

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

C. Rev. No. 128 of 2010

Decided on : 29.4.2011

State Bank of India & others

.. Petitioners.

Vs.

Sheetal Devi

..... Respondent.

Coram

The Hon'ble Mr. Justice Kurian Joseph, Chief Justice.

The Hon'ble Mr. Justice Kuldip Singh, Judge.

For the petitioners : Mr. K.D. Sood, Advocate.

For the respondent : Ms. Sunita Sharma, Advocate.

Justice Kurian Joseph, C.J. (Oral)

This is an application for review of judgment dated 6.7.2010 in LPA No. 59 of 2010. The case has a chequered history, which we are compelled to refer since a poor widow has been dragged before this Court fifth time. The issue pertains to compassionate appointment. Her husband died on 16.9.2003. She has five children (four daughters and one ailing son suffering from chronic diabetes and other diseases). On 15.12.2003, she made an application for compassionate appointment, that was rejected on 17.12.2004 stating that financial benefits she received on account of death of her husband from the bank would show that there were no indigent circumstances. That was challenged before this Court in CWP No. 687 of 2005. That writ petition was disposed of by judgment dated 30.5.2007, directing the bank to consider the matter afresh. The bank considered the matter afresh and passed order dated 16.11.2007 (Annexure PG). The bank reiterated its

stand that the benefit received from the bank would show that the petitioner was not in indigent circumstances. It was further stated in para 3 of Annexure PG order dated 16.11.2007, which is as follows:

“The bank introduced a Scheme of compassionate appointment in the year 1979. The said Scheme was amended from time to time. The employee late Shri Subhash died in the year 2003 and the Scheme for compassionate appointment updated up to 24.1.2003 is applicable in the case of the petitioner.”

2. Therefore, it is the admitted stand of the bank in its order dated 16.11.2007 that the Scheme prevailing in the year 2003 for compassionate appointment is applicable in the case of the petitioner. That Annexure PG was challenged before this Court in CWP No. 1416 of 2008. The impugned order was again quashed by this Court directing the bank to reconsider their stand by judgment dated 21.8.2009. The bank filed Review Petition No. 63 of 2009. That was dismissed on 30.3.2010. The bank thereafter filed an appeal as LPA No. 59 of 2010, that was dismissed by judgment dated 6.7.2010. This Court held that the consideration of the financial benefits disbursed to the petitioner on account of the death of her husband, without considering other factors was not proper so as to assess the indigent circumstance of the petitioner. Crucially, the relevant factors like size of the family, assets and liabilities of the family etc. have been left out. Stating so, the appeal was dismissed. Necessarily the bank had to consider the matter afresh assessing the financial situation of the family of the deceased employee, consisting of a widow and five children (four daughters and one son). The case of the petitioner regarding other liabilities had also to be considered.

3. It is at that juncture the review petition has been filed. The sheet-anchor of the arguments advanced by the learned counsel for the bank Shri Kapil

Dev Sood is that in the recent judgment of the Supreme Court in *State Bank of India & another vs. Raj Kumar*, decided on 8.2.2010 and reported in (2010) 11 SCC 661, it has been held that the application would have to be considered in the light of the Scheme prevailing as on the date of consideration and not on the date of the application. It is submitted that the Scheme i.e. available now on compassionate appointment does not enable the bank to provide employment, but only provides for ex-gratia assistance.

4. We are afraid the stand taken by the bank cannot be appreciated in the light of the factual background we have referred to above. It is not a case of non consideration of the application at the time of the old Scheme. It was considered and rejected. The challenge on that was pending before this Court at the relevant time. It is also the admitted case of the bank as can be seen from the extracted portion of the impugned Annexure PG order that the Scheme i.e. applicable in the case of the petitioner is Annexure 2003 Scheme. It is not in dispute that 2003 Scheme provides for compassionate appointment. It has also to be seen when the application for compassionate appointment was rejected on 7.12.2004, the petitioner had approached this Court in CWP No. 687 of 2005 and that was disposed of by judgment dated 30.5.2007 and at that time the bank did not have any case that new Scheme had come into operation in 2005. This court directed the bank to consider the matter afresh. The bank passed order dated 16.11.2007. The bank did not have a case that in the case of petitioner it is the new Scheme that would apply. When the bank filed the review petition again in CWP No. 1416 of 2008 also, the bank did not have such a contention. In the LPA also there was no such contention. The bank could not have in the factual matrix of the case taken such a contention since in the case of the petitioner the application was not pending

when new Scheme was introduced in the year 2005 since the application had already been rejected on 7.12.2004 and that was under challenge before this Court and CWP No. 687 of 2005 was pending before this Court.

5. It is unfortunate if not sad that such a model institution like State Bank of India on the face of such admitted factual position has dragged a poor widow before this Court, five times. We do not find any ground for review since there is no error apparent on the face of record or on any other available grounds to review the judgment. Though review petition should have been dismissed with exemplary costs, we reluctantly refrain from doing so because that would have way for another round of litigation for the bank and the poor widow would be dragged for another litigation. The review petition is dismissed.

6. Learned counsel for the review petitioner-bank expressed an apprehension that the case will be treated as a precedent for other cases. We do not find any basis for such apprehension since the instant case has a peculiar factual matrix and it cannot be a precedent as such. Since the review petition has been dismissed, we direct the petitioner to comply with the decision rendered by this Court in LPA No. 59 of 2010 within a month.

**(Justice Kurian Joseph),
Chief Justice.**

April 29, 2011
(hem/vt)

**(Justice Kuldip Singh),
Judge.**