

_IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.1568 of 2015
IN
Civil Writ Jurisdiction Case No. 10371 of 2012**

- =====
1. Uttar Bihar Gramin Bank through its General Manager, Head Office - Kalam Bag Chouk, P.S. Kazimohammadpur, District - Muzaffarpur
 2. General Manager, Uttar Bihar Gramin Bank, H/o - Kalam Bag Chouk, P.S. Kazimohammadpur, District - Muzaffarpur
 3. Chairman, General Manager, Uttar Bihar Gramin Bank, H/o - Kalam Bag Chouk, P.S. Kazimohammadpur, District - Muzaffarpur
 4. General Manager (Personnel), General Manager, Uttar Bihar Gramin Bank, H/o - Kalam Bag Chouk, P.S. Kazimohammadpur, District - Muzaffarpur
 5. Senior Manager (Personnel), General Manager, Uttar Bihar Gramin Bank, Kalam Bag Chouk, P.S. Kazimohammadpur, District - Muzaffarpur

.... Appellants

Versus

Rajesh Kumar Ram Son of Late Shaukhi Ram Resident of village - Narkatia, P.O. Babhamgama, P.S. Mejarganj, District - Sitamarhi (Bihar)

.... Respondent

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Appearance :

For the Appellants : Mr. Prabhakar Jha, Advocate
Mr. Shankar Kumar Thakur, Advocate
For the Respondents : Mr. Yugal Kishore, Senior Advocate
Mr. Rupak Kumar, Advocate
Mr. Virendra Prasad, Advocate
Mr. Ugra Nath Mallik, Advocate
Ms. Nutan Sahay, Advocate

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**CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 01-03-2017

A direction issued by the learned single Judge on 28th January, 2015 rendered in C.W.J.C. No. 10371 of 2012 for providing compassionate appointment to the private respondent, namely, Rajesh Kumar Ram, is under challenge in the present Letters Patent Appeal. The appellants want the said order to be set aside in the background that there is no provision for compassionate appointment



any more in the Bank after the year 2006. The maximum which a claimant can get is ex-gratia payments, which the Bank has already settled in favour of the private respondent or the legal heirs.

2. Father of the private respondent died on 19th October, 2005. An application was filed on 22nd November, 2005, for compassionate appointment. Before the case of the private respondent for compassionate appointment could be taken up by the Board of Directors of the Bank, a new scheme came into place on 9th June, 2006, wherein the scheme of compassionate appointment was given a go bye and in lieu thereof provision was made for ex-gratia payments. Since the new amended scheme was also adopted by the Bank and became binding, the Board of Directors rejected the claim of the private respondent for compassionate appointment. The matter rested at that for a while till the private respondent decided to move the High Court by filing a writ application in the year 2010, wherein a direction was issued upon the respondent Bank to consider and take a decision. Since the decision did not go in favour of the private respondent, he decided to again approach the High Court in the present writ application, whose order is under challenge in appeal.

3. The learned single Judge, after considering a bunch of writ applications by a common order, allowed the writ and directed the authorities of the Bank to consider the case for compassionate



appointment primarily on the principle that Article 14 of the Constitution of India has been violated because some similarly situated persons, one of them being Smt. Mamta Verma, was given compassionate appointment.

4. Learned counsel representing the Bank submits that it was not a voluntary action of the Bank to provide compassionate appointment to Smt. Mamta Verma. Such a decision was taken at the behest of a High Court decision in a proceeding and direction issued in contempt. Therefore, the parity which is sought to be demanded or is being looked at is not strictly applicable to the case of the present private respondent because the Bank did not violate the principles and the policy of compassionate appointment. It was the Court's decision which forced their hands.

5. It is urged at the bar that the change of policy of compassionate appointment made applicable by the banking industry was a subject matter of challenge right up till the Hon'ble Apex Court and that policy has been upheld. In other words, for a long period of time, beyond a decade or so, the concept of providing employment under the compassionate head is non-existent in the banking industry because ex-gratia payments are made in lieu thereof and that is the norm not the exception.

6. In the case of the respondent Rajesh Kumar Ram it is



not that there was extraordinary delay in taking a decision by the Bank on his claim for compassionate appointment. Within a couple of months of the application having been filed, the policy underwent a change and under the changed circumstances there was no provision for providing compassionate appointment. That was the reason for rejection. In fact, the private respondent was well aware of the position and that is why he kind of accepted the decision of the Bank and waited for good four-five years to again approach the Court when relief was granted to Mamta Verma pleading discrimination. The learned single Judge in his order has also got carried away by the previous decision and direction under which Mamta Verma came to be appointed which was an exception and not a rule. Therefore, it is the contention of the counsel representing the Bank that any decision, which may be taken in terms of the direction of the learned single Judge will open a floodgate and for all practical purposes will restore the scheme of compassionate appointment and will amount to giving a go bye to the scheme which is in vogue and which is being applied since the year 2006 of providing ex-gratia payment. The effect of the order of the learned single Judge would be to rewrite the policy on compassionate appointment, which the Bank has difficulty in accepting.

