

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10358 of 2023

=====

Abha Kumari, D/o Late Bharat Singh, Resident of I.A.S. Colony, Bailey Road, P.S.- Rupaspur, District- Patna.

... .. Petitioner/s

Versus

1. The Bank of India through its Chairman, 5 Star Palace, G- Block, Bandra Kurla Complex, Mumbai- 400027.
2. The Executive Director, Human Resources, Bank of India, Head Office, 5 Star Palace, G- Block, Bandra Kurla Complex, Mumbai 400027.
3. The General Manager, Human Resources Department, Bank of India, Head Office, 5 Star Palace, G- Block, Bandra Kurla Complex, Mumbai 400027.
4. The Zonal Manager, Bank of India, Chanakya Complex, R- Block, Bihar, Patna.
5. The Senior Manager, Human Resources Department, Bank of India, Industrial Relation Division, Chanakya Complex, R- Block, Bihar, Patna.
6. The Branch Manager, Bank of India, C and P Branch, Chanakya Place, Birchand Patel Path, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
Mr. Akash Anand, Advocate
For the Respondent No. 1 to 5: Mr. Shivendra Kishore, Sr. Advocate
Mr. Nishi Natha Ojha, Advocate
Mr. S. K. Sharma, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 09-08-2024



1. The Petitioner is the married daughter of one Bharat Singh, since deceased. The said Bharat Singh, while working as Senior Manager, Bank of India, C & P Branch, Patna died in harness on 12th of October, 2016. After his death, the widow of the said Bharat Singh, namely, Geeta Devi filed an affidavit, stating, *inter alia*, that after the death of her husband, the Petitioner, being the daughter of the deceased employee, may be appointed on compassionate ground. Thus, she submitted her no objection, if the Petitioner be appointed on compassionate ground on the death of her father, Late Bharat Singh. It is also stated by the Petitioner that at the time of death, the father of the Petitioner left behind his wife, one son, namely, Niraj Kumar and another daughter, namely, Rashmi Kumari. They also filed affidavit, stating their no objection if the Petitioner be appointed on compassionate ground in place of their father who died in harness on 12th of October, 2016. The Petitioner filed her application in prescribed proforma with all documents and the affidavits sworn by above-named heirs of the deceased, praying for appointment on compassionate ground. However, the Respondent No. 3 rejected her claim and the Petitioner received the said information *vide* letter dated 19th of July, 2017. On perusal of the said letter, the Petitioner came to know that her



prayer for compassionate appointment was rejected on the ground that she, being a married daughter, was not wholly dependent upon her father and as per the Bank's Scheme for compassionate appointment, married daughter cannot be appointed on compassionate ground *vide* Circular No. 108/132, dated 29th September, 2014. The Petitioner challenged the said order dated 19th of July, 2017 by filing a writ petition under Article 226 of the Constitution of India bearing C.W.J.C. No. 12491 of 2017. The said writ petition was disposed of by a Co-ordinate Bench of this Court *vide* order dated 26th of August, 2022. The relevant paragraph of the said order runs thus: -

“The submission of the petitioner's counsel is that in 2021, relying upon decisions rendered by various High Courts, the Bank has come out with new provisions enabling the married daughter also to stake claim for compassionate appointment. The scheme, however, is not on record. He however submits that application has already been filed under the scheme.”

2. Subsequent to the disposal of the aforesaid writ petition, the Petitioner filed a fresh representation before the Respondent Bank for consideration of application for compassionate appointment in view of “Bank of India Revised Scheme for Compassionate Appointment or Payment of Ex-



Gratia Lumpsum Amount in lieu of Compassionate Appointment, 2021” and order, dated 26th of August, 2022, passed by a Co-ordinate Bench of this Court in C.W.J.C. No. 12491 of 2017. The said representation was also rejected *vide* letter dated 29th of September, 2022 on the ground that the revised scheme dated 3rd of December, 2021 in paragraph 1.4 states that the scheme shall come into force from the date of approval by the Board, except for cases related to Covid-19 deaths, for which the date of implementation will be from 24th of March, 2020. As Bharat Singh expired on 12th of October, 2016, i.e., prior to the Board meeting dated 29th of October, 2021 and the date of first national lockdown, i.e., 24.03.2020 on account of Covid-19, the aforesaid Circular is not applicable in the case of the Petitioner.

3. I have heard the learned counsel for the Petitioner as well as the Respondents, especially the learned Advocate appearing on behalf of the Bank of India.

