

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

122 (3 cases)

CWP-12870-2019
Date of Decision : 20.03.2024

JAI SINGH ... PETITIONER

Versus

UNION OF INDIA AND OTHERS ... RESPONDENTS

2. CWP-12961-2019

AMIT KUMAR ... PETITIONER

Versus

UNION OF INDIA AND OTHERS ... RESPONDENTS

3. CWP-34913-2019

PARDEEP ... PETITIONER

Versus

UNION OF INDIA AND OTHERS ... RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present : Mr. Parveen Kumar, Advocate for
Mr.Abhimanyu Singh, Advocate
for the petitioner in all cases.

Ms. Monica Chawla, Central Govt. Counsel
for respondent No.1-UOI.

Mr. Bhushan Bhatia, Advocate
for the respondent-bank in CWP-34913-2019.

Mr. G.S.Bajwa, Advocate
for respondents No.3 and 4 in CWP-12870-2019.

JAGMOHAN BANSAL, J. (Oral)

1. By this common order, CWP-12870-2019, CWP-12961-2019 and CWP-34913-2019 are disposed of as issues involved and prayer sought in all the petitions are common. For the sake of convenience and with the consent of parties, the facts are borrowed from CWP-12870-2019.

2. The petitioner through instant petition under Articles 226/227 of Constitution of India is seeking setting aside of order dated 20.03.2019 (Annexure P-5) whereby his claim for compassionate appointment has been rejected on the ground that death of the employee had occurred prior to 31.01.2019.

3. Om Kumar-father of the petitioner joined respondent-bank on 16.09.1983. He died in harness on 30.12.2016 and at that point of time, he was working as Assistant Manager at Bhiwani. The petitioner filed application dated 07.06.2017 seeking appointment on compassionate ground. At the time of death of the employee as well as aforesaid application, policy dated 12.01.2015 regarding compassionate appointment was in vogue. The policy dated 12.01.2015 was modified vide circular dated 04.09.2018. The respondent vide circular dated 12.11.2018 withdrew its earlier policies and issued fresh policy dated 21.01.2019. The policy dated 21.01.2019 was further substituted by policy dated 18.02.2019.

4. The respondent vide order dated 20.03.2019 rejected application of the petitioner on the ground that death of the employee had occurred on 30.12.2016 i.e. prior to cut off date 31.01.2019 contemplated by policy dated 21.01.2019.

5. Mr. Parveen Kumar, Advocate submits that at the time of death of the employee as well as application seeking compassionate appointment, policy

dated 12.01.2015 was in vogue, thus, respondent has wrongly relied upon policy dated 21.01.2019. The policy dated 21.01.2019 was substituted by policy dated 18.02.2019 and even as per policy dated 18.02.2019, there is provision for relaxation of 05 years. The different Courts have held that employees who have passed away within 05 years prior to coming into force policy of 2019 are governed by said policy. The Government of India has issued communication dated 14.09.2023 enjoining that application for appointment on compassionate ground, in case of death of the employee, would be governed by 2019 policy.

6. Per contra, learned counsel for the respondents submit that the petitioner is entitled to ex-gratia amount and he is not entitled to appointment on compassionate ground. The competent authority is supposed to consider financial condition of the family. The compassionate appointment is not a matter of right and its object is to prevent the family from being driven to destitution. The age of the applicant is required to be considered. In each case of death, the bank is not bound to extend benefit of compassionate appointment though bank is willing to make ex-gratia payment.

7. I have heard the arguments of learned counsel for the parties and perused the record.

8. The conceded position emerging from the record is that father of the petitioner passed away on 30.12.2016 and at that point of time, 2015 policy was in vogue. The petitioner applied for appointment on compassionate ground on 07.06.2017. The respondent has rejected application of the petitioner on the ground that 2019 policy is applicable where death has occurred on or after the cut of date i.e. 31.01.2019.

9. Concededly, father of petitioner passed away on 30.12.2016 and at that point of time, 12.01.2015 Policy was in vogue. In the said policy, it was provided that dependant family of a permanent employee would be covered

even in case of death by suicide. As per said policy, one family member of deceased employee was entitled to appoint on compassionate ground. The relevant extracts of the policy read as :

1. **NAME OF THE SCHEME:**

The Scheme is to be called the "SCHEME FOR COMPASSIONATE APPOINTMENT TO A DEPENDENT FAMILY MEMBER OF A DECEASED EMPLOYEE/ EMPLOYEE RETIRED ON MEDICAL GROUNDS DUE TO INCAPACITATION BEFORE REACHING THE AGE OF 55 YEARS"

