

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP (C) Nos. 7495/2007**

Judgment reserved on: 25.03.2009

% Judgment delivered on: 19.05.2009

Laxmi Devi & others Petitioners
Through: Mr. Vivek B. Saharya, Advocate

versus

Syndicate Bank & Others Respondents
Through: Ms. Sumati Anand, Advocate

CORAM:
HON'BLE MR. JUSTICE KAILASH GAMBHIR

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| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be reported in the Digest? | Yes |

KAILASH GAMBHIR, J.

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1. By way of this writ petition filed under Art. 226 of the Constitution of India, the petitioner seeks quashing of the order dated 26.2.2005 passed by the respondent no. 2 and for giving appropriate directions to consider the case of the petitioner no.

2 for appointment on compassionate grounds under the employment of respondents on a suitable post.

2. The brief conspectus of the facts as set out in the petition are as under:

Shri Heera Lal, husband of petitioner No.1 and father of petitioner no.2 was a permanent employee and holding the post of clerk in Syndicate Bank at the Connaught Circus Branch. He was in service with the respondent for 16 years till death, and drawing a pay of Rs.6,387/- per month. Sh. Heera Lal died in harness on 11.9.1996 while he was under the employment of the Respondents. The deceased Heera Lal on his death left behind his legal heirs i.e. his wife aged about 45 years, the petitioner No.1, his eldest daughter aged 19 years, his elder son i.e. petitioner no.2 aged about 17 years and a younger daughter and son aged 15 years and 13 years respectively apart from his ailing mother. Out of the said legal heirs three children were minors at the time of his death. On his death the petitioners did not receive any financial and other benefits from the employer/respondents. The petitioner No. 1 filed an application dated 1.10.1996 with the respondent no.2 requesting therein to

consider her eldest son petitioner no.2 for appointment on compassionate grounds on suitable post to save the family members from starvation. It is submitted here that the eldest son namely Taru Chohla was studying in class-X at the time of death of his father late Sh. Heera Lal. Thereafter, the petitioner No.1 completed the requisite formalities as demanded by the respondents such as furnishing the details of assets and liabilities and also family income from other sources. The respondent felt that the petitioner no.2 was eligible to be granted appointment on compassionate grounds under the 1987 Scheme. The respondent officials had been assuring the petitioners that necessary appointment would be given to the petitioner no.2 at the earliest. Since much time had elapsed and the petitioners kept on running from pillar to post but the respondent had neither appointed petitioner no.2 nor had then given any reply to the representation of the petitioners. Being aggrieved, the petitioners filed a CWP No. 7336/2000 in this Hon'ble Court which was disposed of vide order dated 13.12.2000 by this court directing the respondents to decide the representation of the petitioners within three months. Pursuant to the said directions, respondents examined the matter and the

respondent No.2 vide letter dated 13.1.2001 rejected the application for appointment stating therein that the income of the family exceeded ceiling limits. Being aggrieved with the order dated 22.2.2001 the petitioners preferred another writ petition numbered as CWP No. 4922/2001. On 6.3.2002 the Hon'ble Single Judge passed the order dismissing the petitioners' writ petition. Being aggrieved of the order dated 6.3.2002 of Hon'ble Single Judge the petitioner filed an appeal numbered as W.A. No. 875/2002. After hearing the arguments in the appeal the Hon'ble Division bench was pleased to pass an order dated 7.4.2004 in favour of the petitioner. Hon'ble Court was pleased to observe that it remained to be seen whether petitioner no. 2's was to be considered under the respondent 1999 scheme or 1987 scheme as the application was filed by him in 1996, admittedly prior to the applicability of 1999 scheme. It was also observed by the Hon'ble Division bench that petitioner no.2's case for compassionate appointment should be considered afresh under 1987 scheme. Thereafter, on 2.8.2004 the petitioners wrote a letter to the respondents informing them of the order of Hon'ble Division Bench, for them to consider the petitioner no.2's case for compassionate appointment afresh

under 1987 scheme and pass appropriate reasoned order in the matter within three months of the receipt of this order. The petitioner also annexed a copy of the Hon'ble Division bench order dated 7.4.2004 along with the said letter. On the respondents inaction to pass any reasoned order, the petitioners again wrote another letter dated 14.9.2004 to the respondent no.1 & 2 to expeditiously dispose of the case of petitioner no.2 as the time got already elapsed on 7.7.2004. The respondent No.1 maintained a stony silence to the letter of the petitioner and the order passed by the Division Bench. The petitioner again wrote a letter dated 18.1.2005 requesting the respondent No.1 to consider the petitioner's case and pass a reasoned order on the same. On 26.2.2005, the respondent no.2 passed an erroneous order informing the petitioner no.1, that her request for considering her son's appointment on compassionate grounds was not being acceded to and could not be considered favourably as per the scheme applicable during the relevant period. Aggrieved with the said order, present petition is filed by the petitioners.

