

## **Smt. Snigdha Chakraborty Vs Assistant General Manager, Region - III, State Bank of India and Others**

**Court:** Calcutta High Court

**Date of Decision:** Aug. 29, 2013

**Acts Referred:** Constitution of India, 1950 " Article 226

**Hon'ble Judges:** Asim Kumar Mondal, J

**Bench:** Single Bench

**Advocate:** Sirsanya Bandopadhyay and Mr. Sarosij Dasgupta, for the Appellant; Ashwin Kumar Routh, Sudeep Pal Choudhury and Mr. Indrajit Bhattacharjee, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

Asim Kumar Mondal, J.

This is a writ application filed under article 226 of the Constitution of India in the nature of mandamus for

directions upon the respondent for appointment of the petitioner Smt. Snigdha Chakraborty wife of late Utpal Chakraborty for appointment in the

banking service in compassionate ground. The petitioner is a house wife having two sons both physically and mentally handicapped. The elder one

is aged about 24 years and younger son is aged about 13 years at present. The husband of the petitioner late Utpal Chakraborty was the employee

of State Bank of India and lastly he was posted at Jalpaiguri Main Branch State Bank of India at Jalpaiguri as Senior Assistant. The husband of the

petitioner suddenly died at the age of 49 years on 11.12.2002, within his course of employment, due to cardiac respiratory trouble. The deceased

husband of the petitioner was the sole bread earner in the family.

2. Petitioner made an application before the Bank Authority for appointment in the banking service in a suitable post on compassionate ground.

The said application was filed within due time on 11.1.2003.

3. The respondent Bank did not give her the appointment and the said application dated 11.1.2003 was kept pending for more than two years.

The petitioner was informed that her application is rejected on 29th August, 2005.

4. Being aggrieved by such rejection, the petitioner has moved the present writ application.

5. The respondent Banks contested the writ application by filing affidavit-in-opposition stating inter alia that the scheme for appointment on

compassionate ground has been abolished and/or withdrawn and a new scheme for appointment of ex-gratia lump sum amount in lieu of

appointment on compassionate ground has been introduced on and from August 4, 2005.

6. The petitioner is not entitled to claim appointment on the compassionate ground in the respondent Bank being one of the family members of an

employee who died in harness in terms of a scheme which is framed following the guidelines issued by the Government of India and the law laid

down by the Hon"ble Supreme Court and having not fulfilled the requirements as laid down in the said scheme and as well as the family condition

of the deceased employee was not found to be penurious by the respondent Authority.

7. It is the further case of the respondent that appointment on compassionate ground cannot be claimed after lapse of time, when the crisis is over.

The case of the petitioner is not an exceptional case of a financial distress due to the death of her husband. The respondent authority had come to a

reasonable conclusion of non-sustainability of the claims of the petitioner and as such respondent authority is not providing appointment to the

petitioner.

8. Mr. Sirsanya Bandopadhyay with Mr. Debanik Banerjee appears on behalf of the writ petitioner. It is submitted that the application filed by the

petitioner before the competent authority of the Bank for appointment on the compassionate ground on 11th January, 2003. The respondent Bank

kept the said petition pending for more than two years and informed the petitioner on August 29, 2005 that her application was rejected. Ld.

Advocate for the writ petitioner fairly submits that demand of appointment under compassionate ground was never a right unless the case of the

petitioner is an exceptional one. The respondent Bank is responsible for delay of eight years. The laches on the part of the respondent Bank in

giving the appointment under compassionate ground should not act against the right of the petitioner. The respondent Bank tight over the

application for over two years and thereafter filed an affidavit to the writ petition after six years. Petitioner has a quite exceptional case that anyone

can have applying for an appointment under compassionate ground. The petitioner has filed one supplementary affidavit in support of the fact that

the cost of living has increased many a times within the spent of last ten years. The sons of the petitioner are physically and mentally handicapped.

Petitioner has to spent a considerable amount of money towards the treatment of her son. Case of the petitioner may be considered as an extreme

exceptional case for the shake of humanity and as such, petitioner should be granted the reliefs as prayed for. Court may consider whether the case

of the petitioner is exceptional and/or rare or not and whether the same warrants humanitarian considerations culminating into compassionate

appointment. The principles of compassionate appointment cannot be formulated as a straight jacket formula. Every case has to be evaluated in the

backdrop of its facts and circumstances on behalf of the petitioner further submitted that Hon"ble Apex Court in a case reported in Umesh Kumar

Nagpal Vs. State of Haryana and Others, have been observed that the general rule should be followed strictly in every case but there are some

exceptions carved any interest of justice and to meet certain contingencies. So, the case of the petitioner may be considered favourable to meet the

contingencies.

9. Ld. Advocate draws my attention that petitioner"s husband used to earn Rupees ten thousand nine hundred sixty six at the time of his death i.e.

in the year 2002. The petitioner gets a family pension which is about six thousand seven hundred and twenty seven. Such amount is not enough to

run a family having a widow, two mental and physical handicapped sons. The cost of living has increased many a time within the spent of last ten

years. The life of the petitioner has become worse. The arbitrary action of the respondent Bank thus should not be entertained.

