IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP NO. 13007 of 2016(O&M)
Date of Decision: 30.04.2019

Ravinder Singh

... Petitioner

versus

Union Bank of India & Ors.

... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN MONGA

Present : Mr. Ashok Singla, Advocate
for the petitioner.

Mr. K.K. Gupta, Advocate
for respondents.-Union Bank of India.

***

ARUN MONGA, J.

1. Prayer, inter alia, herein, is to quash impugned orders dated 29.04.2016 (Annexure P-7) and 10.06.2016(Annexure P-9) vide which the request of the petitioner for compassionate appointment has been declined.

2. Father of the petitioner while working as Armed Guard with the Union Bank of India died in harness on 12.09.2015. The Bank has a compassionate appointment policy to save family from penury/ starvation where earning member expires in harness. The Policy was made applicable w.e.f. 05.08.2014 .

3. The petitioner vide application dated 26.10.2015 (Annexure P-4) requested for appointment on compassionate ground, detailing the

financial status of the family and the aggravating circumstances of serious illness of his mother as she is suffering from brain tumour. He also mentioned about his aged grandfather being totally dependent. However, his application was rejected by the respondents vide impugned order dated 29.04.2016 (Annexure P-7). It was stated therein that taking into account the terminal benefits given to deceased employee and income of the family from all sources, his request cannot be acceded to.

4. The petitioner submitted a detailed representation dated 31.05.2016 (Annexure P-8), but that too was rejected vide impugned order dated 10.06.2016(Annexure P-9). Hence, the instant writ petition.

5. The respondents, in their return filed herein have justified the impugned orders on the same ground that the financial position and other relevant factors prevailing at the time of death of deceased were examined by the Designated Committee constituted under the Scheme of Appointment on Compassionate Grounds, 2015 and the claim for compassionate appointment was rightly rejected. The Committee observed that Bank cannot be held liable for past or future expenses incurred on the treatment of the mother of the petitioner.

6. I have heard the learned counsel for the parties and gone through the pleadings and the documents appended in support thereto.

7. Learned counsel for the petitioner submitted that the respondents were not justified in considering only the assets of the family and it was obligatory on their part to take all the liabilities also into the account to adjudge financial condition of the family. Elaborating, he referred to the medical record of the mother of the petitioner and urged that she is struggling with life threatening brain tumour and kidney contraction,

for which substantial amount of money was spent on treatment which is a life long recurring expense. In future it is going to be ever increasing expenditure.

8. According to him, the impugned orders have been passed ignoring the medical condition of the widow of the deceased employee. He further submitted that even in the calculations carried out, as reflected from Annexure R-1, the respondents have not considered the past medical expenses incurred on the treatment of widow and likely future expenses.

9. He has further stated that the only column provided in the proforma, Annexure P-3, is confined to bank loans and there is no option to provide details of other liabilities owing to which the petitioner could not furnish details of past and future medical liabilities. Learned counsel for the petitioner has also pointed out that in the calculations carried out as per Annexure R-1, term deposit interest has been shown to be Rs.15,753/- in Table 4, Column F on the amount of Rs.21,00,438/-(disbursed towards the terminal benefits as well as insurance policies). He submits that annual interest on term deposit ranges from 5% to 6%. Accordingly, in no event the interest earned could be more than Rs.10,000/-, which reflects non-application of mind by respondent Bank while holding that the petitioner does not fall in the category of financially indigent person.

10. According to learned counsel for petitioner, even otherwise, pension and terminal benefits are not to be counted while ascertaining indigency to consider the application for compassionate appointment and the case of the petitioner thus requires re-consideration.

11. In support of his submissions, he has relied upon **Canara Bank & Anr. Vs. M.Mahesh Kumar, 2015(5) SLR 243, Balbir Kaur Vs. Steel**

Authority of India Ltd. 2000(6) SCC 493, Govind Prakash Verma Vs. Life Insurance Corporation of India & Ors. 2005(10) SCC 289, Bikekananda Saha Vs. ABC, 2010(10) SCT 563, Sunaina Devi & Anr. Vs. Union of India & Ors. 2010(13) SCT 759, Akeel Ahmed Khan Vs. General Manager, State Bank of India & Ors. 2003(4) MPHT 167 and **State Bank of India & Ors. Vs. Akeel Ahmad Khan 2004(1) MPHT 531.**

12. On the other hand, learned counsel for the respondent Bank has averred that the Committee was justified in declining the request of the petitioner. Balanced and objective assessment of all the relevant factors viz., the financial status and income of the family from all sources including family pension, terminal benefits, proceeds of insurance policies and other investment etc. and the employment status of family members, size of the family and liabilities, if any were made and he relied heavily on the calculations made in Annexure R-1.

13. He further argues that compassionate appointment is not a matter of right. Only the situation prevailing at the time of death of employee has to be strictly seen and not the future position. According to him, the object of granting compassionate employment is to enable the family to tide over the sudden crisis and not to give employment to member of such family.

14. He submits that the competent authority has rightly taken into account the terminal benefits and financial help received by the family and their other resources to arrive at a conclusion whether family has really fallen in an unrecoverable financial crises so as to be considered for compassionate appointment.

