**IN THE PUNJAB AND HARYANA HIGH COURT
AT CHANDIGARH**

CWP No.17161 of 2003

Date of Decision:06.01.2015

Mukesh Kumar ... Petitioner

Versus

State Bank of India and others ... Respondents

**CORAM : HON'BLE MR. JUSTICE SATISH KUMAR MITTAL
HON'BLE MR. JUSTICE DEEPAK SIBAL**

Present: Mr. R.K. Singla, Advocate for the petitioner.
Mr. Nitin Kumar, Advocate for the respondents.

1. To be referred to the reporters or not?
2. Whether the judgment should be reported in the digest?

DEEPAK SIBAL, J.

The petitioner's father namely Rajinder Parshad was serving as a Teller in State Bank of India (hereinafter referred to as "the Bank") at Hisar. While in service, he succumbed to the deadly disease of cancer and breathed his last on 1.11.2000 at the age of 45 years. On his death, besides old aged parents he left behind the following heirs who were dependent upon him:

1. Urmila Devi-widow;
2. Mukesh Kumar-son aged 23 years;
3. Parvinder Singh-son aged 18 years and
4. Kavita daughter.

The record reveals that at the time of death of late Shri Rajinder Parshad, both his sons namely Mukesh Kumar and Parvinder Singh were college going students and that his daughter was unmarried as late Shri Rajinder Parshad died on 1.11.2000 and the date of marriage of his daughter Kavita is 7.11.2001. Thus, on his death, late Shri Rajinder Parshad left behind aged parents, a young illiterate widow, two college going sons and an unmarried daughter.

As the death of Rajinder Parshad left the family in penury and without any means of livelihood, in December 2000, the petitioner applied in the local branch of the respondent-Bank at Hisar for employment on compassionate basis as per the prevalent scheme of the Bank for compassionate appointment. The Bank authorities at Hisar recommended the case of the petitioner to be appointed on compassionate grounds but the recommendations apparently did not find favour with the higher authorities and resultantly vide the order impugned, the case of the petitioner for appointment on compassionate grounds was rejected. As the rejection order was bereft of any reason and according to the petitioner, the same was illegal, he through his counsel served upon the respondent-Bank a legal notice dated 9.9.2003 questioning the rejection of his claim. In reply to the legal notice, the respondent-Bank informed the petitioner that his case had been rejected under Clause 10 of the scheme of the respondent-Bank for giving compassionate appointment as according to the respondent-Bank under the above said clause the financial condition of the family of Rajinder Parshad was required to be seen before giving compassionate appointment to any one of his dependents and according to the Bank at the time of his death the financial condition of his family was not such as would warrant appointment to any one of his dependent family members on compassionate basis. According to the respondent-Bank, the terminal benefits (after deducting loans and liabilities which were paid to the family of the deceased Rajinder Parshad) were Rs.3.63 lacs. In addition thereto the family was to get family pension at the rate of Rs.4963/- per month and that the family was living in their own house. According to the Bank, the family of the petitioner was also having income from interest on surplus amounting to Rs.2500/- per month. The above facts, according to the respondent-Bank, were enough to deny the family of late Shri Rajinder Parshad any appointment on compassionate basis. It is the above decision of the respondent-Bank denying compassionate appointment to the petitioner which is the subject matter of challenge in the present writ petition.

We have heard learned counsel for the parties and with their able assistance have gone through the record of the case.

Learned counsel for the petitioner argued that the claim of the petitioner had been rejected by the respondent-Bank while relying upon Clause 10 of the scheme made by the respondent-Bank for granting compassionate appointment to a family member of their employee who would die in harness. As per Clause 10 of the scheme, the financial condition of the family at the time of the death of the employee were required to be taken into consideration while considering the case of a family member of a deceased employee for appointment on compassionate basis. According to the learned counsel, this clause was arbitrary and violative of Article 14 of the Constitution of India. Learned counsel would further submit that Clause 10 of the scheme had no nexus to the object sought to be achieved and therefore, on that count also was liable to be declared ultra vires Article 14 of the Constitution of India.