10. In reply Mr. Ashwin Kumar Routh appearing with Mr. Sudip Paul Chowdhury and Mr. Indrajit Bhattacharya for the respondent submits that

after death of the husband of the petitioner, the legal heirs got a sum of Rs. 5,81,000/- (Rupees five lakh eighty one thousand) as terminal benefit

they also got a sum of Rs. 2,50,000/- (Rupees two lakh fifty thousand) from monthly income scheme with Post Office. Petitioner used to receive

her pension at the material point of time, Rs. 5,263/- (Rupees five thousand two hundred and sixty three). The monthly income on account of

interest was Rs. 1466/- (Rupees one thousand four hundred and sixty six). The total income of the petitioner was Rs. 6727/- (six thousand seven

hundred and twenty seven). The family of the deceased has its own house to live. It is further submitted that petitioner submitted an application for

appointment on compassionate ground to the respondent authorities on or about March 13, 2003. The concerned authorities after considering the

various aspects of the matter including the scheme which was relevant at the point of time, declare that the proposal for such employment on 23rd

June, 2003, was not sustainable, as the condition of the family was not considered as penurious. The petitioner issued legal notice demanding for a

job on compassionate ground on July 26, 2005. The respondent authorities advice the petitioner that the proposal was forwarded to the

appropriate authority at the material point of time but the appropriate authority has declared the proposal not sustainable after considering all

aspects. Mr. Bandopadhyay further submits that Hon"ble Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, has provides

factors to be determined for the job of compassionate appointment. Appointment on compassionate grounds cannot claim as a matter of right and

the same has to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the

family of the deceased. The compassionate appointment are to be made in accordance with the rules considering the financial condition of the

family of the deceased and also the retirement benefit received by the heirs. The appointment on compassionate ground could be made only if the

scheme is still in force and nor after it is abolished/withdrawn.

11. The appointment is to be considered as per the parameters laid down in the present new scheme which is in forced. The decision of the

authority regarding penury is not to be interfered by any Court, as authority decides the case on factual and objective findings. Mr. Banerjee further

submits that the scheme for compassionate appointment has already been abolished by replacing new ex-gratia payment. The petitioner now is

getting more amount than she earned at a material point of time. Respondent authority cannot give any appointment on compassionate grounds

deviating the scheme merely on sympathetic grounds. This Court in exercising the jurisdiction of judicial review under article 226 of the Constitution

of India cannot interfere with a decision of a authority but can review the decision making process only in as much as in the instant case the

decision making process of the respondent was legal and fair.

12. Ld. Advocate in support of his submissions and arguments relied upon the decisions of Hon"ble Apex Court and High Court reported in

1. Umesh Kumar Nagpal Vs. State of Haryana and Others, .
2. Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another,
3. State of Manipur Vs. Md. Rajaodin,
4. State of Haryana and Another Vs. Ankur Gupta,
5. General Manager (D and PB) and Others Vs. Kunti Tiwary and Another,
6. Punjab National Bank and Others Vs. Ashwini Kumar Taneja,
7. Commissioner of Public Instructions and Others Vs. K.R. Vishwanath,
8. State Bank of India and Another Vs. Somvir Singh,
9. Union of India (UOI) and Another Vs. B. Kishore,
10. Local Administration Department and Another Vs. M. Selvanayagam @ Kumaravelu,
11. Union of India (UOI) and Another Vs. Shashank Goswami and Another,

12. State Bank of India and Another Vs. Raj Kumar,

13. State Bank of India and Another Vs. Yashpal Kaur reported in 2007 (Supreme) 179.

13. Let me consider some facts which are not disputed. Petitioner filed application for employment in the Banking service on compassionate

ground on or about 13th March, 2003. At the relevant time of submission of application for appointment in Banking Service on compassionate

ground by the petitioner, the scheme for appointment on compassionate ground was in existence.

14. The said scheme has been withdrawn/abolished and a new scheme for payment of Ex-gratia lump sum amount in lieu of appointment on

compassionate ground has been introduced on and from 4th August, 2005. It is not disputed that at the time of death, take home per month salary

of the deceased employee was Rs. 10,966/- (Rupees ten thousand nine hundred and sixty six) with which he used to manage his family expenses

comprising of two sons, wife and himself. It is not disputed that one of the son of deceased employee was mentally challenged. The family has their

own house. The Bank Authority finally informed the petitioner on 29.08.2005, that the proposal for compassionate appointment of the petitioner

was declined after considering all aspects.

15. The grounds as made out by the petitioner in her petition for such appointment is that her husband Utpal Chakraborty was appointed in the

S.B.I. in the year 1980 and lastly he was posted as Senior Assistant. He served in the Bank about 22 years. He died on 11.12.2002 at the age of

49 years. He was the sole bread earner in the family. Petitioner is passing very hard days along with her two male children, and both are

handicapped depending upon the small interest, which incurred from the total amount of Rs. 1,40,000/- (Rupees one lakh, forty thousand) which

she get after deduction of all dues from the total amount of monetary benefit including leave salary, gratuity and Provident fund.

