



W.P.(MD).No.14020 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 13.07.2023

PRONOUNCED ON : 25.07.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.14020 of 2022

and

W.M.P(MD)No.10004 of 2022

D.Paulraj

... Petitioner

Vs.

- 1.The Managing Director & CEO,
(Competent Authority),
Union Bank of India,
Central Office,
No.239, Vidhan Bhavan Marg,
Mumbai – 400 021.
- 2.The Assistant General Manager,
Union Bank of India,
Central Office,
No.239, Vidhan Bhavan Marg,
Mumbai – 400 021.
- 3.The Regional Manager,
Union Bank of India,
Regional Office,
B.B. Kulam,
Madurai District.



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4.The Branch Manager,
Union Bank of India,
Easwaran Kovil Street,
Emaneshwaram – 623 701,
Paramakudi,
Ramnad District.

.... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order in HR.MPRD.F-1575:1477-I: 2022 dated 09.03.2022 on the file of the first respondent and quash the same as illegal and consequently directing the first respondent to appoint the petitioner on compassionate grounds in any suitable post in the first respondent Bank within the period stipulated by this Court.

For Petitioner	: Mr.Aswin Rajasimman for Mr.T.Lajapathi Roy
For Respondents	: Mr.N.Dilip Kumar Standing Counsel

ORDER

The present Writ Petition has been filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned order, dated 09.03.2022 on the file of the first respondent and consequently to direct the first respondent to appoint the petitioner on compassionate grounds in any suitable post in the first respondent Bank within the period stipulated by this Court.



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2.The petitioner's father worked as a Head Cashier II cum Clerk at the third respondent Bank. Unexpectedly, while in service, he passed away on 04.10.2014. He was survived by his wife and three sons, of which, the youngest son is the petitioner. The petitioner's mother also away on 14.07.2020. Immediately, after the demise of the petitioner's father, the petitioner approached the respondents 1 to 3 in person seeking compassionate appointment, since his family was in financial distress. The petitioner's family was running on hand loans of relatives. The petitioner's elder brothers, namely, D.Raj Kumar and D.Packia Raj, had given their no objection certificate for the petitioner's appointment based on compassionate grounds. The petitioner completed the Degree of B.A Tamil in the year 2015 and he had been the breadwinner of his family. At the time of the death of the petitioner's father, the petitioner's elder brother was working in a private firm temporarily in abroad and he was living separately with his own family consisting of his wife and child. The petitioner's younger brother was pursuing Law at that point of time. The petitioner's family had incurred heavy debts, which was already expended towards treatment of the prolonged illness suffered by his father. Under such circumstances, the petitioner approached the respondents 1 to 3 seeking appointment on compassionate grounds.

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3.The petitioner's family belonged to SC Community living in a remote Village and his mother was born deaf and dumb and she was continuously suffering from various ailments. As a result of which, she passed away on 14.07.2020. The meagre family pension to a tune of around Rs.10,000/- was not sufficient even for taking care of the petitioner's mother and her medical expenses. Finally, since the petitioner's personal request were not heeded to by the respondents 1 to 3, the petitioner made a representation on 17.03.2015 seeking appointment under compassionate grounds. However, vide letters dated 02.04.2016 and 09.09.2016 from the Central Office of the third respondent Bank, the petitioner's application was disposed of denying the compassionate appointment stating that taking into account the income of the family from all sources, his request for compassionate appointment was not considered by the competent authority. Aggrieved by the same, the petitioner filed a Writ Petition in W.P(MD)No.2925 of 2018. This Court, vide order, dated 16.12.2021, after elaborate discussions allowed the aforesaid Writ Petition and the operative portion of the same is extracted as follows:-



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"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."

4.The respondents refrained from preferring an appeal as against the said order in W.P(MD)No.2925 of 2018, dated 16.12.2021. However, proceeded to consider the petitioner's application afresh. But to the shock and disappointment of the petitioner, once again the first respondent Bank rejected the petitioner's application vide impugned order, dated 09.03.2022 on various grounds. Challenging the same, this Writ Petition came to be filed.



