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(2007) 113 FLR 947 : (2007) **25 LCD 357**

**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

SINGLE BENCH

SMT. BASMATI DEVI — Appellant

Vs.

STATE BANK OF INDIA AND OTHERS — Respondent

( Before : Narayan Shukla, J )

Decided on : 11-12-2006

**A. Service Law Compassionate Appointment Eligibility Criteria Financial Hardship** The primary purpose of compassionate appointment is to alleviate immediate financial hardship faced by the family of a deceased employee, not to provide an alternative form of succession to the deceased's employment; therefore, such appointments are an exception to the general rule of open recruitment and are contingent on the family's financial condition. (Paras 2, 13, 19)

**B. Service Law Compassionate Appointment Consideration of Retiral Benefits and Family Pension** The amount received as family pension and other terminal benefits (gratuity, provident fund, LIC proceeds, and other investments) must be considered when assessing the financial condition of the deceased employee's family for compassionate appointment. Refusal of compassionate appointment based on the receipt of such benefits is permissible if the family is deemed not to be in penury. (Paras 6, 8, 9, 12, 14, 16)

**C. Service Law Compassionate Appointment Scheme Provisions** The terms of a bank's specific compassionate appointment scheme, which may include criteria for financial condition (such as family pension, gratuity, PF contributions, and other income/assets), are binding and valid, especially if upheld by higher courts. If a scheme explicitly directs the consideration of

**retiral benefits, this aspect must be adhered to. (Paras 12, 14, 15, 20, 21)**

**D. Service Law Compassionate Appointment Judicial Review and Discretion of Appointing Authority Courts should not generally interfere with the discretionary decisions of appointing authorities regarding compassionate appointments by re-evaluating circumstances as an appellate court, especially when the decision aligns with a valid scheme. The competent authority's objective findings based on full facts should not be disturbed unless there is clear illegality. (Paras 14, 19)**

**E. Service Law Compassionate Appointment No Vested Right An applicant for compassionate appointment does not have a vested or hereditary right to the employment; they are only entitled to preferential treatment against the general principle of appointment, subject to the employer's discretion and the scheme's criteria. The employer's duty is to properly consider the application, not to guarantee appointment. (Para 18)**

#### Cases Referred

- [Union Bank of India and Others Vs. M.T. Latheesh](#), (2006) 111 FLR 77 : (2006) 3 LLJ 791 : (2006) 8 SCALE 145 : (2006) 7 SCC 350 : (2006) SCC(L&S) 1646 : (2006) 5 SCR 696 Supp
- [General Manager \(D and PB\) and Others Vs. Kunti Tiwary and Another](#), (2004) 3 LLJ 1136 : (2004) 7 SCALE 155 : (2004) 7 SCC 271 : (2004) SCC(L&S) 943
- [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), (1994) 68 FLR 1191 : (1994) 3 JT 525 : (1994) 2 SCALE 834 : (1994) 4 SCC 138 : (1994) 3 SCR 893 : (1995) 1 SLJ 229 : (1994) 2 UJ 322
- [Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others](#), AIR 2000 SC 1596 : (2000) 90 CLT 450 : (2000) 86 FLR 197 : (2000) 7 JT 135 : (2000) 6 JT 281 : (2000) 2 LLJ 1 : (2000) 4 SCALE 670 : (2000) 6 SCC 493 : (2000) SCC(L&S) 767 : (2000) AIRSCW 1745 : (2000) 4 Supreme 602
- [Punjab National Bank and Others Vs. Ashwini Kumar Taneja](#), AIR 2004 SC 4155 : (2004) 102 FLR 1023 : (2004) 6 JT 418 : (2004) 3 LLJ 536 : (2004) 7 SCALE 16 : (2004) 7 SCC 265 : (2004) SCC(L&S) 938 : (2004) 3 SCR 597 Supp : (2005) 1 SLJ 30 : (2004) AIRSCW 4602 : (2004) 6 Supreme 180

Final Result : Dismissed

#### JUDGMENT

Shri Narayan Shukla, J.—Heard Mr. H.G.S. Parihar, learned Counsel for the petitioner and Mr. Sudeep Seth, learned Counsel for the respondents.

By means of the present writ petition, the petitioner has prayed for issuing a writ of mandamus commanding the opposite parties particularly opposite party No. 3 to give appointment to the petitioner on compassionate ground on any suitable post ignoring the family pension, post retiral benefits and assets of the family of the deceased, The petitioner has also prayed for quashing the order dated 19.11.2002 passed by the Branch Manager, Region-IV Zonal Office Gorakhpur, whereby the petitioner's request for compassionate appointment has been rejected on the ground that the retiral dues of the deceased employee is Rs. 5.2 lacs and the family pension is Rs. 3900/- per month as well as monthly relief from MVVS is Rs. 375/- is being paid to the family of the deceased employee. Thus including family pension and relief from MVVS and interest on investments, the family of the deceased is getting Rs. 7499/- per month.

