



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.12.2021**

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.2925 of 2018

and

W.M.P.(MD)No.3084 of 2018

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D.Paulraj

...Petitioner

/Vs./

1.The Assistant General Manager,
Union Bank of India,
Central Office,
No.239, Vidhan Bhavan Marg,
Mumbai - 400 021.

2.The Regional Manger,
Union Bank of India,
Regional Office, B.B.Kulam,
Madurai District.

3.The Branch Manager,
Union Bank of India,
Easwaran Kovil Street,
Emaneshwaram - 623 701,
Paramakudi,
Ramanad District.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned letter in HR:MPRD: F- 1575: 431:2016 dated 09.09.2016 on the file of the Respondent No.1 and quash the same as illegal and consequently directing the Respondent No.1 to appoint the petitioner on compassionate grounds for any post which he is eligible within the time period stipulated by this Court.

For Petitioner	: Mr.T.Aswin Rajasimman for Mr.T.Lajapathi Roy
For Respondents	: Ms.P.Porkodi Nachiar for Mr.N.Dilip Kumar



ORDER

The petitioner is one of three sons of one S.Devandra Kumar, who was employed in the respondent bank, the Union Bank of India (in short, hereinafter referred to as 'Bank'). Devendra Kumar had passed away on 04.10.2014, in harness, while working as Head Cashier - II cum clerk in the Bank.

2.The petitioner approached the Bank within the time stipulated under the scheme of appointment on compassionate ground dated 19.01.2015 seeking appointment in place of his father. The bank would submit that the application had been rejected on 02.04.2016, but, according to the petitioner, this order was never received by the petitioner.

3.A representation had been made by the petitioner reiterating the request for compassionate appointment, which has come to be rejected by way of impugned order dated 09.09.2016, wherein the bank refers to the earlier rejection dated 02.04.2016. One of the arguments put forth is that since letter dated 02.04.2016 has not been challenged, the present writ petition is not maintainable.

4.This argument is rejected for the reason that even assuming that order dated 02.04.2016 had been received by the petitioner, the sum and substance of both letter dated 02.04.2016 as well as 09.09.2016 are one and the same. A copy of letter dated 02.04.2016 is placed on record now by the respondent.

5.Both orders as above, are cryptic, and reject the request of the petitioner stating that the matter had been placed before the competent authority and had been rejected '*taking into account the income of the family from all sources*'. There is no elaboration on enquiry, if any, that was caused prior to passing of the order in regard to what the avowed sources were, or the income was, that was taken into account by the authority, in rejecting the request of the petitioner.

6.The scheme for compassionate appointment defines a dependent family member as a spouse, a wholly dependent son, wholly dependent daughter or a wholly dependent brother or sister in the case of an unmarried employee. Clause 10 of the scheme envisages a situation where a dependent family member would continue to the entitlement of compassionate appointment, even if there were an earning member in the family.

7.Clause 10 of the Scheme reads as follows:

"10. WHERE THERE IS AN EARNING MEMBER



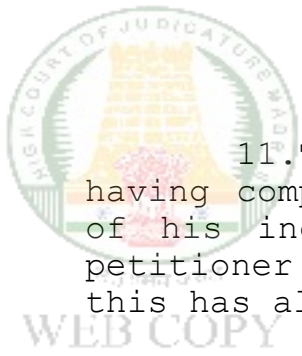
10.1. In deserving cases, even when there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with the prior approval of the competent authority of the bank who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified, having regard to the number of dependents, assets and liabilities left by the employee, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the employee and whether he should not be a source of support to other members of the family.

10.2. In cases where any member of the family of the deceased or medically retired employee is already in employment and is not supporting the other members of the family of the deceased employee, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the deceased employee so that, the facility of appointment on compassionate ground, is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family."

8. In the present case, the petitioner is one of three sons. The elder son had been temporarily employed abroad and had his own family to support. At the time of filing of the writ petition, he had returned to India and is stated to be unemployed. The younger brother was pursuing the study of law at the time when the writ petition was filed. The mother of the petitioner is stated to be physically disabled, being 90% deaf and dumb and her disability certificate is placed on record.

9. The substratum of the respondents' case in rejecting the request for compassionate appointment is that the petitioner/his family has alternate sources of income. This has not been elaborated and it thus falls upon this Court to discuss and arrive at the possible revenue sources that might have weighed with the bank.

10. Even assuming that the older brother of the petitioner is presently employed, to establish which no enquiry has been carried out by the Bank, it cannot lead to the automatic conclusion that his income would be available to support the petitioner and their mother. The older brother has a family unit of his own to support and nothing is brought on record by the respondents to establish either the sufficiency of his income or the willingness of the brother to support the petitioner and/or their mother.



11.The younger brother is stated to be a practicing lawyer, having completed the course pending writ petition and the adequacy of his income or his willingness or inclination to support the petitioner and their mother cannot also be assumed. In any event this has also not been established by the respondents.

12.The Hon'ble Supreme Court in the case of *Govind Prakash Verma vs. Life Insurance Corporation of India and others* (2005 (10) SCC 289) opines that the family pension that was being paid to the widow of the deceased as well as employment of the elder brother as casual labour, would hardly be relevant in determining the entitlement of that petitioner for compassionate appointment. The findings of the High Court were thus reversed, and the entitlement of that petitioner to compassionate appointment was confirmed.

13.In the present case, I am of the view that the impugned order hardly contains any reasoning to reject the request of the petitioner. In fact, that the petitioner is unemployed has not been disputed either in the impugned order or in the counter. The petitioner also states that he is presently supporting his mother through his meagre resources. Both, the impugned order and the counter merely refer to '*family income of the petitioner*' without elaborating on what the nature of the income is or the quantum thereof.

14.I am of the considered view that even assuming that the petitioner's brothers are employed with independent sources of income, unless the respondents are in a position to establish that they are, in fact, supporting the petitioner and their mother in full, the petitioner is entitled to be considered for compassionate appointment.

15.The factum of 'dependency' of the petitioner upon the other members of the family has to be examined with reference to the petitioner's sources of income, the income earned by his brothers and its sufficiency, as well as their inclination to support dependents. After all, though an ideal situation, it cannot be assumed that more prosperous family members would always be inclined to, and enthusiastic about supporting dependent family members.

16.The rejection of the petitioner's request is arbitrary, cryptic and indicates absolutely no application of mind. The impugned order is thus set aside. The petitioner's application for compassionate appointment shall be considered afresh, bearing in mind all parameters as discussed above, and in line with the ratio of the judgment of the Hon'ble Supreme Court referred to above and Clause 10 of the Scheme.

17.A speaking order be passed upon the representation of the



petitioner within six weeks from today, after hearing the petitioners and considering all submissions made. This writ petition is allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-39349[F] dated 17/12/2021)

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-39204[F] dated 17/12/2021)

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RK(31.01.2022) 5P 3C