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5.The learned counsel appearing for the petitioner vehemently contended that the petitioner is entitled for compassionate appointment in the line of the order passed by this Court in W.P(MD)No.2925 of 2018, dated 16.12.2021. He further submitted that the Bank having not preferred an appeal as against the said Writ Petition ought not to have rejected the petitioner's application, on the other hand, the first respondent Bank ought to have considered the petitioner's application with compassion in line with the ratio of the Judgment of the Honourable Apex Court in the case of **Govind Prakash Verma Vs Life Insurance Corporation of India and others** reported in **(2005) 10 SCC 289** and Clause 10 of the Scheme of the Bank for compassionate appointment. He added that the precedent set by **Govind Prakash Verma's case (cited supra)** is not a bad law and the scheme of compassionate appointment which was dealt with by the Honourable Apex Court in **Govind Prakash Verma Vs Life Insurance Corporation of India and others** reported in **(2005) 10 SCC 289** was with respect to Life Insurance Corporation of India and the said scheme is a parimateria with that of the scheme of the compassionate appointment of this respondent Bank as well. He relied upon the said Judgment wherein it is specifically discussed as follows:-



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"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as be benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the



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enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The interference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.”

6.Relying on the said Judgment, the learned counsel appearing for the petitioner submitted that payment of terminal benefits under the Rules and family pension to the widow of the deceased would be wholly irrelevant for the departmental authorities while considering an application for compassionate appointment. He added the gainful employment of the brothers of the petitioner is also irrelevant unless the same is elaborately enquired. Nothing of that kind of exercise had been done by the respondent Bank rather conducting an enquiry with the petitioner virtually that too in a different language which is alien to the petitioner which was conducted with the help of an interpreter in between the petitioner and the respondent authorities.



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He further added that if an application for compassionate appointment is not duly considered, the entire scheme of compassionate appointment will itself become redundant. The finding of the first respondent Bank is that the eldest brother of the petitioner is gainfully employed. However, the first respondent Bank failed to take into consideration that by the time when the petitioner made an application seeking compassionate appointment, the eldest brother had returned from abroad jobless and he remains unemployed till date. However, with respect to the younger brother of the petitioner is concerned, when the application was made he was in the initial stage of his legal practise as a lawyer and having a separate family of his own, he also has nothing to do with supporting the petitioner and his mother. Hence, the rejection order is not reasoned and the Writ Petition should be allowed.

7.Per contra, the learned standing counsel appearing for the respondents Bank vehemently argued that the impugned order passed by the first respondent is legally sustainable for the reason that it has been properly passed by the first respondent Bank after conduct of an elaborate enquiry. He further submitted that on account of the demise of the petitioner's father, namely S.Devandra Kumar, a sum of 9/28



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Rs.2,34,345/- was paid towards provident fund on 07.01.2015 to his wife, who was the nominee. Another sum of Rs.2,57,516/- was paid towards Gratuity vide order, dated 02.02.2015 and another sum of Rs. 2,29,468/- was paid towards PL encashment. In addition to that, family pension was sanctioned to his wife D.Saroja with effect from 05.10.2014 and her last drawn pension was Rs.10,992/- till her death in the year 2020.

8.The learned standing counsel appearing for the respondents vehemently contended that of the two brothers of the petitioner one of whom was gainfully employed even at the time of death of their father. He added that an application seeking compassionate appointment made by the petitioner vide representation, dated 17.03.2015 was rejected by the competent authority on 02.04.2016 only taking into account the income of the family from all sources and only on that basis, his request was rejected. He vehemently contended that the Judgment of the Hon'ble Apex Court in **Govind Prakash Verma's case (cited supra)** is not applicable to the facts and circumstances of this case.



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9. In support of his contention, the learned counsel appearing for the respondents relied on the following Judgments:-

(i) The Hon'ble Supreme Court of India in a Judgment in ***Mumtax Yunus Mulani (SMT) Vs. State of Maharashtra and others*** reported in **(2008) 11 SCC 384**, in paragraph No.14 has held as follows:-

"14. The question came up for consideration yet again in Govind Prakash Varma v. Life Insurance Corporation of India & Ors. [(2005) 10 SCC 289], wherein it was held :

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder



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brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."