7. This Court does not have to reproduce all the



decisions, which have been rendered not only by this Court but even by the Apex Court from time to time, which clearly holds the field even now that compassionate appointment is not a constitutional right. If at all, it is a weak right and it flows from existence of policy in vogue. If there is no policy for compassionate appointment, one cannot hide behind Article 14 of the Constitution of India because demanding and begetting the compassionate appointment is not a fundamental right and, therefore, it cannot be interfered with by a constitutional Court by issuance of writs. If this is the position in law, then there is difficulty for this Court to accept the opinion and direction issued by the learned single Judge to appoint the private respondent on compassionate ground on the logic that non-appointment of the private respondent will violate Article 14 of the Constitution of India.

8. It is also well settled principle in relation to compassionate appointment that the object behind providing employment to one of the family members is to tide over the immediate crises which the family may face due to the sudden loss on the death. Even this rule is not the thumb rule because it also depends upon the financial status of the family as well as the responsibility and liability which the family has and has to meet because of the death of the bread-earner. There are many a cases



where death have taken place, but Courts have refrained from passing any direction because there are adequate financial support in terms of compensation or even other property and wealth from where the family could take care of itself. In other words, the financial status of the family and the degree of distress is a very important factor in taking a decision in favour of compassionate appointment.

9. The father of the private respondent was on a managerial post at the time when death happened and the Court is not required to go into all the financial settlements which have been made by the Bank in favour of the private respondent.

10. Death happened in the year 2005. We are in the year 2017. 12 years have gone past. Therefore, the primary object of providing compassionate appointment to provide immediate relief or succor to the family is non-existent now. The 2006 scheme is in vogue for 11 years now and compassionate appointment is not the rule any more. Every employee is entitled to only ex-gratia payment, if found eligible and that is the law of the land. If these two factors are taken into consideration then with due respect to the learned single Judge Mamta Verma cannot be made as a test case for giving a direction for compassionate appointment on the touchstone of violation of Article 14 of the Constitution of India.

11. Counsel representing the private respondent relies



on a very recent decision rendered by the Hon'ble Apex Court, which is the case of ***Canara Bank and Another Vs. M. Mahesh Kumar***, reported in 2015(3) PLJR (SC) 197, wherein a Division Bench of two Judges considered the case of compassionate appointment. It is the submission of the counsel representing the private respondent that in the said case even though the death happened in the year 1998, the Court gave a direction for consideration for compassionate appointment. This case squarely covers the facts of the present case and, therefore, the decision of the learned single Judge should not be interfered with and the Bank should be directed to comply with the direction for compassionate appointment.

12. When the learned counsel for the private respondent is confronted with a series of other decisions with regard to the provisions on which compassionate appointment is required to be granted, he relied on certain decisions rendered in the case of ***Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd. and another***, reported in AIR 1980 Karnataka 92 (F.B.), with emphasis on paragraph 12 and in the case of ***Vasant Tatoba Hargude and Others v. Dikkaya Muttaya Pujari***, reported in AIR 1980 Bom. 341 (paragraph 13), for the principle that if there are two conflicting decisions of the Hon'ble Supreme Court then the latest decision of



the Supreme Court will occupy the field.

13. The conflict which the learned counsel for the private respondent is seeing in the decisions of the Hon'ble Supreme Court with regard to the direction relating to the compassionate appointment is non-existent. The basic principles relating to compassionate appointment has not been read down or diluted in any manner in the latest decision of the Hon'ble Apex Court in the case of *Canara Bank* (supra). The decision has been rendered by the Hon'ble Apex Court taking into consideration the relevant facts which led to the decision by the Hon'ble Apex Court.

14. The two basic principles which this Court has talked about in the earlier part of the order with regard to non-existence of a scheme from where a right flows cannot be wished away. The object behind providing compassionate appointment and more than 12 years having gone past since death cannot be overlooked. Coupled with the fact that in the case of Mamta Verma, which was not a unilateral decision of the Bank to provide compassionate appointment to her, but it was an obligation created upon the Bank for implementation of a judicial direction and order which created the situation. In other words, the Bank did not intentionally violate its own policy of non-providing of compassionate appointment, but was compelled to do so to honour a judicial direction.



15. If these facts are taken in totality, coupled with the fact that the policy for compassionate appointment has not been in vogue for more than a decade now in the Bank, the direction to provide compassionate appointment in terms of the order of the learned single Judge would amount to rewriting the policy through a judicial order, which is not permissible in law.

16. In totality, therefore, the Court is convinced that a case is made out for interference with the order of the learned single Judge dated 28th January, 2015, passed in C.W.J.C. No. 10371 of 2012 and quash the same wherein a direction was issued for providing compassionate appointment to the private respondent under the Bank.

17. The appeal stands allowed in terms of the above.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

Pawan/-

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