2. On the strength of the decision of Hon'ble Supreme Court rendered in the case of [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), by taking into account the facts of the monthly income of the family of the deceased, the competent authority has rejected the claim of the petitioner for providing htm employment on compassionate ground.

3. The petitioner claims that there is a scheme in the respondent-Bank for compassionate appointment under the terms of which the petitioner is entitled for giving him appointment.

4. The petitioner submits that the benefit of the compassionate appointment which is permissible under the scheme framed by the Bank cannot be denied on the ground of payment of retiral benefits of the employee and family pension etc.

5. In support of his contention, the learned Counsel for the petitioner has cited the following cases:

6. In the case [Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others](#), the factual score in issue depicts that on 22.1.1993 a request for compassionate employment to appellant 2, who is the holder of a valid heavy vehicle driving licence, was made, but the same was denied for consideration, then the appellant moved the High Court to file a writ petition, the High Court also negated the compassionate appointment. The appellant filed SLP before the Hon'ble Supreme Court. In defence the respondent contended that the Family Benefit Scheme was introduced on 21.11.1992 to the effect that the family being unable to obtain regular salary from the management could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the Company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee (deceased). It was also contended on behalf of the respondent that the adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. The Hon'ble Supreme Court held that this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the

bread earner can only be absorbed by some lump sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

7. Hon'ble Supreme Court has further held that the provident fund is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. The family needs the money in lump sum and availability of this amount is the only insulating factor to such a grief-stricken family. The amount is payable in one lump-sum and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee,

8. In the case of *Govind Prakash Verma v. Life Insurance Corporation of India and Ors.* 2005 SCC (L&S) 590, the Hon'ble Supreme Court has held as under:

In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rule. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.

9. In the case of *State Bank of India and Ors. v. Ram Piyarey and Ors.* (2001) 2 UPLBEC

1571 the Hon'ble Supreme Court has held as under:

The other decision relied upon by the learned Advocate for the appellants in the case of [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), in our view is also of no assistance to the appellant since the said decision has only laid down that the compassionate appointment can be offered as a matter of course irrespective of the financial crisis.

In our opinion, the learned Single Judge was correct in holding that the receipt of family pension by the widow and a sum of Rs. 1.42 lacs paid to widow after deducting the loan cannot be taken to be a good ground for rejecting the case for appointment on compassionate ground, It is common knowledge that the widow is entitled to family pension and other benefits in the event her husband dies in harness. If the plea of the Bank is accepted then no appointment can be made on compassionate ground and the scheme of the Bank shall have no meaning. We are of the view that the learned Single Judge was quite justified in allowing the writ petition.

10. Respondents have filed counter affidavit as well as supplementary counter affidavit, in which they have taken same stand as has been taken in the order impugned.

11. In support of his contention Mr. Sudeep Seth, learned Counsel for the respondents has placed reliance on the following cases:

12. In the case of [Punjab National Bank and Others Vs. Ashwini Kumar Taneja](#), the Hon'ble Supreme Court has held as under:

One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in G.M. (D & PB) v. Kunti Tiwari. It was categorically held that the amounts have to be taken into consideration.

In the instant case, there was a scheme called "Scheme for Employment of the Dependants of the Employees, who Die While in the Service of the Bank-service on Compassionate Grounds" (in short "the Scheme") operating in Appellant Bank which categorically provides as follows:

financial condition of the family-

The dependants of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specially keeping in view the following:

(a) family pension.

(b) Gratuity amount received.

- (c) Employee's/employer's contribution to PF.
- (d) Any compensation paid by the Bank or its Welfare Fund.
- (e) Proceeds of LIC policy and other investments of the deceased employee.
- (f) Income of family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc.

It is most respectfully submitted that the Board of Directors of the petitioner Bank had provided the above said Scheme, which was based upon the guidelines circulated by Indian Banks Association to all the public sector banks which in turn are based upon the law laid down by this Hon'ble Court in the case of *Umesh Kumar Nagpal v. State of Haryana*. The Scheme after approval was circulated vide PDCL 6/97 read with PDCL 11/99 dated 17.4.1999."

