2025:PHHC:040002

IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH.

250

CWP-24796-2021 (O&M).
Date of Decision: 24.03.2025.

SAHIL

... Petitioner

Versus

THE UNION OF INDIA AND OTHERS

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. Aditya Yadav, Advocate, for the petitioner.

Ms. Preeti Grover, Advocate, for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

Challenging the order dated 03.11.2021 (Annexure P-10) passed by the respondent Bank rejecting the claim of the petitioner for compassionate appointment on the ground of total monthly income of 'family of petitioner' being more than 60% of the last drawn salary of the deceased employee, the present writ petition has been filed. A further prayer has been made for directing the respondents to offer him a post of Sweeper in the respondent Bank under Compassionate Employment Scheme dated 25.09.2014 (Annexure P-1) on account of death of his father during service.

2 Learned counsel appearing for the petitioner contends that Late Rajesh Kumar, father of the petitioner, was appointed on 05.09.2013 on the regular post of Part Time Sweeper in the respondent Bank Branch VPO Kanina, District Mahendragarh. He died in service on 02.02.2019, after rendering service for a period of 05 years and 05 months in the respondent bank. The petitioner accordingly submitted an application for seeking appointment under the Scheme for compassionate appointment notified vide PAD Circular No.236/2014 to a dependent member of deceased employee/employee retired on medical grounds due to incapacitation before reaching the age of 55 years. He refers to clause 13 of the said Scheme which is referred as under: -

> "***13. WHERE THERE IS AN EARNING MEMBER***
>
> *13.1 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."*

3 Referring to the above, it is contended that merely because some member in the family is an earning member, it should not have been the basis

for denying compassionate appointment. It is vehemently argued by the counsel for the petitioner that notwithstanding that the above said Scheme does not prescribe any income criteria or attaches any disqualification on account of any other earning member in the family, however the claim of the petitioner for seeking compassionate appointment has still been rejected by placing reliance on the Scheme notified in the year 2020. He contends that the claim for compassionate appointment has to be considered in terms of the Scheme that was applicable on the date of death and not under any other Scheme that may be eventually modified. It is contended that the petitioner restricts his prayer for issuance of directions to the respondents to reconsider his claim for compassionate appointment under the Scheme dated 25.09.2014 which does not attach any disqualification on an income criteria. He submits that the petitioner is a poor person and does not have sufficient resources for maintaining himself and is in severe need of an employment.

4 Counsel for the petitioner refers to the judgment of the Hon'ble Supreme Court in the matter of ***State of Madhya Pradesh Vs. Ashish Awasthi, Civil Appeal No.6903 of 2021 decided on 18.11.2021***. The relevant para of the same is extracted as under: -

> *"4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular prevalent at the time of the death of the deceased employee, i.e., policy/circular No.C-3- 12/2013/1-3 dated 29.09.2014 in case of death of the employee working on work charge, his*

dependents/heirs were not entitled to the appointment on compassionate ground and were entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.

4.1 In the case of ***Indian Bank and Ors. Vs. Promila and Anr., (2020) 2 SCC 729****, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of* ***State of Madhya Pradesh and Ors. Vs. Amit Shrivas, (2020) 10 SCC 496****. It is required to be noted that in the case of* ***Amit Shrivas*** *(supra) the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside.*

4.2 The submission on behalf of the respondent that after the impugned judgment and order passed by the High Court, the

> *respondent has been appointed and therefore his appointment may not be disturbed, deserves rejection. Once the judgment and order passed by the Division bench under which respondent is appointed is quashed and set aside, necessary consequences shall follow and the appointment of the respondent, which was pursuant to the impugned judgment and order passed by the Division Bench of the High Court cannot be protected."*

5 Controverting the same, counsel for the respondent Bank submits that even though the relationship of the deceased employee with the respondent Bank is not denied, however, the claim of the petitioner has been rightly rejected by the respondent Bank after proper application of the Scheme as well as the circular issued for governing compassionate appointment. It is contended by the counsel for the respondent Bank that the arguments advanced by the counsel for the petitioner are misconceived and that the circular dated 26.03.2020 was issued in an order to bring about uniformity in assessment of proposal and maintain objectivity and transparency in assessing the financial condition of a family by bringing about a standardized formula for allowing compassionate appointment. Thus, it was not an introduction of a new Scheme for compassionate appointment but was only a clarificatory assessment and evaluation criteria for determining the eligibility in terms of Clause 13 of 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 dated 25.09.2014. Hence, the evaluation of the

claim under the Scheme of 2014, as per the financial assessment criteria issued vide Circular dated 26.03.2020, cannot be said to be under any other different Scheme. She further contends that it is settled position in law that any clarification of existing conditions, as are in the nature of clarification of or supplementing the original clause in the Scheme, cannot be perceived as an incorporation of any new eligibility condition. The object of introduction of the standardized formula being to bring about transparency and uniformity in decision making process, it cannot be held that the said decision is bad and is liable to be set aside. Reference is made to Clause 3 of the Circular No.495/2020 dated 26.03.2020 which reads thus: -

