables the dependent family members of a medically incapacitated employee who has no option, but to retire, or a deceased employee, to tide over the immediate crisis caused by the incapacitation or death of the breadwinner. Compassionate Appointment excludes equally or more meritorious candidates, much in need of a job, from the zone of consideration. Consideration for compassionate appointment must, therefore, be strictly in accordance with the prevalent rules for compassionate appointment applicable to the deceased/prematurely retired employee.

21. In this case, there is a financial criteria of eligibility for compassionate appointment under the Compassionate Appointment Scheme. Rules which provide for a financial criteria for appointment on Compassionate ground are valid and lawful rules which have to be construed strictly, as otherwise the quota reserved for compassionate appointment would be filled up excluding others who might be in greater and/or far more acute financial distress.

22. As held by this court in *State Bank of India vs. Raj Kumar* reported in (2010) 11 SCC 661 cited by Mr. Debal Kumar Banerji, learned senior counsel appearing on behalf of the appellant-Bank, the claim for compassionate appointment is traceable only to the Scheme framed by the employer for such employment, and there is no right whatsoever outside such scheme. There could be no automatic appointment merely on application. The respondent-writ petitioner did not have any special claim or special right to employment as dependent family member of the retired employee.

23. The High Court patently erred in ignoring the financial criteria for compassionate appointment under the Compassionate Appointment Scheme. Moreover, the High Court completely overlooked the fact that the respondent had suppressed his appointment with ICICI Bank in his application for compassionate appointment. The writ petition was liable to be rejected on that ground alone.

24. The law with regard to compassionate appointment being well settled, it is not necessary for this Court to discuss the other judgments cited by Mr. Debal Kumar Banerji, more so since the application of the respondent-writ petitioner was, in any case, liable to be rejected on the ground of suppression of material facts.

25. The appeal is, accordingly, allowed. The impugned judgment and order is set aside. There shall be no order as to costs.

Item No. 13

Central Bank of India Vs. NITIN

[Petition(s) for Special Leave to Appeal (C) No(s). 19757/2021 arising out of impugned final judgment and order dated 04-08-2021 in WP No. 12352/2018 passed by the High Court of Judicature at Bombay at Aurangabad]

[IA No. 156050/2021 - PERMISSION TO FILE ADDITIONAL DOCUMENTS/ FACTS/ANNEXURES]

These matters were called on for hearing today.

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE HON'BLE MR. JUSTICE V. RAMASUBRAMANIAN

For Petitioner(s)

Mr. Debal Kumar Banerji, Sr. Adv. Mr. divyanshu Sahay, Adv. Ms. Shradha Narayan, Adv. Mr. Akshay Samay, Adv. Mr. Mithu Jain, AOR

For Respondent(s)

Mr. Pragyan Pradeep sharma, Adv. Mr. Neeraj Kumar Gupta, AOR Mr. Ranjeet Kumar Singh, Adv. Mr. Kartikay Dutia, Adv. Ms. Pallavi Kumari, Adv. Ms. Arti Prasad, Adv. Mr. Abhishek Kumar, Adv.

UPON hearing the counsel the Court made the following

Leave granted.

The appeal is allowed in terms of the signed reportable judgment.

The impugned judgment and order is set aside.

There shall be no order as to costs.

Pending applications, if any, shall also stand disposed of.

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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