It, however, does not appear that therein the earlier binding precedent of this Court had been taken notice of."



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(ii) The Hon'ble Supreme Court of India in a Judgment in **State Bank of India and another Vs. Raj Kumar** reported in **(2010) 11 SCC 661**, in paragraph Nos.9 and 11 has held as follows:-

"9. Normally the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the scheme in force at the time of death would apply.

10.....

11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a



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specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies."

(iii) The Hon'ble Supreme Court of India in a Judgment in ***Shiv Kumar Dubey Vs. State of Uttar Pradesh and others*** reported in **2014 SCC Online All 16214**, in paragraph No.31 has held as follows:-

31.We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve



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the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to



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whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an



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application has to be made, the operation of the rule is not suspended during the minority of a member of the family."

(iv) The Hon'ble Supreme Court of India in a Judgment in ***Government of India and another Vs. P.Venkatesh*** reported in ***(2019) 15 SCC 613***, in paragraph No.10 has held as follows:-

"10.Bearing in mind the above principles, this Court held:

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.""

(v) The Hon'ble Supreme Court of India in a Judgment in ***N.C.Santhosh Vs. State of Karnataka and others*** reported in ***(2020) 7 SCC 617***, in paragraph No.5 has held as follows:-



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"18. In the most recent judgment in *State of Himachal Pradesh & Anr. vs. Shashi Kumar* the earlier decisions governing the principles of compassionate appointment were discussed and analysed. Speaking for the bench, Dr. Justice D.Y. Chandrachud reiterated that appointment to any public post in the service of the State has to be made on the basis of principles in accord with Articles 14 and 16 of the Constitution and compassionate appointment is an exception to the general rule. The Dependent of a deceased government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy.

(vi) The Hon'ble Supreme Court of India in a Judgment in ***State of Uttar Pradesh and others Vs. Premlata*** reported in ***(2022) 1 SCC 30***, has held as follows:-

"26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* (2008) 11 SCC 384 has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden



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financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

10.The learned standing counsel appearing for the respondents reiterated that the schemes for compassionate appointments are framed as per the guidelines of the Government and the same is for immediate assistance to the dependent family members for relief from financial destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointment, it would turn out to be a reservation in favour of the dependents of an employee, who died while in service, which would be directly in conflict with the idea of equality guaranteed under Articles 14 and 16 of the Constitution of India. He concluded that in the present case, it can be observed that the family has already survived for a substantial period of more than 7 years from the date of death of the employee and hence pressed for dismissal of the Writ Petition.



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11.Heard Mr.Aswin Rajasimman, learned counsel appearing for the petitioner and Mr.N.Dilip Kumar, learned standing counsel appearing for the respondents and anxiously perused the materials available on record.

12.Though the compassionate appointment is an exception to the general rule, it is a settled proposition of law that an applicant seeking appointment by compassionate appointment should fully fulfil the norms laid down by the scheme of compassionate appointment. That apart, no aspirant has a vested right to claim compassionate appointment beyond the parameters of the norms that are in force. But this Court is conscious that this case is also an exceptional case. This is the second round of litigation initiated by the petitioner as a result of the first respondent Bank rejecting the application of the petitioner seeking compassionate appointment by letters, dated 02.04.2016 and 09.09.2016 by means of a cryptic and unreasoned order. The first round of litigation was initiated by the petitioner challenging those two letters which was elaborately dealt with by this Court in W.P(MD)No.2925 of 2018, which was disposed of in favour of the petitioner on 16.12.2021. The specific direction of this Court in the

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aforsaid order was to consider the petitioner's application for compassionate appointment afresh bearing in mind all the parameters as discussed in the case of Govind Prakash Verma Vs Life Insurance Corporation of India and others reported in (2005) 10 SCC 289 as well as all those observations made by this Court from paragraph Nos.1 to 15 of the order passed in W.P(MD)No.2925 of 2018 along with Clause 10 of the Scheme of compassionate appointment of the respondent Bank. The specific clause of the Scheme which this Court directed the respondent Bank to consider is extracted 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.