3. Mr. Vivek B. Saharya counsel for the petitioner contended that without considering important and relevant facts in mind

which are necessary to be considered for appointment of the petitioner no. 2 on compassionate grounds, his request was declined. The counsel urged that the competent authority erred in not appreciating the order dated 7.4.2004 of the Hon'ble Division Bench in W.A. No. 875/2002 in the correct perspective and did not comply with the said order as it did not pass the order within three months as directed by this court. The counsel urged that the deceased Sh. Hira Lal left his widow, two sons, two daughters and aged mother in penury and indigent conditions as he was the sole bread earning member of the family. The counsel maintained that the requirements under the scheme for compassionate appointment of the bank were fulfilled by the petitioners but still appointment was denied to the petitioner no. 2 on flimsy grounds. The counsel averred that the family benefit scheme and benefits received under it cannot be equated with the grant of compassionate appointment.

4. Per contra, Ms. Sumati Anand, counsel for the respondent contended that this court cannot sit as an appellate authority over the decision of the Bank rejecting the request of the petitioner for compassionate employment. The counsel submitted that upon the death of the deceased Sh. Hira Lal, the

bank sanctioned various terminal benefits to the tune of Rs. 4,62,349.52 after deducting the pending liabilities to the tune of Rs. 71,883/-. Therefore, the net assets falling in the hands of the petitioners were Rs. 3,90,466.52/-. The counsel urged that clearly the deceased Sh. Hira Lal left behind Rs. 3,90,466.52/- for his family members and therefore, it cannot be said that he left them behind in a state of penury, therefore, the respondent rightly rejected the application of the petitioners for compassionate appointment. The counsel submitted that be that as it may appointment on compassionate ground cannot be claimed as a matter of right.

5. I have heard learned counsel for the parties and perused the record.

6. Article 16(1) of the Constitution of India guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds of religion, race, caste, sex, descent. Public employment is considered to be a wealth. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the

rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become destitute. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion. In matter of compassionate appointment there cannot be insistence for a particular post. Out of purely 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 ends meet. Necessary provision is made in the various rules applicable to the Government, Semi-Government Departments, Statutory Corporations and Undertakings etc. for giving appointment to one of the

dependants of the deceased who may be eligible for appointment. Explaining the purpose of the compassionate appointment, the Hon'ble Apex Court in **Umesh Kumar Nagpal v. State of Haryana and Ors. - (1994) 4 SCC 138** observed as under:

“As a rule, appointments 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 interests 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 posts in Class-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.”**

7. It is well established that the High Court, while exercising jurisdiction under Art. 226 of the Constitution of India, does not act as a Court of appeal. The Court cannot order appointment on compassionate ground, de hors the provisions of the statutory regulations and instructions and that hardship of the candidate does not entitle him to compassionate appointment de hors the statutory provisions. High Courts and Administrative Tribunals cannot confer benefaction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments.

8. In the said case of **Umesh Kumar Nagpal (Supra)** The Hon'ble Supreme Court also observed that the said compassionate appointment cannot be claimed at any time and the same should be claimed within a reasonable period. The relevant paras in this regard are as under:

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7.It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis .”

9. There is no dispute whatsoever that the employer is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment de hors the scheme. In this regard in **State Bank of India and Anr. v. Somvir Singh (2007) 4 SCC 778** the Supreme Court held as under:

“10. There is no dispute whatsoever that the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment de hors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be. “

10. At this juncture we shall discuss the relevant provisions of the Scheme applicable in the instant case. The relevant portions of the said scheme are reproduced as under:

- 1.1.1 The bank may offer employment to any other dependent of the deceased employee.
- 1.1.2 Employee means a regular employee whether in the subordinate, clerical or officer cadres, whether confirmed or on probation and whether working full time or part time but will not include a temporary or casual employee or one appointed on contract.
- 1.1.3 Dependent means a son or a widow or a daughter or a brother or a sister of the deceased employee or any other near relative nominated by the widow on whom she will be wholly dependent.
- 1.1.4 In the case of the deceased married female employee, the benefits under this scheme will cover her husband. If he was solely dependent on her due to his incapacitation by accident, sickness etc.
- 1.1.5 The eligibility criteria to be satisfied for appointment in clerical and sub-staff cadre are spelt out in Annexure-I. However, should a dependent of the deceased employee not satisfy the eligibility criteria, the Managing Director and in his absence, Executive Director and Executive Director General Manager may suitably relax the minimum conditions of eligibility laid down for the recruitment of clerks/subordinate staff as the case may be, if such relaxation is found necessary while age and standard or qualifications are relaxed, the minimum qualifications for the post prescribed will not be relaxed.

