

(2003) 10 AHC CK 0068

Allahabad High Court

Case No: C.M.W.P. No. 36941 of 2002

Smt. Kiran Lata Jauhari

APPELLANT

Vs

Chief General Manager, State
Bank of India and Others

RESPONDENT

Date of Decision: Oct. 9, 2003

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 21, 39

Citation: (2004) 1 AWC 96 : (2004) 1 UPLBEC 801

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: R.K. Yadav, for the Appellant; A.K. Mishra, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.

Heard Sri Raj Karan Yadav for petitioner and Sri A. K. Misra for State Bank of India.

2. Brief facts giving rise to this writ petition are that petitioner's husband Late Sri K. K. Jauhari was working as Senior Assistant in Shyamganj Branch of State Bank of India. He died in harness on 4.4.2001, seven and half years before his superannuation, leaving behind petitioner as his widow, two daughters and two sons. Both the daughters were married before his death. Petitioner made an application on 8.8.2001 for compassionate appointment to her son Mona deep Mona. The application was recommended by the Branch Manager. It was, however, dismissed by the Chief General Manager, Local Head Office, Lucknow. The order was communicated to petitioner by the Branch Manager of the Bank on 6.6.2002.

3. In the counter-affidavit, the respondents have relied upon a scheme for appointment on compassionate ground which provides that where the retirement benefits and family pension given to the dependents of the deceased employee are sufficient to take care of the financial need, compassionate appointment shall not be

offered. It is submitted that petitioner received Rs. 7.61 lacs as terminal benefits and is receiving family pension of Rs. 6,703 (including basic Rs. 3,574 and Dearness Allowance Rs. 3,129). It was found that taking into account the interest at 9% over the terminal benefits and other assets of Rs. 1.43 lacs, excluding the liability disclosed by the petitioner of Rs. 2.25 lacs, after deduction of tax on interest, will get net monthly interest, of Rs. 11,718 p.m. to the family, from all sources. In the circumstances it was found that petitioner shall not face such financial hardships which may entitle compassionate appointment to her son.

4. Counsel for petitioner has relied upon the judgment of this Court in *Dhiraj Kumar Dixit v. General Manager (Personal), U.C.O. Bank, Calcutta* (2003) 1 UPLBEC 20. In this case this Court considered the scheme, and found that the scheme virtually defeats the object and purpose of compassionate appointment and while declaring Clauses 7 and 8 of the scheme of recruitment of dependent of deceased employee on compassionate ground, as arbitrary and irrational, quashed the order directing respondent to consider her representation afresh.

5. Counsel for respondents has relied upon the Division Bench decisions of this Court in Writ Petition No. 23351 of 2003, *Om Prakash Ram and Anr. v. Central Administrative Tribunal, Allahabad and Ors.*, decided on 23.5.2003 ; S. A. No. 447 of 1999, *Jadwatt Devi and Ors. v. State Bank of India*, decided on 27.7.1999 and [Anand Kumar Vs. Union of India \(UOI\) and Others](#), as well as decisions of learned single Judge in Writ Petition No. 5659 of 2000, *Anurag Yadav v. Chief General Manager, State Bank of India, Lucknow and Ors.*, decided on 1.4.2002, and *Kishore Singh v. S.B.I., Kanpur* 2001 (1) CLR (All). In these decisions the Division Benches have denied compassionate appointment where the financial condition of the dependents, did not justify any such appointments.

6. There is a series of decisions of Apex Court which gives ample guidelines in these matter. An extract from the decision given in *Om Prakash Ram and Anr. v. Central Administrative Tribunal, Allahabad and Ors.* is quoted as below :

"In [Smt. Sushma Gosain and Others Vs. Union of India \(UOI\) and Others](#), the Apex Court held as under :

"It can be stated unequivocally that in all claims for appointment on compassionate ground, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant."

7. The aforesaid judgment was approved and the principle laid down therein was reiterated by the Hon'ble Supreme Court in [Smt. Phoolwati Vs. Union of India and Others](#),

8. In [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), the Hon"ble Apex Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court has observed as under :

"It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying-in-harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. 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 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.... Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased..... The decision does not justify compassionate employment either as a matter of course..... 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.

9. The same view has been reiterated in [Jagdish Prasad Vs. State of Bihar and Another](#) ; [State of Bihar and others etc. Vs. Samsuz Zoha etc.](#) ; [Himachal Road Transport Corporation Vs. Dinesh Kumar](#), and [Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai](#) . It has categorically been held that compassionate employment cannot be claimed as a matter of course not being a vested right.

10. In [Haryana State Electricity Board and another Vs. Hakim Singh](#) , the Hon"ble Apex Court placed reliance upon the Judgments referred to above and observed that the object of providing for compassionate employment is only to relieve the family from financial hardship, therefore, an "ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment".

11. Similarly, in [Haryana State Electricity Board Vs. Naresh Tanwar and Another](#), the Hon"ble Apex Court reiterated and followed the law laid down in Umesh Nagpal's case (supra) and directed the applicants involved therein to apply for employment on compassionate ground "by giving full details of the family circumstances and the economic conditions."