4. Needless to say that the compassionate appointment is not recognized in any rule or notification of general appointment of an employee. The compassionate appointment always is *de hors* the rule. It is social security scheme launched by the Government of India to grant appointment to a dependent



family member on compassionate basis when a government servant dies while in service or retires on medical grounds. The objective of the scheme is to provide immediate financial assistance to the family who is left in penury and without any mean to sustain their livelihood. The social security scheme of the Government has been adopted by PSUs, Bank and other Statutory Corporations laying down their own scheme.

5. It is general rule that appointment to any public post is to be made in accordance with Article 14 and Article 16 of the Constitution of India and compassionate appointment is the exception to this general rule.

6. In *Mamta Devi v. State of Himachal Pradesh & Ors.*, reported in *2020 SCC Online HP 2125*, the father of the Petitioner died in harness leaving behind a widow and two daughters. The Petitioner, being the married daughter, had to take care of her widow mother and sister. She applied for compassionate appointment with the no objection certificate from her mother and sister. The Himachal Pradesh High Court held that the Petitioner could not be denied compassionate appointment solely on the ground that she was married. The Court opined that the object of compassionate appointment is to support the family of the deceased government servant who died



in harness and by not including married daughters in the sweep of the family, the object of the scheme cannot be achieved. The Court further stated that the daughter remains a daughter even after marriage and thus if a married son has a right to compassionate appointment then a married daughter also stands on the same footing.

7. The learned Advocate on behalf of the Petitioner submits that the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training in its office Memorandum, dated 5th of September, 2016 directed that if a married son otherwise fulfills all the other requirements of the scheme, i.e., he is otherwise eligible and fulfills the criteria laid down in this Department's Office Memorandum, dated 16th of January, 2013, a married son can be considered for compassionate appointment which was directed to be effective from 25th of February, 2015.

8. According to the learned Advocate for the Petitioner, if Bank Authority had taken into consideration the above-mentioned office Memorandum issued by the Government of India, it ought to have held that the married daughter, being at par with married son, was entitled to compassionate appointment.



9. “Bank of India Revised Scheme for Compassionate Appointment or Payment of Ex-Gratia Lumpsum Amount in lieu of Compassionate Appointment, 2021” revised the definition of dependent family members. In the revised definition, wholly dependent married daughter has been brought within the purview of the scheme of compassionate appointment.

10. By virtue of the order, dated 29th of September, 2022, the prayer of the Petitioner was rejected only on the ground that she is married daughter of the deceased and at the time of her filing application, there is no such scheme that the married daughter is entitled to get compassionate appointment.

11. In **Mamta Devi** (supra), the legality of the compassionate policy in vogue was subject matter of adjudication. In the said report, the Division Bench of Himachal Pradesh High Court held as follows:

“20. The legality of the compassionate policy, in vogue, and in question herein, has to be evaluated on the touchstone of its constitutionality, but the policy, upon its evaluation, is discriminatory to married daughters, hence against the spirit of Article 15 of the Constitution of India. The State cannot act in a misogynistic way, carving ways to



debar compassionate employment to married daughters and such act(s) fall within the definition of discrimination based on sex, which is against Article 15 of the Constitution of India.

21. The object of compassionate employment is not only social welfare, but also to support the family of the deceased government servant, who dies in harness, and by excluding married daughter(s) from the sweep of the family, the real purpose of social purpose cannot be achieved. If the marital status of a son does not make any difference in the eyes of law, then it is difficult to think, how marital status of a daughter makes such a huge difference in her eligibility. In fact, marriage does not have proximate nexus with identity and even after marriage, a daughter continues to be a daughter. Therefore, if a married son has right to compassionate appointment, then a married daughter also stands on the same footing and her exclusion does not have any plausible basis or logic, so her exclusion has no justifiable criteria.

23. As held above, the object of compassionate appointment is not only social welfare, but also to support the family of the deceased government servant, so, the State, being a welfare State, should extend its hands to lift a family from penury and not to turn its back



to married daughters, rather pushing them to penury. In case the State deprives compassionate appointment to a married daughter, who, after the death of the deceased employee, has to look after surviving family members, only for the reason that she is married, then the whole object of the policy is vitiated.

24. After incisive deliberations, it emerges that core purpose of compassionate appointment is to save a family from financial vacuum, created after the death of deceased employee. This financial vacuum could be filled up by providing compassionate appointment to the petitioner, who is to look after the survivors of her deceased father and she cannot be deprived compassionate appointment merely on the ground that she is a married daughter, more particularly when there is no male child in the family and the petitioner is having 'No Objection Certificates' from her mother and younger sister, the only members in the family.

25. In the instant case, in case the petitioner is not given compassionate appointment, who has to take care of her widowed mother and sister, if she is otherwise eligible and she fulfils the apt criteria, the whole family will be pushed to impoverishment, vitiating the real aim of the compassionate employment policy.

