IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

Present:

The Hon'ble Justice Ananya Bandyopadhyay

W.P.A. 23024 of 2019

Smt. Tapati Ganguly and Anr.
-Vs-
The United Bank of India & Ors.

For the Petitioners	: Mr. Sharanya Chatterjee Mr. Subhajit Barman
For the Respondents	: Ms. Parna Roy Choudhury
Heard on	: 13.11.2024, 17.02.2025, 23.07.2025
Judgment on	: 02.09.2025

<u>Ananya Bandyopadhyay, J.:-</u>

1. The petitioner has prayed for a writ in the nature of mandamus directing the respondents to set aside the letter dated 6th November, 2019 being Ref: PA(AS)/DIH/N-85/1075/2019 issued by the Respondents and provide compassionate appointment to the petitioner no.2.

2. The deceased, Shyamal Kumar Ganguly, was an employee of the United Bank of India, Durgapur Branch, serving as an Ex-Daftary, holding SPF No. 22365. He died in harness on 4th October 2015, leaving behind his widow (petitioner no.1), his only daughter (petitioner no.2), and his aged, ailing mother, Smt. Sabitri Ganguly. All three were wholly dependent on the

income of the deceased employee. The deceased had no other legal heirs or representatives.

3. At the time of his death, the age of the widow was around 48 years, the daughter was approximately 33 years old and was the mother of a 5-year-old male child. The husband of Petitioner No. 2 remained largely unemployed, occasionally engaged in low-paying contractual work, rendering her financially dependent. The mother of the deceased, Smt. Sabitri Ganguly, is over 85 years of age, suffers from chronic ailments, and requires regular medical attention and care, which was being managed by petitioner no.1.

4. Following the death of her husband, petitioner no.1 applied on 3rd May 2016 for compassionate appointment under the "Died in Harness" scheme. In her application to the Assistant General Manager of the Bank (Respondent No.2), she conveyed her inability to take up employment due to her responsibility to look after her ailing mother-in-law. She, therefore, requested that her only daughter, petitioner no.2, be appointed on compassionate grounds, stating that she would care for both her mother and grandmother for the rest of their lives.

5. On the same date, petitioner no.2 submitted an undertaking declaring her commitment to look after her mother and grandmother and accepted that any negligence in fulfilling his duty would lead to termination of her employment.

6. By a letter dated 23rd June 2016, the Chief Manager of the Respondent Bank instructed its Senior Manager to collect supporting documents from the petitioners, including the legal heirship certificate, affidavit, letter of

relinquishment, and income details of the married daughter and her family. The petitioners complied with the requirements and submitted all necessary documents on 1st August 2016.

7. At the time of death, the deceased's last drawn gross monthly salary in September 2015 was Rs..36,158.24, along with other allowances and benefits which ceased upon his death. The family was left with a family pension of Rs.12,685.00, representing a significant and sudden reduction in monthly income.

8. By order dated 8th February 2017, vide Memo No. PA (AS)/DIH/N-85/181/2017, the Chief Manager of the Bank rejected the compassionate appointment claim of petitioner no.2 solely on the ground that she was married and thus could not be considered a dependent family member under the scheme.

9. The petitioners further stated that the said rejection was violative of Article 14 of the Constitution of India, as it arbitrarily denies equal treatment to a legitimate heir of the deceased employee based solely on her marital status. The Petitioner No. 2, being the only offspring of the deceased and still financially dependent, has no one else to support her, her mother, and her ailing grandmother.

10. Being aggrieved by the arbitrary rejection, the petitioners preferred W.P. No. 13311(W) of 2017 under Article 226 of the Constitution of India. The matter was heard by this Hon'ble High Court on 31st July 2019, and set aside the rejection order dated 8th February 2017 and directed the Respondent Bank to reconsider the application for compassionate appointment strictly in

accordance with the Died in Harness Scheme. The said order was communicated to the petitioners on 22nd August, 2019.

11. Instead of complying with the said direction in letter and spirit, the Respondent Bank, by a cryptic and non-reasoned communication dated 6th November 2019 (Ref: PA(AS)/DIH/N-85/1075/2019), once again rejected the application of petitioner no.2, citing that there was only a "marginal fall" in monthly income of the family post the employee's death, thereby rendering her ineligible.