12. In [Director of Education \(Secondary\) and Another Vs. Pushpendra Kumar and Others](#), the Apex Court has observed as under ;

"The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both the ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provision, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds for the dependant of a deceased employee,"

13. In [Chairman, Bihar Rajya Vidyut Board Vs. Chhathu Ram and Others](#), the Hon"ble Supreme Court held that in absence of the statutory provisions, an adopted son cannot claim appointment on compassionate ground. Similarly, in General Secretary, American Express Bank Union v. American Express Bank Ltd. (1999) SCC 1235 , the Hon"ble Supreme Court held that mere adoption of recruitment policy in

pursuance of a settlement between the union and the employer for compassionate employment of the specified categories of relations of employees on their retirement, death or incapacitation, cannot be enforced unless adopted by the employer by bringing the Standing Order/Statutory Rule. Similarly, in [West Bengal State Electricity Board and Others Vs. Samir K. Sarkar](#), the Hon''ble Apex Court held that embargo on compassionate employment in case of death of employee within two years prior to reaching the age of superannuation, was not invalid.

14. Undoubtedly, in [Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others](#), the Hon''ble Supreme Court held that appointment on compassionate ground is not a vested right but it should not be denied in deserving cases for the reason that it would be tantamount to denial of economical and social Justice as enshrined in the Constitution and law must be, in its adaptability and flexibility, applied depending upon a situation for the benefit of the society.

15. In [Sanjay Kumar Vs. The State of Bihar and Others](#), the Hon''ble Supreme Court again reiterated that the purpose of the rules providing for compassionate employment is only to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood, but such an appointment cannot be held as if a reservation for the dependents of the deceased Government servant who died in harness. In *Regional Manager, A.P.S.R.T.C., Nellore v. C.M. Pawana Kumari* AIR 2001 SCW 4779, the Apex Court held that direction cannot be issued to appoint a person on compassionate ground de hors the scheme framed by the employer nor the Court has a power to modify the scheme or rules framed in this regard. Similar view has been reiterated in the *Divisional Manager, A.P.S.R.T.C. v. K. Radha Krishna* AIR 2001 SCW 5190, while deciding a case of appointment on compassionate ground under Re-employment Children Quota provided under the circular issued by the Corporation.

16. In *Surya Kant Kadam v. State of Karnataka and Ors.* 2001 (2) AWC 1128 : AIR 2001 SC 3145, the Apex Court held that in absence of any statutory rules, appointment on compassionate ground can be governed by the executive instructions and in spite of the fact that the said instructions may not have a statutory force, the same are bound to be observed by the employer.

17. In [State of Haryana and Others Vs. Vipin Kumar](#), the Apex Court held that compassionate employment is not given to offer a status on a family and no person can claim to have the same post and if rules/executive instructions provide that appointment shall be made on one stage below, it can be made not only next below post but to any other lower post as the rules provide only that the appointment may be offered at least one step below the post the deceased Government Servant was holding and there can be no bar in offering still a lower post for the reason that the purpose of appointment on compassionate ground is to redeem the family from financial constraints and not to confer any other benefit or status.

18. In [Sail and Another Vs. Awadhesh Singh and Others](#), the Hon"ble Supreme Court held that if rule prohibits an appointment on compassionate ground if any other member of the family is already in service, the said Rule is valid and no direction can be issued against such a scheme.

19. While reiterating the purpose of making appointment on compassionate ground, the Hon"ble Supreme Court, in [Haryana State Electricity Board Vs. Krishna Devi](#), held that the main object behind giving such employment is to provide immediate financial help to the family of the deceased employee. Such appointment cannot be made in absence of Rules or instructions.

Application for such employment must be made within the period prescribed by the Rules/Instructions. 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.

20. The object and purpose of compassionate appointment as stated in the aforesaid Apex Court's decisions is to tide over immediate financial crisis faced by the dependent of the deceased. The appointment is not given as a matter of right of employment. It is an exception to the general rule to provide immediate relief to the deceased family and to lake care of financial hardship suffered by the family. In the present case, the petitioners have not denied that they will be beneficiaries of the amount, detailed in the counter-affidavit. With an income of Rs. 11.718 per month, and with no further liabilities of marriage of her daughters, the widow and sons cannot be said to have been left by the deceased in penury. They cannot be said to be suffering from such financial hardship or distress to be offered appointment in bank as of right. With a regular steady and recurring income, the family cannot claim a right to exception in appointment. The ratio of decisions of Supreme Court and Division Benches of this Court, saves the scheme from the vice of arbitrariness or invalidity on the touchstone of Articles 14, 16, 21 or 39 of the Constitution of India.

21. Although in Dhiraj Kumar, the judgment of Umesh Kumar Nagpal and Balbir Kaur, has been referred to but the said judgment does not take into account the long chain of established principles of law of compassionate appointments laid down by judgments of Supreme Court, as well as the four Division Bench decisions which were rendered earlier to the Judgment in Dhiraj Kumar Dixit's case.

22. Following the decision of Apex Court and the Division Bench's of the Court, as above, I do not find any ground to interfere in the matter. The writ petition is, accordingly, dismissed.