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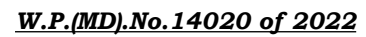
10.2. In cases where any member of the family of the deceased or medically retired employee is already in employment and is not supporting the other members of the family of the deceased employee, extreme caution has to be observed in ascertaining the economic distress of the members of the family of 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.”

13. When the scheme itself mandates that 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, such an exercise was not at all resorted to by the respondent Bank. When the scheme itself mandates as to the cases where any member of the family of the deceased 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, in this case, in the impugned order, the respondent Bank



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has proceeded to observe that the petitioner himself has confirmed that his brothers are supporting him for sustenance and he is also engaging himself in some labour work and earning a sum of Rs.200/- per day. Ironically, in the very same findings, the respondent Bank has also mentioned that the petitioner's brothers are staying separately. Taking into account today's cost of living in all aspects, it is ridiculous as to how the Bank refrained from undertaking an elaborate enquiry as to the income of the petitioner's brothers separately and to the specific amount of sustenance which they are contributing to the petitioner every month. No doubt, the petitioner's brothers are living separately with their respective families and the petitioner's elder brother is remaining unemployed after returning from abroad. There is no whisper about the income or employment of the youngest brother. It is unreasonable for the respondent Bank for having come to a conclusion that the petitioner has sustained to maintain himself and his family for more than three years from the date of death of his father on 14.07.2020. When the Honourable Apex Court has made it clear in ***Govind Prakash Verma Vs Life Insurance Corporation of India and others*** reported in ***(2005) 10 SCC 289***, that the payment of terminal benefits or family pension to the widow of the deceased would be wholly irrelevant for the departmental authorities while considering



14. In this case, the respondent Bank has proceeded to rely upon the terminal benefits which has been paid to the petitioner's mother in their counter-affidavit and specifically in their conclusion in the impugned order had made a mockery of the petitioner for not having tried any job since his graduation and observing that he was waiting endlessly for the Bank's job. The respondents conclusion cannot be justified in any way when the Bank's finding itself has recorded that the petitioner has engaged himself in some labour work and is earning a paltry sum of Rs.200/- per day and one can understand the kind of job which could be available in the job market for a B.A Graduate in Tamil in the present social circumstances.

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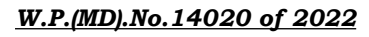


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petitioner's application afresh in a hurry burry manner by swiftly conducting an enquiry virtually without going into the elaborate details of the penury and the complete economic condition of the family. In this case, though the factum that the petitioner is already married has been recorded by the respondent Bank, it is not justifiable on their part that the petitioner has not tried for any job despite recording that he is engaging himself in labour work and I come to a conclusion that the respondent Bank has approached the application of the petitioner with the vindictive approach. Moreover, this Court is also inclined to observe that the petitioner's elder brother is still unemployed and the petitioner's younger brother's avocation and source of income is not appraised by the respondent Bank properly. Without proper supporting evidence, the Bank ought not to have confirmed that the petitioner's brothers are supporting him for sustenance though they are staying separately. Hence, this Court is inclined to quash the impugned order.

16. Accordingly, the impugned order, dated 09.03.2022 passed by the first respondent is quashed and consequently, this Court directs the first respondent to appoint the petitioner on compassionate grounds in any suitable post within a stipulated period of twelve weeks from the date of receipt of a copy of this order. This Court makes it

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17. With the above said directions, this Writ Petition stands
there shall be no order as to costs. Consequently, connected
ous Petition is closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes
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To

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- 1.The Managing Director & CEO,
(Competent Authority),
Union Bank of India,
Central Office,
No.239, Vidhan Bhavan Marg,
Mumbai – 400 021.
- 2.The Assistant General Manager,
Union Bank of India,
Central Office,
No.239, Vidhan Bhavan Marg,
Mumbai – 400 021.
- 3.The Regional Manager,
Union Bank of India,
Regional Office,
B.B. Kulam,
Madurai District.
- 4.The Branch Manager,
Union Bank of India,
Easwaran Kovil Street,
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Ramnad District.



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L.VICTORIA GOWRI, J.

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Pre-Delivery Order made in
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