12. There was nothing stated in the Reasoned Order from which it could be concluded that there had been a marginal fall in the monthly income of the deceased employee's family.

13. The respondent acted in contravention of the settled principle of law by not communicating the reasons for arriving at the impugned decision and had sought to supply reasons in its report in the form of affidavit.

14. It was pertinent to mention that the relevant provision in respect of family pension as under the United Bank of India (Employees) Pension Regulations, 1995, providing that the family pension will decrease drasticall after seven years of death of the deceased employee. It was further important to mention that computation of pension was not made on net salary drawn but takes in to account other increments, contribution including dearness allowance.

15. The term pay had been defined in the Regulation to include other allowances and contribution to Provident Fund and it was a settle proposition of law that in order to determine financial status of the family of the deceased the

last drawn salary had to be considered which was actually the gross salary of the deceased.

16. The respondent had not taken into consideration the gross salary and tried to suppress the fact that the gross salary of the deceased employee was Rs.36,158.24/- and there had been a drastic deduction in income of the family of the deceased employee. The respondent to mislead the Court had tried to pass order based on the net salary.

17. It was settled proposition of law, also provided in the Scheme for Compassionate Appointment that money received as terminal benefit could not disentitle a person seeking Compassionate Appointment.

18. The Learned Advocate representing the petitioners submitted as follows:-

    i. The order dated 6th November, 2019 being Ref: PA(AS)/DIH/N-85/1075/2019, has been passed in a cryptic manner without any application of mind bereft of any reasons for arriving at the conclusion that the Petitioner No.2 was not entitled to compassionate appointment.

    ii. There was nothing stated in the Reasoned Order from which it could be concluded that there had been a marginal fall in the monthly income of the deceased employee's family.

    iii. The Respondent authority did not come to a finding supported by reasons and in the order even the income of the family before and after the death of the deceased employee has not been recorded.

    iv. The arbitrary activities of the Respondent from the fact of an earlier single sentence rejection of the petitioner's prayer for compassionate appointment and the said rejection dated 08.02.2017 has already failed the test of judicial review.

v. In the earlier rejection of the petitioner's prayer for compassionate appointment the ground of marginal decrease income of the family was never mentioned as provided in the present Reasoned Order.

vi. The impugned Order though captioned as "Reasoned Order" provides no reason for arriving at the decision there by reasonably fails to qualify Wednesbury Principle of the Reasonableness and Rationality.

vii. In the earlier order dated 08.02.2017 though the petitioner's prayer for compassionate appointment was rejected on the ground that the petitioner no.2 had been a married daughter of the deceased employee the respondent had acknowledged the financial distress of the family and offered payment of exgratia-lump sum amount in lieu of compassionate appointment.

viii. The Respondent is now contradicting its earlier stand wherein the financial distress of the family was acknowledged.

7. The Learned Advocate representing the petitioners further submitted as follows:-

i. The said "Reasoned Order" was devoid of actual reasoning, failed to disclose any financial assessment, and appeared to be a mechanical reiteration of earlier grounds. Moreover, the Bank sought to justify its decision by filing a report later, in the form of affidavit, which was not part of the original communication and impermissible in law.

ii. As per the United Bank of India (Employees) Pension Regulations, 1995, the family pension undergoes a significant reduction after a period of seven years from the death of the employee. Further, it was a settled legal principle that while determining financial condition for compassionate appointment, gross last drawn salary (including all allowances) must be considered, not just net income or pension alone.

iii. Under the Died in Harness Scheme, receipt of terminal benefits, such as family pension, gratuity, or provident fund, could not be a ground to deny compassionate appointment if financial distress was otherwise established.