Irrespective of the challenge to Clause 10 of the scheme, learned counsel for the petitioner would submit that even otherwise the impugned order passed by the respondent-Bank rejecting the case of the petitioner was liable to be set aside as the same was a non speaking order. Learned counsel still further submitted that the reasons for rejection of the case of the petitioner as spelt out in the reply to the legal notice were arbitrary. All that the family of the deceased employee namely Rajinder Parshad had got were meager retiral benefits which were not adequate especially in view of the facts that he left behind aged parents, a young illiterate widow, two college going sons and an unmarried daughter admittedly with no other source of income or any other investment. That being so, on that ground the petitioner could not have been denied appointment on compassionate basis.

Per contra, learned counsel appearing on behalf of the respondent-Bank defended the order impugned by the petitioner. He submitted that the respondent-Bank had considered the case of the petitioner as per the scheme while admitting that the impugned order rejecting the claim of the petitioner was non-speaking. He submitted that the reasons for rejecting the case of the petitioner had been supplied to him through the reply sent by the respondent-Bank to the legal notice served by the petitioner. Learned counsel for the respondent also relied upon the following judgments of the Apex Court in support of his contentions: ***Union Bank of India and others v. M.T. Latheesh***; 2006(7) SCC 350; ***State Bank of India and another v. Somvir Singh***; 2007(4) SCC 778 and ***State Bank of India and others v. Jaspal Kaur***; 2007(2) S.C.T. 226 and ***State Bank of India and others v. Surya Narain Tripathi***; 2014(2) S.C.T. 161.

Before we proceed to examine the challenge to Clause 10 of the scheme made by the respondent-Bank for appointment on compassionate grounds for dependents of deceased employees, it would be useful to reproduce the relevant clause:

"10. <u>Financial condition of family</u>

Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However exceptions are made in favour of the dependents 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 certain for deciding the proposals of 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 of 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 source

vii) income of other family members from employment,or other sources

viii) size of the family and verifiable liabilities, if any."

According to us, taking into consideration the financial condition of the family of a deceased employee while considering grant of compassionate appointment to any of the dependents of the deceased employee is a valid consideration. It is settled law that compassionate appointment to one of the dependents of the deceased employee of an organisation who would die in harness is required to be considered as per the scheme for compassionate appointment so made by that organisation and while considering such claim, the organisation can take into consideration the financial condition of the family. Only if the family is unable to survive the sudden demise of its only bread winner, only then the organisation should offer appointment to the dependent of a deceased employee so that the family of the deceased employee can tide over the sudden crises which engulfs the family on the death of its sole bread winner.

Thus, we find that the impugned Clause 10 is reasonable and not liable to be set aside as prayed for by the petitioner.

Having held so, we now consider the claim of the petitioner on the factual aspect of the issue to determine whether the financial condition of the family of late Shri Rajinder Parshad was good enough to deny appointment to the petitioner on compassionate basis.

It is not disputed before us that late Shri Rajinder Parshad, father of the petitioner who belonged to the scheduled caste category was working on a Class-III post at the time of his death. It is further not disputed that he died in harness at a young age of 45 years on account of cancer. It is also not denied by the respondent-Bank that at the time of death of Rajinder Parshad, his family had no other source of income. It is further undisputed that late Shri Rajinder Parshad left behind aged parents a young illiterate widow, two college going sons and an unmarried daughter. The record further reveals that soon after the death of Rajinder Parshad, the petitioner had applied in December 2000 to consider his case for appointment under the scheme floated by the respondent-Bank for compassionate appointment and that his application has been favourably recommended by the local branch of the respondent-Bank at Hisar. The respondent-Bank does not further dispute that at the time of death of Rajinder Parshad, his family had no insurance policy or any other benefit from any other investment made by the deceased employee.