1.1.6 In case the dependent of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority provided a request is made to the bank by the family of the deceased employee and the same may be considered subject to rules prevailing at the time of consideration.

1.1.7 In case the dependent of the deceased employee to be offered appointment does not possess suitable minimum qualifications, his/her cases may be considered within 4 years from the date of death of the employee to enable him/her to qualify in terms of qualification, provided a request to that effect has been made to the bank by the family of the deceased employee.

1.1.8 Application for appointment on compassionate grounds should be preferred within 1 year from the date of death of the employee.

11. A perusal of the aforesaid scheme of the year 1987 on compassionate appointment clearly brings out that the same does not talk about the criteria of penury or that the applicant applying under the said scheme should be leading a life of indigency. The deceased Hira Lal died on 11.09.1996 and application for compassionate appointment was made on 1.10.1996, and till then the 1999 scheme did not come into force, therefore, the Division Bench of this court vide order dated 7/4/2004 directed the respondents to consider the

application for compassionate appointment of the petitioner no. 2 as per the 1987 scheme.

12. In **General Manager (D&PB) and Ors. vs. Kunti Tiwary and Anr. (2004) 7 SCC 271**, the Hon'ble Apex Court observed that the State Bank of India, which was one of the party before the Apex Court had framed the policy on compassionate appointment after the Supreme Courts directions in **Umesh Kumar Nagpal (Supra)** wherein the Apex Court 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. In adoption of this principle, an office memorandum was circulated to all banks on 7-8-1996 emphasising that the observations of the Supreme Court would have to be complied with. The Indian Banks' Association also adopted the directive of this Court in **Umesh Kumar Nagpal case** in the Scheme which was proposed for appointment of heirs of deceased employees. This recommendation of the Indian

Banks' Association was accepted in the Scheme which was finally formulated on 1-1-1998 where the same criteria for determining the financial condition of the family was laid down. It may be noted that under the 1999 scheme it is mentioned in express language that appointment on compassionate grounds are to be made in favour of dependants of employees dying in harness and leaving their family in "penury" and "without any means of livelihood".

13. In the instant case, the language of the 1989 scheme is clear and it does not put forth any condition of the kind as may be found in the 1999 scheme wherein it is mentioned in express language that appointment on compassionate grounds are to be made in favour of dependants of employees dying in harness and leaving their family in "penury" and "without any means of livelihood". Further on perusal of the entire scheme, it is manifest that the scheme for compassionate appointment catered to two categories, viz. (a) dependants of deceased employees and (b) dependents of employees opting for voluntary retirement on medical grounds before attaining the age of 55 years. In case of the compassionate appointment, Para 1 deals

with appointment of dependants of the deceased employee and para 1.1.1 of the said scheme is reproduced as under:

“1.1.1 The bank may offer employment to any one dependant of the deceased employee.”

14. Whereas, in case of the compassionate appointment of dependants of the employees opting for voluntary retirement on medical grounds before attaining the age of 55 years, Para 2 is the relevant para and para 2.1.1 of the said scheme is reproduced as under:

“2.1.1 The bank may extend appointment on compassionate grounds to one of the dependants of the employee opting to retire voluntarily or retired on medical grounds before attaining the age of 55 years provided the condition of the family is indigent and in great distress.”

15. From perusal of the above two paras it is manifest that only in case of dependents of employees opting for voluntary retirement on medical grounds before attaining the age of 55 years, the criteria of indigency was stressed upon, whereas no such criteria was prescribed for compassionate appointment for dependants of deceased employees. There are no two views regarding the legal position that request for compassionate appointment is to be considered only in accordance with the scheme framed by the employer and no discretion as such can be left with any of the authorities to make compassionate

appointment de hors the scheme. In the facts of the present case, the scheme nowhere mentioned the requirement of penury and indigency to be met with by the present petitioners, I am, therefore of the view that the respondent Bank has arbitrarily dismissed the request of the petitioners in this regard.

16. Not only the respondent bank has arbitrarily refused the request of the petitioners for compassionate appointment but it also acted in violation of the directions given by this court vide order dated 7/4/2004 by not only not considering the case of the petitioners properly under the 1987 scheme but also by defying the period of 3 months as prescribed by this court.

17. In view of the above discussion, the order dated 26.2.2005 is quashed, being illegal and directions are made to the respondent bank to consider petitioner no. 2 for appointment on compassionate grounds in a suitable post in its office after properly considering the conditions being satisfied by the said petitioner as per the 1987 scheme, within a period of three months from the date of this order.

18. With the above directions, petition is disposed of with costs of Rs. 25,000/- in favour of the petitioner and against the respondents to be paid within a period of one month.

May 19 , 2009

KAILASH GAMBHIR, J.