15. In support of his arguments, learned counsel for respondent has relied upon a decision of Hon'ble Apex Court in **State of Himachal**

Pradesh & Anr. Vs. Parkash Chand, SLP(C) No. 28355 of 2016, decided on 17.01.2019**,** judgments rendered in **Punjab National Bank Vs. Ashwini Kumar Taneja, 2004(3) SCT 835, Union Bank of India & Ors. Vs. M.T. Latheesh, 2006 AIR(SCW) 4626, General Manager(D&Pb) & Ors. Vs. Kunti Tiwary & Anr. 2004(7) SCC 271, Food Corporation of India & Ors. Vs. Smt. Surjit, LPA No.1795 of 2015,** decided by a Division Bench of this Court on 05.02.2019,**Krishna Kumari Vs. State of Haryana & Ors. 2012(2) SCT 736, Smt. Anjani Patel Vs. State of Chhattisgarh, 2016(2) CHLJ 135, Brijesh Kumar Vs. Union Bank of India & Ors. 2016(3) LLJ 315.**

16. Having considered all of above, I am of the opinion that a very hypothetical and pedantic approach has been adopted by the respondent Bank while declining the request of the petitioner for compassionate appointment.

17. No doubt, employment on compassionate ground cannot be claimed as a matter of right, but the order declining the request must reflect application of mind and consideration of all the relevant factors concerning the financial indigency of the dependent, which is lacking in the instant case. It cannot be gathered from a perusal of both the impugned orders that what weighed in the mind of the competent authority to turn down his request. It was only stated that taking into account the income of the family from all sources, the request for compassionate appointment cannot be considered. If the terminal benefits of Rs.8,71,974/- disbursed to the family of the petitioner are taken out from calculations as per Annexure R/1, virtually there is nothing left for the family to bear the medical expenditure towards treatment of the widow of the deceased employee. And if argument

of the learned counsel for respondent/FCI is to be accepted then family of every employee who dies in harness would be disentitled to seek benefit of compassionate appointment by virtue of terminal benefits.

18. As per the spirit of Scheme (Annexure R-2), while considering the request for compassionate appointment, not only the assets but also the liabilities (emphasis supplied) have to be taken into account. In none of the impugned orders i.e. Annexures P-7 and P-9 it has been disclosed as to whether the liabilities of the petitioner viz. Treatment of ailing mother and aged grandfather were taken into consideration.

19. The respondent Bank has placed on record the calculations made by the Committee at the time of considering the application of the petitioner. The terminal benefits given to the dependents of the deceased employee were computed and the liability of Rs.2,50,000/- towards loan was considered. However, the medical expenditure towards the ailment of the widow of the deceased employee, both recurring as well as in future as also spent in past, have not been taken into consideration. The reply is also silent in this regard. But when the petitioner confronted the respondents with the medical record and bills of his mother by filing an application, the respondent Bank filed the reply and tried to wriggle out of its liability by saying that exaggerated bills have been submitted.

20. The respondents have not disputed that the nature of medical ailment of the mother of the petitioner(widow of the deceased employee) suffering from Brain tumour and Kidney Contractions. Owing to her ailment, she has to undergo electrotherapy daily which incurs heavy recurring and future expenses.

21. Learned counsel for the petitioner is right in pointing out that

all the expenditures which are being spent and have been spent in past are from the terminal benefits given to the petitioner and his family and there is no other source of income as the petitioner is unemployed.

Assuming for the sake of arguments that the terminal benefits were to be calculated in determining the financial indigency of the family of the deceased employee, given the nature of ailment being suffered by the widow of the deceased, it is but natural that the family has to live under constant fear of being financially ready for any exigency that may arise at a short notice viz. emergent surgery etc. Resultantly, a constant financial buffer is required to be maintained at all times to meet any God forbidden medical urgency. Given the high cost of medical treatment in the hospitals in today's time, even the riches today are fearful of their capacity to meet the said costs. Particularly, keeping in view the cost of treatment of the life threatening brain tumour with which the widow of the deceased is afflicted with, in the present case.

22. The reliance of respondent Bank on the case of M.T. Latheesh (supra) to contend that the the competent authority can taken into consideration the terminal benefits of the deceased and family pension and other financial help received by the family while considering the application for compassionate appointment, is of no avail, in the light of latest judgment rendered by the Hon'ble Apex Court **Canara Bank & Anr. Vs. M. Mahesh Kumar, 2015(5) JT 156,** (later in time than M.T. Latheesh), wherein it has been held that payment of pension and terminal benefits is of no consequence in considering the application for compassionate appointment. Relevant whereof is reproduced hereinbelow:-

"15. *Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant 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. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.*

16. In Balbir Kaur & Anr. vs. Steel Authority of India Ltd. & Ors., (2000) 6 SCC 493, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:-

> *"13. ....But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental*

> *agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation." Referring to Steel Authority of India Ltd.'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."*

23. Without delving too deep into the calculations made by the respondents, which are primarily based on the pension and terminal benefits received by the family and were made ignoring the factual aspect of liabilities of seriously ill widow of the deceased (mother of the petitioner), I am of the considered view that the impugned orders are not sustainable. The respondent-FCI ought to have taken a sympathetic and holistic view of the matter *dehors* the terminal benefits disbursed to the family of deceased employee.

24. In view of the above, the impugned orders dated 29.04.2016 and 10.06.2016 (Annexures P-7 & P-9 respectively) are set aside. The respondent Bank is directed to pass fresh orders to ascertain the indigent condition of the petitioner based on my observations above, particularly, keeping in view the expenditure to be incurred in future as well as the expenses incurred in past towards the ailment of the widow of the deceased employee as also the grounds taken in the representation dated 31.05.2016 (Annexure P-8). Let the needful be done within a period of three months

from the receipt of certified copy of this order.

Disposed of accordingly.

(ARUN MONGA)
JUDGE

April 30, 2019
Jiten

1. Whether speaking/ reasoned: Yes/ No

2. Whether reportable: Yes/ No