13. In the case of [General Manager \(D and PB\) and Others Vs. Kunti Tiwary and Another](#), the Hon'ble Supreme Court has held as under:

The policy in question was framed by the appellant Bank pursuant to the decision of this Court in *Umesh Kumar Nagpal v. State of Haryana* where this Court has said that appointment by way of compassionate appointment is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. This exception was to be resorted to in cases of penury where the dependants of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet.

14. In Special Appeal No. 996 of 2006 (*Chief General Manager, SBI and Ors. v. Durgesh Kumar Tiwari*). the Hon'ble Supreme Court has held as under:

As can be seen from the narration of the development of law at the out set, the pensionary benefits could be taken into account for the purpose of determining the financial condition of the family of the deceased employee. Besides, in this particular case, this aspect of the matter was covered by the 1997 scheme which specifically provided for taking into account the retiral benefits. There was no challenge to the Scheme by the respondent. The decision of the High Court cannot, therefore, be sustained and is accordingly set aside, We are of the view that having regard to the settled legal position, the order of rejection of the application for compassionate appointment of the respondent was correct. Finally, we may observe that the High Court erred in reevaluating the circumstances mentioned in the order of rejection as if it were a Court of appeal completely overlooking the well known parameters for exercising discretion under Article 226 of the Constitution.

15. In the case of [Union Bank of India and Others Vs. M.T. Latheesh](#), the Hon'ble Supreme

Court in terms of the case of Umesh Kumar Nagpul (supra) has held that a scheme was framed by the Union Bank of India Departmental of Personnel Policy Section Scheme for appointment of dependants of deceased employees on compassionate grounds in which it was provided that the competent authority will take into account the financial condition of the family of the deceased employee.

16. The respondent applied for employment in the Bank on compassionate grounds, which was declined by the competent authority of the bank on the ground that the respondent's family was not indigent. The competent authority look into consideration the net terminal benefits of Rs. 5,47,495 received by the family after deducting the liability including the housing loan and personal loan. The competent authority also considered that the family of the deceased employee at the time had also received monthly family pension of Rs. 4468/-.

17. The respondent filed a writ petition in the High Court challenging the rejection order of the Bank to appoint the respondent on compassionate grounds, The learned Single Judge of the High Court allowed the writ petition on the ground that the respondent being eligible as per the Scheme formulated by the Bank was liable to be appointed on compassionate grounds. The appellant Bank filed writ Appeal No. 883 of 2003 before the Division Bench of the High Court alongwith a miscellaneous application being IA No. 181 of 2003 for ad interim stay. The Division Bench of the High Court dismissed the writ appeal by the impugned judgment. Being aggrieved with the dismissal of the appeal, the bank preferred the above appeal by way of SLP in the Hon'ble Supreme Court.

18. The respondent took protection of the decision of the Hon'ble Supreme Court in the case of Balbir Kaur (supra), in which the Hon'ble Supreme Court hold that the dependent does not automatically become entitled to get employment. The right that accrues to the applicant is a right to get preferential treatment against the general principle of appointment, subject to the discretion of the Bank. Further, the possession of relevant qualification does not create any vested right in the applicant to get appointed to a post specified by the scheme. The dependent of a deceased employee will not get any vested or hereditary right to succeed the deceased in the matter of employment. What he is entitled to is a preferential treatment for appointment as against the general principle of appointment. The employer is not under obligation to grant appointment to the dependents. The duty of the employer is only to properly consider the application.

19. Relying upon the decision given in G.M. (D&PB) v. Kunti Tiwary (supra) the Hon'ble Supreme Court distinguished the case of Balbir Kaur (supra) on facts and law on the ground that observation made therein is a general observation by the Court in the context of compassionate appointment and ultimately hold as under:

It is also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case ore been equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Learned Single, Judge and the Division Bench by directing appointment has

fettered the discretion of the appointing and selecting authorities. The bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new scheme because the financial status of the family is much above the criterion fixed in the new scheme.

20. In the present case the learned Counsel for the respondents has submitted that the scheme framed by the Bank for providing employment of the dependents of the deceased family has already been upheld, under which the petitioner has been provided monetary benefits and in light of which the respondents are not liable to provide compassionate appointment to the petitioner.

21. From perusal of the scheme framed by the bank as well the orders passed by the Hon'ble Supreme Court in the case of M.T. Latheesh (supra) I find that the same scheme has been upheld by the Hon'ble Supreme Court and under the terms of the scheme, the Hon'ble Supreme Court has negated the appointment.

Under the circumstances I find no error in the order dated 19.11.2002 passed by the opposite party No. 4.

The writ petition is dismissed.