X

X

X

X

4. **COVERAGE**

4.1 *To a dependent family member of a permanent employee of the Bank who-*

- a) dies while in service (including death by suicide)*
- b) is retired on medical grounds due to incapacitation before reaching the age of 55 years. (Incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/Government District Head Quarter Hospitals/Panel of Doctors nominated by the Bank for the purpose).*

4.2 *For the purpose of the Scheme, "employee" would mean and include only a confirmed regular employee who was serving full time or part-time on scale wages, at the time of death/retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on-contract/temporary/casual or any person who is paid on commission basis.*

X

X

X

X

7. **POSTS TO WHICH APPOINTMENTS CAN BE MADE**

7.1 *The appointment shall be made in the Office Assistant and Office Attendant cadre only.*

8. **ELIGIBILITY**

- 8.1 *The family is indigent and deserves immediate assistance for relief from financial destitution; and*
- 8.2 *Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.*

10. The aforesaid policy came to be modified vide circular dated 04.09.2018. In the said policy, the scope of coverage was same. It was para-
materia with policy dated 12.01.2015. The relevant extracts of the policy dated 04.09.2018 are reproduced as below :

NAME OF THE SCHEME:

*The Scheme is to be called the "**SCHEME FOR COMPASSIONATE APPOINTMENT TO A DEPENDENT FAMILY MEMBER OF A DECEASED EMPLOYEE EMPLOYEE RETIRED ON MEDICAL GROUNDS DUE TO INCAPACITATION BEFORE REACHING THE AGE OF 55 YEARS**".*

X X X X

4. **COVERAGE**

The Scheme covers all cases where death of the employee occurs on or after 05.08.2014 and shall replace the Schemes for payment of ex-gratia lump sum amount existed prior to 05.08.2014 and appointment on Compassionate Grounds to dependent 'next of kin' of a deceased employee who expires under certain exceptional circumstances.

- 4.1 *To a dependent family member of a permanent employee of the Bank who-*
- a) *dies while in service (including death by suicide)*
- b) *is retired on medical grounds due to incapacitation before reaching the age of 55 years. (Incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/Government District Head Quarter Hospitals/Panel of Doctors nominated by the Bank for the purpose).*

4.2 For the purpose of the Scheme, "employee" would mean and include only confirmed regular employee who was serving full time or part-time on scale wages, at the time of death/retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on contract/temporary/casual or any person who is paid on commission basis.

X X X X

8. ELIGIBILITY

8.1 The family is indigent and deserves immediate assistance for relief from financial destitution; and

8.2 Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

11. The policy dated 04.09.2018 read with policy dated 12.01.2015 came to be superseded by policy dated 21.01.2019. It is apt to notice that policy dated 21.01.2019 was further substituted by policy dated 18.02.2019. In the policy dated 18.02.2019, the scope of coverage was same, however, it was provided that scheme shall be effective from 31.01.2019. The relevant extracts of the policy dated 18.02.2019 are reproduced as below :

REG: SCHEME FOR COMPASSIONATE APPOINTMENT TO A DEPENDENT FAMILY MEMBER OF A DECEASED EMPLOYEE/ EMPLOYEE RETIRED ON MEDICAL GROUNDS DUE TO INCAPACITATION BEFORE REACHING THE AGE OF 55 YEARS OR SCHEME FOR PAYMENT OF EX-GRATIA LUMP-SUM AMOUNT IN LIEU OF APPOINTMENT ON COMPASSIONATE GROUNDS.

X X X X

The Scheme shall be effective from 31.01.2019.

X X X X

1. **COVERAGE**

1.1. *To a dependent family member of permanent employee of the Bank (Sarva Haryana Gramin Bank) who-*

- a) dies while in service (including death by suicide)*
- b) is retired on medical grounds due to incapacitation before reaching the age of 55 years*
(incapacitation is to be certified by a duly appointed Medical Board in a Government Medical College/ Government District Headquarters Hospitals/Panel of Doctors nominated by the Bank for the purpose).

1.2. *For the purpose of the Scheme, "employee" would mean and include only a confirmed regular employee who was serving full time or part-time on scale wages, at the time of death/retirement on medical grounds, before reaching age of 55 years and does not include any one engaged on contract temporary/casual or any person who is paid on commission basis*

X X X X

5. **ELIGIBILITY**

5.1. *The family is indigent and deserves immediate assistance for relief from financial destitution; and*

5.2. *Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules*

X X X X

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 case.*

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.