26. Therefore, this Court is of the considered



view that in the instant case, the compassionate employment policy requires a generous application, keeping in view the peculiar facts and circumstances viz., the deceased employee has left behind his widow and two daughters; the petitioner being the elder daughter, has to look-after her widowed mother and sister, coupled with the fact that they have given their 'No Objection Certificates' in favour of the petitioner.

27. So, in view of the foregoing discussion, the object of the compassionate employment policy would only be met in case the petitioner is given compassionate appointment, if she otherwise fulfills other required eligibility criteria under the policy for compassionate appointment to the dependents of the deceased employee.

28. In view of foregoing discussion and considering the relevant law on the subject, the extant writ petition is allowed, directing the respondents to give compassionate employment to the petitioner, if she is otherwise eligible and fulfills the criteria prescribed in the apt compassionate employment policy.

12. The same principle is laid down by the Full Bench of Uttar Pradesh High Court in ***Udham Singh Nagar District Co-operative Bank Ltd. & Anr. v. Anjula Singh & Ors.***, reported in ***2019 SCC OnLine Utt 1856***. The Court in Paragraph Nos. 23,



24 and 25 held as follows: -

“23. Every scheme introduced for the benefit of the weaker/deprived sections such as the scheme of compassionate appointment, must be implemented in its proper spirit for achieving the noble object for which such law or scheme is brought into existence.(Purnima Das) (2018 Lab IC 1522 (Cal) (FB). When the necessity to frame a scheme arises as a social welfare measure, it ought to be the duty of the framers to take into consideration all conceivable situations, that such a scheme should cover, to satisfy its avowed object. (Purnima Das). A law should ordinarily cover all possible contingencies and not exclude those who are also eligible, from within its ambit.

24. Indian women have suffered and are suffering discrimination in silence. They have been subjected to inequities indignities inequality and discrimination. (Madhu Kishwar) (1996) 5 SCC 125 : AIR 1996 SC 1864). Though women have equal rights in law, tradition and social customs have hindered Indian women enjoying equal rights with men. With a change in the family structure life styles and social norms nothing is so detrimental to society as a blind adherence to outworn forms and obsolete social customs which largely survive because of inertia. (R. Jayamma)



((1992) 3 Kant LJ 570). Excluding a married daughter from the ambit of the family may well defeat the object of a social welfare subordinate legislation. (Vimla Srivastava) ((2016) 1 All LJ 678).

25. If a married man has a right a married woman, other things being equal stands on no worse footing. This misogynous posture is a hangover of the masculine culture of manacling the weaker sex. That our founding faith enshrined in Articles 14 and 16, should have been tragically ignored vis-a-vis half of India's humanity, viz., our women, is a sad reflection on the distance between Constitution in the book and Law in Action. And if the Executive as the surrogate of Parliament makes rules in the teeth of Part III the inference of die-hard allergy to gender parity is inevitable. (C.B. Muthamma (1979) 4 SCC 260 : AIR 1979 SC 1868); R. Jayamma)."

13. Previously, the application of the Petitioner was rejected on the ground that the Petitioner is married and she is not wholly dependent of late Bharat Singh as per Bank scheme for compassionate appointment circulated vide Head Office Branch Circular No. 108/132, dated 29th September, 2014. Therefore, the widow of late Bharat Singh or unmarried daughter were advised to file application for compassionate



appointment as they are dependent family members of late Bharat Singh.

14. Considering the whole object of grant of compassionate employment and the decisions, referred to above, this Court does not have any hesitation to hold that when a married son is entitled to get compassionate appointment on proof of his being dependent upon his deceased father, there should not be any disparity with regard to the scheme of married daughter, provided she was wholly dependent upon her father.

15. In view of such circumstances, this Court does not find any scope to accept the reason stated in the letter dated 29th of September, 2022 for rejection of Petitioner's prayer for compassionate appointment on the ground that on the date of death of her father, there was no scheme of Bank of India to give compassionate appointment to a married daughter.

16. Accordingly, the impugned order, dated 29th of September, 2022 is quashed and set aside.

17. The Respondent Nos. 3, 4 and 5 are directed to consider the prayer of the Petitioner specially taking into account the affidavits filed by the widow, son and the second daughter of the deceased expressing their no objection if the Petitioner is appointed on compassionate ground to relieve them



of penury which they suffer after the death of Bharat Singh.

18. The above-named Respondents are directed to dispose of the Petitioner’s application on the above consideration within a period of 90 days from the date of receipt/communication of this order.

19. With the aforesaid direction, the instant petition sands disposed of, on contest, however, without cost.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	30.07.2024
Uploading Date	09.08.2024
Transmission Date	N/A

