

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.4199 OF 2002

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ORDER:

This writ petition is filed for issuance of *Mandamus* declaring the action of the respondents in not considering the petitioner's case for compassionate appointment, as arbitrary and illegal and for a consequential direction to the respondents to appoint the petitioner in any suitable post on compassionate grounds within a specified time.

The case of the petitioner is that his father joined in 1st respondent Bank on 24.01.1970 and has put in 27 years of service. While the petitioner's father was working as an Accountant in 3rd respondent branch, Domalguda, Hyderabad, he passed away on 08.12.1997, leaving behind his wife, petitioner and two daughters. Consequent to the death of petitioner's father, the petitioner submitted a representation within two weeks seeking compassionate appointment and the same was rejected by the 3rd respondent vide a letter dated 18.12.1998 stating that they are unable to consider the petitioner's request for compassionate appointment after taking into consideration certain financial parameters. Aggrieved by the same, present writ petition is filed.

The respondents filed counter affidavit admitting that petitioner's father worked in the respondent bank and that consequent to the death of the petitioner's father the family of the petitioner received an amount of Rs.6,44,656.92 Ps., and out of which an amount of Rs.2,10,716/- was recovered towards the amount due for the loans availed by the petitioner's father from the bank and the balance amount of Rs.4,33,971/- was paid to the petitioner's mother. It is also stated that petitioner's mother is receiving pension of Rs.4,327/- per month. It is stated that the Board of Directors of the respondent Bank approved the revised scheme for appointment on compassionate grounds on 19.12.1996 which contains the guidelines of Personnel and Training regarding recruitment on compassionate grounds; that these guidelines were issued by the Government of India on the basis of Judgment passed by the Supreme Court in *Umesh Kumar Nagpal v. State of Hariyana and others*; and that as per the amended scheme, financial condition of family has to be reckoned. As per the aforesaid scheme, the dependents of an employee, who died in harness, can be considered for

Compassionate Employment provided the family is without any means, taking into account of the following to determine the family 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 policy and other investments of the deceased employee
- vi. Income for family from other sources
- vii. Employment of other family members
- viii. Size of the employee and liabilities, if any etc.

It is further stated that the scheme for appointment on compassionate grounds approved by the Board of Directors on 19.12.1996 was further modified on 01.10.1999, which is subsequent to the death of the petitioner's father, and the rejection of petitioner's request for appointment on compassionate grounds; that in order to determine the financial conditions of the family, the factors to be considered have been given to estimate the assets and liabilities; that after deducting the liabilities, the net asset value is determined and if the net amount earns interest on notional basis @ 10% and said the monthly income on notional basis if the same is less than net salary or 60% of the gross salary payable to the deceased employee at the time of his demise, the case shall be considered for appointment subject to other terms and conditions viz., eligibility etc.

It is also stated that the contentions of the petitioner that he came to know that in case of three other persons who were died while working in respondent bank, their dependents were given jobs on compassionate grounds is concerned, the respondent bank submits that it is true that the children of three other employees were given appointments on compassionate grounds as their financial condition was that their monthly income on a notional basis, after calculating as per the scheme approved on 01.10.1999, was less than net salary or 60% of gross salary payable to the deceased employee and finally the respondents sought for dismissal of the writ petition.

Learned counsel for the petitioner submits that though petitioner's mother received an amount of Rs.6,44,656.92 Ps., out of which an amount of Rs.2,10,716/- was recovered towards outstanding loans taken by the petitioner's father from the bank. Thus the petitioner's family has received an amount of Rs.4,33,971/- in net and out of which an amount of Rs.78,000/- was paid towards

the amount borrowed by the petitioner's father for house loan from others and the remaining amount of Rs.3,55,971/- was spent for performing the marriage of petitioner's elder sister. As such, he prays to set aside the impugned proceedings, which is issued by the respondents without considering the above aspects.

On the other hand, learned Standing Counsel for respondents submits that the respondent Bank has considered the case of the petitioner for compassionate appointment basing on the scheme approved by the Board of Directors on 19.12.1996. After considering various parameters, including the finances received by the petitioner's family, they have rejected the claim of the petitioner. He also submits that since the respondent bank rejected the claim of the petitioner only after taking into account various parameters, this Court cannot interfere. In support of his contention he relied on the Judgments rendered by the Supreme Court in ***Union Bank of India and others v. M.T.Latheesh***^[1] and ***Life Insurance Corporation of India v. Mrs.Asha Ramchandra Ambekar and another***^[2] and ***State of Gujarat v. Arvind Kumar T.tiwari***^[3].

In this case the admitted fact is that the petitioner's family received an amount of Rs.4,33,971/- after the death of petitioner's father and that the petitioner's mother is receiving an amount of Rs.4,327/- per month, towards pension. Further, as per the scheme relied on by the respondents they have to take into account the financial condition of the family for making appointments on compassionate grounds. The following aspects which are to be considered for making appointment on compassionate grounds as per the scheme relied on by the respondents are as follows;

Financial Condition of Family

In case a widow, son or daughter, is already in employment, whether in the bank or elsewhere, the Bank may at its discretion, consider giving employment to another son or daughter after taking into account the individual circumstances of each case i.e. the income of the member of the family already employed, the size of the family, the assets and liabilities of the family and other relevant consideration.	The dependents of an employee dying in harness can be considered for Compassionate Employment provided the family is without any means, taking into account following to determine the financial condition of the family: (a) Family Pension (b) Gratuity amount received. (c) Employee's/Employer's contribution to Provident Fund (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 for family from other sources. (g) Employment of other family members. (h) Size of the family and liabilities, if any, etc.
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In this case, the respondents have considered the above said aspect and passed the impugned order. The Judgment relied on by the petitioner in **Union Bank of India case (supra 1)** the Apex Court held as follows;

“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 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.”

As held by the Apex Court, compassionate appointment cannot be claimed as a matter of right and the same has to be considered in accordance with the

rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased.

In the present case when once the respondent-Bank, has taken the relevant factors into account as per the statutory scheme while considering the claim of the petitioner for Compassionate Employment and rejected the same, again this Court cannot consider all those factors sitting as appellate authority while exercising jurisdiction under Article 226 of the Constitution of India. As such, I do not find any illegality in the impugned order. More so, petitioner's father died in the year 1997 and now question of appointing the petitioner on compassionate ground at this stage does not arise. Every purpose of compassionate appointment is to see that the family of the deceased employee gets immediate succor in case of sudden death of the employee.

In view of the above facts and circumstances, I do not see any merits in the writ petition. Accordingly, the same is dismissed. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending in the writ petition, shall stand closed.

A.RAJASHEKER REDDY, J

24.07.2015

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[\[1\]](#) (2006) 7 Supreme Court Cases 350

[\[2\]](#) AIR 1994 Supreme Court 2148(1)

[\[3\]](#) (2012) 9 SCC 545