12. The Karnataka High Court in **Smt. Padmavathi and others vs. Karnataka Gramin Bank and others, CWP No.22758 of 2021, decided on 05.09.2023** considering 2019 Scheme applicable to Gramin Bank has opined that scheme came into force w.e.f. 06.02.2019, however, it would be applicable to those employees who died within 05 years from the date of introduction of policy. The relevant extracts of the judgment read as :

38. *It has to be borne in mind that the Scheme is one in which the employment is offered on Compassionate Grounds and this is basically to ensure that the family of the deceased is given relief to get over the crisis created by the death of the employee and to ensure a continuity in the lives of the dependents of such an employee.*

39. *In this regard, the judgment rendered by the High Court of Judicature for Rajasthan at Jodhpur in the case of **Smt. Gigna Devi v. Union of India, S.B.Civil Writ Petition No.955 of 2018** would also have some relevance, since it has been held that the revised Compassionate Grounds Model Scheme of 2019 would also be applicable in respect of the death of employees which occurred five years prior to the implementation of the 2019 Scheme.*

40. *Having regard to the scope of the Scheme, it is but necessary to hold that notwithstanding the fact that the Scheme came into force on 06.02.2019, it would be*

applicable in respect of those employees who died within the period of five years prior to the effective date of the Scheme.

41. Since the husbands of petitioner Nos.1 to 3 who had died during the year 2016 i.e., within three years prior to the formulation of 2019 Scheme, they would be entitled to make an application under this Scheme and the Bank would be bound to consider the same in accordance with 2019 Scheme.

42. In this view of the matter, the impugned orders are quashed and the Bank is directed to consider the case of the petitioners under the revised Model Scheme for Appointment on Compassionate Grounds, which has come into force from 06.02.2019 and has been adopted by the Bank on 24.04.2019.

13. The Government of India vide circular dated 14.09.2023 has directed the Regional Rural Banks to consider eligible applicants for appointment on compassionate ground where death has occurred within span of 05 years preceding the adoption of 2019 policy. The relevant extracts of letter dated 14.09.2023 are reproduced as below :

Dated the 14th September, 2023

To

*The Chairman,
All RRBs.*

Subject Implementation of Compassionate Appointment Scheme in RRBs.

Sir/Madam,

I am directed to refer to NABARD's letter No.IDD, RRB/-/316 (Compassionate Appoint.)/2018-19 dated 09.01.2019 on the above subject, conveying approval of the Government for Implementation of the revised model scheme for appointment on compassionate grounds in RRBs, as per the scheme in Public Sector Banks circulated by IBA to CEOs of PSBs vide its letter dated 11.08.2014. The scheme was made effective from the date on which Board of Individual RRB adopted the same.

2. In terms of paragraphs 8.1 and 8.2 of the said scheme, application for employment under the scheme from eligible

dependents should normally be considered up to five years from the date of death or retirement on medical grounds and decision to be taken on merit in each case. 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.

3. *In some RRBs, appointment on compassionate grounds under the scheme was not allowed where the employee had expired prior to RRB adopting the scheme, resulting in litigation in Courts of Law. While disposing the petitions, the Hon'ble Courts have held that paragraph 8.2 of the scheme has a retrospective effect and appointments on compassionate ground can be considered if the death of the employee had occurred within the span of five years preceding the adoption of the scheme. Appeals/SLP filed against such orders have been dismissed.*

4 *Keeping this in view, RRBs are advised to consider the eligible applicants for appointment on compassionate grounds, in terms of paragraphs 8.2 of the Scheme, in case the death of the employee had occurred within five years preceding the adoption of the scheme, subject to the other conditions laid down in the said scheme.”*

14. From the perusal of policy dated 12.01.2015, 04.09.2018, 21.01.2019 and 18.02.2019, it is evident that if an employee dies while in service including by suicide, the family members are entitled to compassionate appointment. The family is not automatically and mechanically eligible for appointment. In the policies, it has been further provided that family should be indigent and deserve immediate assistance for relief from financial destitution. The respondent has rejected claim of the petitioner on the sole ground that death of the employee had occurred prior to introduction of 2019 policy. The employee passed away in 2016 and his family members filed application seeking appointment in 2017 meaning thereby both incidents i.e. death and

application seeking appointment took place prior to introduction of 2019 policy.

It is not the case of respondent that policy for compassionate appointment came into force for the first time in 2019. Prior to 2019, policy of 2015 read with policy of 2018 was in force. The respondent as per its will and convenience kept application of the petitioner pending for more than 02 years and on the anvil of policy of 2019, rejected his claim. The approach adopted by respondent does not seem to be plausible and in accordance with purport of policy of compassionate appointment. The respondent in view of para 8.2 of 2019 policy read with afore-cited judgment and instructions issued by Government of India was bound to consider case of petitioner in true spirit and within four corners of the policy. The application could not be rejected on the ground that death had occurred prior to introduction of 2019 policy.

15. In the wake of above discussion and findings, all the petitions are hereby disposed of with a direction to respondents to re-consider claim of the petitioners in the light of above findings. The needful shall be done within 06 months from today.

20.03.2024

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(JAGMOHAN BANSAL)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>