Before we proceed further, it would be useful to reproduce the objects of the scheme for appointment on compassionate grounds made by the respondent-Bank, the same are reproduced below:

"The object of granting compassionate appointment is to enable the family to tide over the sudden crisis due to the death of the bread-

> *winner. The mere death of an employee in harness does not entitle his family to such a livelihood. The object is to offer compassionate appointment only when the Bank is satisfied that the financial condition of the family is such that, but for the provision of employment, the family will not be able to meet the crisis. This will apply nutatis-mutandis to the scheme for appointment of dependents of employees who retire on medical grounds."*

From the objects of the scheme as reproduced above, it is clear that scheme had been made by the respondent-Bank for granting compassionate appointment to dependents of the deceased employee to enable them to tide over the certain crisis due to the death of the sole bread winner. In the case in hand, late Shri Rajinder Parshad was the only bread winner for his family. He died due to cancer while in office. At the time of his death, none of his family members were employed and that the family had no other source of income. All that the family of late Shri Rajinder Parshad got from the respondent-Bank was a meager amount of Rs.3.63 lacs as retiral benefits and a monthly pension of Rs.4963/-. At this stage, it may be noticed that at the time of death of Rajinder Parshad, both the petitioner and his brother Parvinder Singh were studying. Their sister Kavita was unmarried. In fact her marriage took place on 7.11.2001 i.e. after one year of the death of her father. The widow of late Shri Rajinder Parshad was illiterate is a fact which has also not been denied by the respondent-Bank. Further it remains controverted, there was no investment made by late Shri Rajinder Parshad which would fetch any income to his dependents after his death. So far as the stand of the Bank regarding monthly income of the family of the petitioner on account of interest on surplus amounting to Rs.2500/- is concerned, the same was an imaginary figure on the part of the Bank. The Bank presumed that the amount of Rs.3.63 lacs which had been given to the petitioner's family as retiral benefits of late Shri Rajinder Parshad would be deposited in the Bank and would gather the above referred monthly interest of Rs.2500/-. This was on a presumption that the amount of Rs.3.63 lacs would not be needed or spent on the sudden demise of the sole bread winner of the family.

In view of the above facts, the presumption is otherwise. A major part of the amount of Rs.3.63 lacs would have been spent on the marriage of Kavita daughter of late Shri Rajinder Parshad. Further, a part of that amount would have also gone into the expenses towards studies of both the sons.

In view of the above facts, the question that arises for consideration is that whether the above payment of Rs.3.63 lacs with a monthly pension of Rs.4963/- was enough to deny appointment on compassionate basis to the petitioner? According to us, no.

It cannot be disputed that a major part of the amount received on the death of Rajinder Parshad would have gone into the marriage of Kavita, his daughter and into the tuition fees of both the sons namely the petitioner-Mukesh Kumar and Parvinder Singh. It may be noticed that the petitioner passed M.A. in Political Science in 2003 and Parvinder Singh was doing his graduation at the time of his father's death. Thus, according to us, the respondent-Bank acted unfairly to have denied appointment on compassionate basis to the petitioner. Rather, according to us, the respondent-Bank treated the family of late Shri Rajinder Parshad rather callously.

We have gone through the judgments relied upon by the learned counsel appearing on behalf of the Bank and find that all of those judgments are given on the respective facts in each of those cases. None of those judgments can be applied to the facts of the present case and are, therefore distinguishable.

In the light of the above facts, the action of the respondent-Bank in rejecting the case of the petitioner and that too through a non speaking order cannot be sustained.

Now the question arises that at this stage what relief can be granted to the petitioner?

For the last over 11 years, this writ petition has been pending before this Court. Today over 14 years have passed after the death of Rajinder Parshad. At this stage, we do not deem it proper to order the appointment of the petitioner on compassionate basis but to balance the equities and for the reason that, according to us, the respondent-Bank has acted illegally, arbitrarily and unfairly while rejecting the case of the petitioner, we deem it proper to compensate the petitioner which would to some extent console the petitioner and his family.

Accordingly, in order to balance the equities, we deem it proper to award a compensation of Rs.3 lacs to the petitioner. We further direct that the above referred payment be paid to the petitioner within a period of three months from the date of receipt of a certified copy of this order. In case the same is not done then from the expiry of the abovesaid period of three months, the petitioner shall be entitled to interest on the awarded amount @ 9% per annum.

Disposed of in the above terms.

(SATISH KUMAR MITTAL)	**(DEEPAK SIBAL)**
JUDGE	**JUDGE**

06.01.2015
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