16. Pursuant to the order dated 27.06.2011 of this Court, petitioner affirmed a supplementary affidavit to substantiate monthly expenses incurred

by her with respect to maintenance of her two mentally challenged sons. The elder son of the petitioner is mentally challenged person and is not

likely to respond to any sorts of treatment. The younger son is an orthopedically mentally challenged person and is not likely to respond any sorts

of treatment. Petitioner alleges that she has to spent an amount of Rs. 10,764/- (Rupees ten thousand seven hundred and sixty four) per month to

meet the expenses towards travelling expenses medicine Doctors" fees salary to nurses and maids for looking after the children, stationery, food,

electricity, telephone, cooking gas etc. So she is passing her days in great hardship to meet all the expenses out of income of Rs. 6,808/- (Rupees

six thousand eight hundred and eight). Petitioner submits that her case is the most exceptional case and therefore her case should not be considered

in a straight jackets formula.

17. Ld. Advocate appearing on behalf of the opposite party submits that the prayer of the petitioner for appointment in Banking Service on

compassionate ground has been considered under the scheme prevailing at the relevant point of time. The representation of the petitioner was

considered in view of the enquiry conducted by the Bank Authority with regards to certain factual aspects. From the said enquiry it appears that

petitioner is entitled to get Rs. 5,81,000/- (Rupees five lakh eighty one thousand) as terminal benefit out of said terminal benefit an amount of Rs.

4,65,000/- (Four lakh sixty five thousand) was deducted towards the liability of the deceased employee. Family pension of the petitioner is Rs.

5,263/-(Five thousand two hundred and sixty three) and monthly interest out of the 80% of the balance terminal benefit and investment would Rs.

51,466/-(Rupees fifty one thousand four hundred and sixty six) and such petitioner income would come Rs. 6,727/- (Rupees six thousand seven

hundred and twenty seven) per month. Apart from the said amount there is income from MIS at Post Office of an amount of Rs. 2,50,000/-

(Rupees two lakh fifty thousand).

18. A chart is filed showing the calculation of the factors in order to ascertain the financial position of the family of deceased employee.

19. Let me consider whether the decision of the Bank Authority responding to give appointment to the petitioner is wholly illegal and arbitrary, in

view of the facts and circumstances as stated by the petitioner in her petition in support of her prayer for appointment on compassionate ground.

20. We are to keep in mind the criterion for appointment on compassionate ground under employer Bank's Scheme formulated pursuant to

Umesh Kumar Nagpal Vs. State of Haryana and Others, The petition filed by the petitioner for appointment on compassionate ground is based on

the premises that she was dependant in the deceased employee. The said deceased employee was the only bread earner. The prayer is to be

considered in the light of observation in Umesh Kumar Nagpal Vs. State of Haryana case. In the said case it has been observed that as a rule

Public Service appointment should be made strictly on the basis of open invitation of application on merit. The exception to the general rule of

appointment may be considered in the case of death of an employee while in service living his family without any means of livelihood. The object is

to enable the family to get over sudden financial crisis.

21. Therefore, we are to considered as to whether the Bank Authority has taken into all factors including the financial condition to the deceased

family for determination as to whether the family in penury and hand to mouth condition.

22. The following factors should be taken into account for determining the financial condition of the family as per the scheme on compassionate

grounds for dependants of the deceased employee;

1. Family Pension

2. Gratuity amount required.

3. Employees/ Employer"s contribution to the Provident Fund.

4. Any compensation paid by the Bank or the welfare fund.

5. Proceeds of LIC of the parties and other investment of the deceased employee.

6. Income of family from other grounds.

7. Income of other family members.

8. Size of the family and verifiable inabilities if any.

23. In view of observation of Apex Court in State Bank of India & Other Vs. Yashpal Kaur reported in 2007 (3) Supreme 179, decision

regarding penury not to be interfered.

24. The Authority concern, as it appears for the calculating chart to determine the financial condition, has followed the rules of the scheme strictly.

In fact, there is no scope to consider the expenses of the family for the present days. The case of the petitioner cannot be said as a very very

exceptional one, which entitled the petitioner, an appointment on compassionate ground, in spite of non-fulfilment of the criterion that the deceased

employee left his family without any means of livelihood.

25. This Court should not pass any order in the nature of mandamus for directions upon the respondent Bank for appointment of the petitioner in

Banking service on compassionate ground as petitioner has failed to make out a case to show that her husband left her in sudden acute financial

crisis which should be considered favourably on humanitarian grounds. The income of the petitioner would come Rs. 6,727/- (Rupees six thousand

seven hundred and twenty seven) at the relevant time which the Authority concerned considered reasonable to run the family after taken into the

determining factors for ascertaining the financial condition as per the scheme on compassionate grounds for the dependents on the deceased

employee.

26. In exercising the jurisdiction of judicial review under article 226 of the Constitution of India, this Court cannot interfere with the determination

of the authority, which has not been suffer from any irregularity or illegality. Thus, the writ application is dismissed without costs.