iv. In the case of Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, the Hon'ble Supreme Court, in paragraph 8 of the judgment, categorically held as under: "*The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.*"

v. The impugned order bearing reference No. PA (AS)/DIH/N-85/1075/2019, issued by the Respondent Bank, did not disclose any reasons for the rejection of the appointment of Petitioner No. 2. It was only at a subsequent stage, through a counter-affidavit, that the Respondent had sought to furnish reasons for such rejection which was impermissible in law, as the legality and validity of an administrative or quasi-judicial order must be examined solely on the basis of the reasons recorded in the order itself and could not be supplemented upon by subsequent justifications through affidavits or otherwise. The action of the Respondent is, therefore, contrary to the settled position of law as laid down in the aforesaid judgment.

vi. In *Govind Kumar Verma v. Life Insurance Corporation of India*, the Hon'ble Supreme Court held that compassionate appointment could not be denied merely on the ground that the family of the deceased employee had received family pension or terminal benefits under the applicable service rules. The Court clarified that such benefits were distinct from the relief provided under a compassionate appointment scheme, which was meant to offer immediate financial assistance to the family following the sudden demise of the earning member. In the present case, however, the respondents, in their affidavit-specifically in paragraph-7 had detailed the total assets and pension received by the deceased employee's family members. Furthermore, in paragraphs 9, 10, and 11, they had outlined the total monthly income of the family, including the pension amount, and had relied on these financial particulars to reject the application for compassionate appointment. Such reliance was contrary to the law laid down by the Hon'ble Supreme Court and renders the rejection legally unsustainable.

8. The subsequent "reasoned order" dated 6th November, 2019 under Ref.: PA(A)/DIH/N-85/1075/2019 issued by the Chief Manager PA(AS) of United Bank of India on scrutinization of records and documents in compliance of

the judgment dated 31.07.2019 passed in WP No. 13311 (W) of 2017 where the respondent Bank was directed to reconsider the prayer of compassionate appointment of the daughter of the petitioner, the respondent/Bank, inter alia, concluded the daughter to be considered ineligible for compassionate appointment under DIH Scheme of the Bank as fall in monthly income of the family after the demise of the deceased employee was found to be marginal.

9. On the earlier occasion the respondent Bank refused to grant compassionate appointment to the daughter of the petitioner due to her marital status on not considering her as a dependent family member of the respondent Bank.

10. Such contrary views adopted by the respondent/Bank are not accepted.

11. By the decision of the Larger Bench of this Court passed in ***FMA 1277 of 2016, State of West Bengal and Others –v- Purnima Das and Others***[1] the marital status of the daughter prohibiting her to claim to compassionate appointment had been conclusively decided in favour of both married and unmarried daughters irrespectively.

12. The respondent/Bank should adhere to its decision judiciously with precision rather than wavering and deviating on considerations to obliterate and abdicate to grant compassionate appointment. The respondent/Bank did not consider the plummeted income to be marginal vide its order dated 8th February, 2017. The marginal fall of income has not been described through discernable computation.

13. The respondent/Bank being a responsible legal entity is well accomplished to realize the beneficial legislative intent of compassionate appointment and

[1] 2017 SCC OnLine CAL 13121

cannot deliberately refrain to grant the same on one ground and the other. The respondent/Bank is aware of the unfortunate and unwarranted consequences both financial and otherwise faced by the family members of the deceased employee and is not expected to avoid its responsibility under the extant and prevailing scheme to refuse such employment, if otherwise not found defective and ineligible.

14. In the instant case the marital status of the daughter of the petitioner is no longer an embargo to reject or refuse her candidature. Moreover, in absence of specific determination of "marginal fall" in income, vague and unsubstantiated assertion cannot preclude the daughter of the petitioner from being granted appointment on compassionate ground.

15. In view of the above discussions, the respondent/Bank authorities to set aside the letter dated 6th November, 2019 being Ref: PA(AS)DIH/N-85/1075 of 2019 issued by the respondents. The respondent/Bank authorities are further directed to provide compassionate appointment to petitioner no. 2 within one (1) month of passing this order.

16. Accordingly, the instant writ petition being WPA 23024 of 2019 is allowed.

17. The writ petition being WPA 23024 of 2019 is disposed of.

18. There is no order as to costs.

19. Photostat certified copy of this order, if applied for, be given to the parties on priority basis on compliance of all formalities.

(Ananya Bandyopadhyay, J.)