10.08.2022
Court No.13
Item No.07
pk

WPCRC 112 of 2022

Subhajit Bayen
Vs.
Raj Kishore Sahoo
In
WPA 3116 of 2021

Mr. Malay Dhar,
Mr. Ziaul Haque,
Mr. Manish Kumar Das
… for the petitioner

Mr. Phiroze Edulji,
Mr. Ajit Kumar Mishra,
Mr. Baidurya Ghosal,
Mr. Abhishek Acharya,
Mr. Abhishek Dey
… for the alleged contemnor.

Both counsel for the petitioner as well as the Bank/alleged contemnor have made detailed submissions on the facts as well as the law.

The only issue in a contempt application is as to whether there has been compliance with the Court's order. This Court had directed for consideration of the petitioner's application for compassionate employment. Consideration has been effected albeit belatedly. Contempt proceedings should have ended thereafter.

However, this Court in consideration of the fact that the petitioner is seeking employment on compassionate grounds and may not have sufficient means to test the propriety of the decision taken by the bank in a fresh litigation and in the interest of both the parties, the propriety of the decision of the bank is considered and decided upon hereunder.

The bank in the impugned order has assessed the income of the family of the deceased as follows:-

"**ELIGIBILITY FOR BEING CONSIDERED FOR COMPASSIONATE APPOINTMENT**:

A	**Net terminal dues paid:**	
	Provident Fund	15,50,159.00
	Gratuity	5,70,938.00
	Leave Encashment	3,30,734.00
	Any other amount paid under Bank's Scheme(s)/NPS	Nil
	Total	24,51,831.00
B	**Liabilities:**	
	Loans taken from Bank and/or other financial institution with the prior approval of the Bank	
	If death is on account of prolonged illness and hospitalization, any Unreimbursed Expenses can be considered as liabilities.	
	Personal borrowing from friends/relatives can be considered under liabilities if the same was taken through proper Banking channels but not prior of the said transfer of the respective amount is shown to the satisfaction of the Bank.	
	Total	Nil
C	**Net corpus of Terminal benefits (A-B)**	**24,51,831.00**
D	**Investments:**	
	Deposits	16,00,000.00
	NSC	
	PPF	
	LIC Policies	
	Others	
	Total	16,00,000.00
E	**Final Computation**	
	Monthly income (notional) from interest on other investments/receivables at Bank's maximum term deposit rate	8,333.00

	Monthly income from immovable property	Nil
	Monthly income from movable property	Nil
	Monthly income from pension (if any)	14,810.00
	Monthly income of family member (s)	8,000.00
	Any other income of the family	Nil
	Total	**31,143.00**

1. **Salary (Net of Taxes) of family of Deceased Employee**:

A	Notional Gross salary of the Employees for the complete month in which he/she has expired	41,341.75
B	Amount of national income tax on 'a' above	650.00
C	Notional monthly salary (net of taxes) (a-b)	40,691.75
D	Amount to taken into account (Notional Eligible Amount i.e. 60% of 'c')	24,415.05

It appears from the records that the bank had a scheme for compassionate employment dated 6th March, 2019, which is applicable to the instant case. The definition of '*indigent family'* is set out against Clause 5.1 of the said Scheme. It is indicated that '*indigent family'* is one that deserves immediate relief from financial destitution. The said scheme was replaced by another scheme for compassionate employment dated 21st June, 2021. The definition of 'indigent' has been clarified therein under Clause 6(i)(ii). The income gradation of the family to qualify as indigent has also been explained.

The issue that therefore comes up for consideration is as to whether, for the purpose of assessment of indigency, can the terminal benefits of the deceased be taken into consideration and if so, to what extent.

The expression “indigency” under the Rules dated 06.03.2019 is rather vague. However, there is some force in the submissions of the counsel for the petitioner that the Rules of 21st June, 2021 cannot be applied to the petitioner as the order-in-question has been passed before that.

It is necessary here to consider the object, purpose and scope of compassionate employment as extensively dealt with in the case of **Umesh Kumar Nagpal Vs. State of Haryana** reported in **(1994) 4 SCC 138**. The said principles have been reiterated in the decision of **Union Bank of India and others Vs. M. T. Latheesh** reported in **2006 AIR SCW 4626**.

In **State of Himachal Pradesh and Another Vs. Shashi Kumar** reported in **(2019) 3 SCC 653** at Para 18 and 21 it was held as follows.

> “**18.** While considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. The basis of the policy is that it recognises that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered.

The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.

21. The decision in *Govind Prakash Verma* [*Govind Prakash Verma* v. *LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in *Umesh Kumar Nagpal* v. *State of Haryana* [*Umesh Kumar Nagpal* v. *State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] . The principles which have been laid down in *Umesh Kumar Nagpal* [*Umesh Kumar Nagpal* v. *State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (*Umesh Kumar Nagpal case* [*Umesh Kumar Nagpal* v. *State of Haryana*, (1994) 4 SCC 138 : 1994 SCC (L&S) 930] , SCC pp. 139-40, para 2)

> "*2.* … As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The

> posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.""

