

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Petition No. 1626 of 2003**

Sunil Shrivastava, aged about 35 years, son of late Shri I.N. Shrivastava, resident of Village Dhodrepal, Post Chhote Devda, Tehsil Jagdalpur, Distt. Bastar (Chhattisgarh).

---- **Petitioner****Versus**

1. State Bank of India (Constituted under State Bank of India Act, 1955), through the Assistant General Manager, Region-4, Dharampura Road, Jagdalpur, Distt. Bastar (Chhattisgarh).
2. The Branch Manager, State Bank of India, Agricultural Development Branch, Jagdalpur, Distt. Bastar (Chhattisgarh).

---- **Respondents**

For Petitioner	:	Shri Akhilesh Mishra, Advocate.
For Respondents	:	Shri B.D. Guru, Advocate.

Hon'ble Shri Justice P.Sam Koshy**Order On Board****03/09/2015**

1. The Petitioner is challenging the impugned order dated 11.11.1999 (Annexure P/1) whereby his claim for compassionate appointment has been rejected by the Respondents-Bank on the ground that the Petitioner did not meet the parameters prescribed under the relevant scheme applicable in the Respondent-Bank.
2. The brief facts necessary for disposal of this petition is that the father of Petitioner while working with the Respondent-Bank died in harness on 18.12.1997 and since then the Petitioner has been approaching the

authorities for grant of employment and at one point of time they sought an application for compassionate appointment from the Petitioner and when the Petitioner had applied, the same was rejected on the ground that he does not fulfill the parameters prescribed under the scheme for compassionate appointment leading to filing of this petition.

3. Learned counsel for the Respondents submits that Clause-10 of Scheme For Appointment on Compassionate Grounds For Dependents of Deceased Employee/Employees Retired on Medical Grounds deals with financial conditions of the family members to be considered for grant of compassionate appointment, which provides as under :

“10. Financial condition of the family-

Appointment in the public services are made strictly on the basis of open invitation of application and merit. However, exceptions are made in favour of dependants of employees dying in harness and leaving their family in penury and without any means of livelihood. Determining the financial condition of the family is, therefore, an important criterion for deciding the proposals for compassionate appointment. The following factors should be taken into account for determining the financial condition of the family:

- I. family pension.
- II. gratuity amount received.
- III. Employee's/employer's contribution to Provident Fund.
- IV. Any compensation paid by the Bank or its welfare fund.
- V. Proceeds of LIC policies and other investments of the deceased employee.
- VI. Income of family from other sources.
- VII. Income of other family members from employment, or other sources.
- VIII. Size of the family and verifiable liabilities, if any.”

4. Counsel for the Respondents further submits that on account of death of deceased i.e. father of Petitioner, the Respondent Bank has paid Rs.2,61,924/- towards terminal benefits. Likewise, the family members have also received NSCs worth Rs.23,300/-, Rs.10,000/- towards Death

Relief under SBI Mutual Welfare Scheme. The Petitioners family had also received Rs.57,014/- towards arrears of Pension and in addition, the family pension payable to the mother of Petitioner is Rs.3644/- per month. Thus, total monthly income of the family is accessed as Rs. 5333/- approximately which was more than the net payable salary after deductions which the father of Petitioner was receiving at the time of his death. Thus, the Respondents Bank having found the Petitioners family not in penury, rejected the prayer of Petitioner for his appointment on compassionate ground.

5. I have heard the counsel appearing for the parties and perused the documents available on record.
6. It is by now well settled principle of law that the appointment on compassionate ground is not a method of recruitment, but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee from destitution. In other words, the object of compassionate appointment is to enable penurious family to tide over the sudden financial crisis and is not to provide employment. It is also well settled that mere death of the employee does not entitle his family to claim compassionate appointment if the family members could sustain themselves financially from other sources of income.
7. The Supreme Court in case of **Umesh Kumar Nagpal Vs. State of Haryana & Others**¹, has held as under :

“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.”

¹ 1994 (4) SCC 138

8. Reiterating the principles of the law laid down in cases of **General manager (D&PB) & Others v. Kunti Tiwary and Another**² and **Punjab National Bank and Others v. Ashwini Kumar Taneja**³, similar view has also been taken by the Supreme Court in the case of **Union of India & Another vs. Shashank Goswami and Another**⁴ and has held that compassionate appointment has to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Where the scheme provides that in case the family of the deceased gets the retiral/terminal benefits exceeding a particular ceiling, the dependent of such deceased employee would not be eligible for compassionate appointment. In the later part, the Supreme Court has further held as under :

- “9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right.
10. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

2 2004(7) SCC 271

3 2004(7) SCC 265

4 2012 (11) SCC 307

9. In the matter of **State of J & K and others vs. Sajad Ahmed Mir**⁵, the Supreme Court after having considered all the aspects of compassionate appointment, in para 11 observed as under :-

“11.....it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.”

10. In the matter of **Haryana State Electricity Board and another vs. Hakim Singh**⁶ the Supreme Court held that “the whole object of any compassionate appointment scheme is to give succor to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member.”
11. The Supreme Court in case of **Union of India & Others Vs. M.T. Latheesh**⁷ while considering the monthly income of family members of the deceased had justified non grant of compassionate appointment and held as under:

“26.....the competent authority of the Bank had to consider the case of the Petitioner as per the laid down parameters, more particularly mentioned in the Petition and the recurrent income derivable by the family. All these factors weighted in the minds of the competent authority while deciding the case of compassionate employment”

37. It is also settled law that the specially constituted authorities in the rules or regulations like the competent authority in this case are better equipped to decide the cases on facts of the case and

5 (2006) 5 SCC 766

6 2007 AIR SCW 6060

7 2006(7) SCC 350

their objective finding arrived on the appreciation of the full fact should not be disturbed.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.....”

12. In addition, very recently in case of **MGB Gramin Bank Vs. Chakrawarti**

Singh⁸ the Supreme Court in a very categorical terms has held as under :

“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

13. Thus, applying the above well settled principles of law to the facts of the case on hand, in particular taking into consideration the monetary benefit received by the family members of the deceased including the Petitioner as also the monthly income of the family, this court is of the opinion that the Petitioner does not deserve any relief.
14. In view of the foregoing, the petition is liable to be and is hereby dismissed. No order asto costs.

Sd/-
(P.Sam Koshy)
JUDGE

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