It is therefore now well settled that compassionate employment is not a regular source of employment but an exception thereto. It is only aimed at ensuring that the family of the deceased does not fall to destitution and penury.

The issue then boils down to whether terminal benefits of a deceased available to the family members can be taken into account for the purpose of assessing indigency in the facts of the case.

This issue also came to be considered by the Supreme Court in para 25 of the **State of Himachal Pradesh Vs. Shashi Kumar (supra)** decision as follows.

> **"25.** The decision in *SBI* v. *Somvir Singh* [*SBI* v. *Somvir Singh*, (2007) 4 SCC 778 : (2007) 2 SCC (L&S) 92] has noticed the scheme for appointment of dependants of deceased employees on compassionate grounds framed

> by State Bank of India. The Court expressly held that the authorities were not in error in taking account of the terminal benefits, investments and the monthly family income including the family pension paid by the Bank. The view of this Court finds expression in the following extract: (SCC p. 784, para 12)
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> > "*12.* The competent authority while considering the application had taken into consideration each one of those factors and accordingly found that the dependants of the employee who died in harness are not in penury and without any means of livelihood. *The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purposes of deciding as to whether the family of late Zile Singh had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration.* The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land."
> >
> > (emphasis supplied)
>
> In the view of this Court, the only issue to be considered was whether the claim for compassionate appointment had been considered in accordance with the scheme. The income of the family from all sources was required to be taken into consideration according to the scheme. This having been ignored by the High Court, the appeal filed by the Bank was allowed."

It is clear from the above decision that a family having sufficient income from any source cannot be said to be in penury or in destitution.

Learned counsel for the petitioner argues that the said decision must essentially be viewed in the light of the Circulars of the State of Himachal Pradesh which prescribes that the family income and pension of the deceased need to be taken into consideration for the purpose of assessment of *indigency*.

In the instant case the Bank has put in place a scheme for compassionate employment. The scheme itself contemplates 'indigency' to mean a family falling into financial destitution and the relief of companionate employment is a relief to prevent the same.

The expression “income” has not been defined under the Rules dated 6th March, 2019. Rule 8, particularly 8.2 must be referred to for this purpose:

> **“8.TIME LIMIT FOR CONSIDERING APPLICATIONS**
> 8.1 Application for employment under the Scheme from eligible dependent should normally be considered upto five years from the date of death or retirement on medical grounds and decision to be taken on merit in each ease.
> 8.2 However, Bank can consider request for compassionate appointment even when the death or retirement on medical grounds of the employee took place long back, even five years ago. While considering such belated requests, it should, however, be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the employee in order to relieve it from economic distress. The very **fact that the family has been able** to manage somehow, all these years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, examination of such cases would call for a great deal of circumspection. The decision to make appointment on compassionate grounds in such cases may, therefore, be taken only at the Board level.”

A plain reading of the above and given the larger perspective and the object and purpose of compassionate employment as already discussed by the Supreme Court in the cases referred to hereinabove, it cannot be said that the petitioner or the family members of the deceased are in penury or destitution given the terminal benefits of the deceased being received by them. The inclusion of terminal benefits in assessing the income of the family to assesses indigency, by the bank cannot therefore be faulted.

The decision of the Supreme Court in the case of **Govind Prakash Verma Vs. L.I.C.** reported in (**2005) 10 SCC 289** relied upon by counsel for the petitioner has been specifically distinguished and held inapplicable at paragraph 16 of the **Sashi Kumar decision (supra)**.

Further, the dicta of the Supreme Court in the case of **APSRTC, Musheerabad Vs. Sarvarunnisa Begum** reported in **AIR 2008 SCW 1946** and **Canara Bank Vs. M. Mahesh Kumar** reported in **(2015) 7 SCC 412** have also been distinguished. The same may be considered for application where the employer does not have any specific scheme for compassionate employment.

This Court does not wish to enter into the disputes with regard to the calculation of terminal benefits raised by the petitioner. Even assuming for the sake of argument that their may have been some minor errors in calculation, this Court is of the view that the petitioner’s family is not in financial destitution or in penury.

The argument of the counsel for the bank/contemnor is that the bank is not averse to compassionate employment, especially in view of the pending scheme and the appointment of 19 persons due to the reasons stated above, also be ignored. It has been demonstrated by Edulji, learned counsel for the bank that in each of the 19 cases, the terminal benefits received by the family of the deceased were taken into account.

Learned counsel for the petitioner submits that his client has not got any opportunity for hearing. Controverting the case of 19 persons, who received compassionate employment referred to herein above. This Court does not deem it necessary to give such an opportunity since the same has not been the basis for holding against the writ petitioner. The particulars of such appointment have already been handed over to counsel for the petitioner.

The petitioner has been given a fair consideration for compassionate employment and the bank has found that he is not entitled to the same. The decision of the bank is sustainable in law.

The contempt application is disposed of.

Rule, if any, shall stand discharged.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Rajasekhar Mantha, J.)