> *"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 was circulate vide PAD circular No. 236 dated 25.09.2014 as per Government guidelines, in terms of approval accorded by the Board in its meeting held on 19.09.2014.*
>
> *The Scheme covers all cases where death of the employee occurs while in service on or after 05.08.2014.*
>
> *2. Subsequently, in terms of Government letter dated 05.12.2014 forwarded by IBA permitting all Public Sector Banks to have both the option i.e. Compassionate Appointment or Payment of Lump sum Ex-gratia amount, the same was approved by the Board in its meeting held on 23.12.2014 and circulated vide PAD Circular No. 244 dated 3rd January 2015.*

3. *<u>In order to bring an element of objectivity in assessment of proposal and to maintain uniformity and transparency in assessing the financial condition of a family, it is decided to set a standardized formula for assessing the financial condition of a family at minimum 60% of the last drawn gross salary (net of taxes) of the employee concerned</u>."*

(emphasis supplied)

6 Hence, she submits that the said circular is in continuation to the erstwhile scheme of 2014 and is not in supersession or the repeal of erstwhile scheme. Prescription of detailed uniform criteria for assessing the eligibility and determining the suitability from amongst the inter se claims has to be read into the substantive clause. The claim of the petitioner for grant of compassionate appointment under the Scheme of 2014 was accordingly considered applying the uniform objective criteria and it was noticed that the spouse of the deceased Rajesh Kumar (mother of the petitioner) was employed with the respondent Bank as a Peon herself and was drawing a salary of Rs.45,972/- per month. As far as 60% of the last drawn salary of the deceased employee Rajesh Kumar is concerned, the same was Rs.6780/-. Hence, the total family income of the deceased employee from all sources is Rs.48,002/-, which is nearly 08 times of the limitation prescribed for ascertaining the financial position and as to whether the family is in need of compassionate appointment or not. The relevant part of the order dated 03.11.2021 is extracted hereunder: -

"Shri Sahil S/o Late Shri Rajesh Kumar (PF:0318971), ex PTS vide application dated 06.11.2019 had applied for compassionate appointment.

Late Shri Rajesh Kumar joined the Bank on 20.09.2013 and while working as PTS at BO: Kanina, Rewari Circle, expired on 02.02.2019 at the age of 34 years 7 months after rendering 5 years 4 month of service in the Bank, leaving behind the following family members: -

S.N.	Name	Relationship	Age (yr)	Qualification	Marital status	Whether employed	If yes, details of income
1	Neetu Devi	Spouse	44	Illiterate	Widow	Employed in PNB as Peon cum Daftary at BO: Buchawas	Rs.45,972
2	Sahil	Son	24	5th	Married	Unemployed	NIL
3	Ankit	Son	20	9th	Unmarried	Unemployed	NIL
4	Nisha	daughter	18	11th	Unmarried	Unemployed	NIL

In the above case the deceased employee had left behind 4 members, viz wife, two son and one daughter. Shri Sahil S/o Shri Rajesh Kumar is married whereas one Son & Daughter are unmarried. The family is in receipt of terminal dues of Rs. 1.53 lacs besides other receivable of Rs.1.60 lacs. Smt Neetu Devi W/o late Shri Rajesh Kumar is presently working as Peon Cum Daftary in PNB at monthly Salary of Rs.45972/p.m. As per the extant guidelines of Compassionate Appointment, it was found that the total monthly income of the family of deceased employee from all sources (i.e Rs.48002/-) is more than 60% of the last drawn salary (net of notional tax) (i.e Rs.6780/) of the deceased employee. Hence, it was found by the Competent Authority that Shri Sahil S/o Late Shri Rajesh Kumar is not eligible for compassionate appointment in terms of Bank's extant guidelines for Compassionate Appointment.

The intent of the Scheme is to provide help and succour to the family in the exigencies provided in the scheme. The Compassionate appointment is not a mode of recruitment. The basic requirement of meeting the immediate crisis become redundant particularly when the family has means of income as detailed above.

In view of the decision dated 02.08.2021 of Hon'ble Punjab & Haryana High Court in CWP No. 14336/2021 & in light of position stated above, proposal for compassionate appointment to Shri Sahil son of Late Shri Rajesh Kumar, do not hold merit for further consideration and so is declined."

7 No other argument has been raised by counsel for the respective parties nor any other judgment cited in support of their respective claim.

8 I have heard the learned counsel appearing for the respective parties and have gone through the documents appended along with the present petition as also the judgment cited by the counsel for the petitioner.

9 At the outset, it becomes essential to delineate the fine legal distinction between a "new condition of eligibility" and a "new criteria" in the context of appointment.

10 While a condition prescribes a preliminary requirement to be eligible and would determine whether a candidate can apply or not for appointment to a post and is enforceable at a pre-application stage, a criteria only prescribes a yardstick for evaluation and assessment or prescribes the

manner or process of appointment and is applied at the time of assessment – post application.

11 A new condition which alters the eligibility can thus be held bad, if applied against an old process, however, the criteria would not be set aside if it is in larger interest; based on expert recommendation; is uniformly applied; is not arbitrary or mala fide. The distinction can be better understood from an illustration. While change of an academic, experience or age limit would be a "condition of eligibility", a decision to assign percentage for qualification or mode/procedure for selection and evaluation would be a "Criteria."

12 Undisputedly, the respondents have not introduced any condition as would hinder a candidate from applying but have devised a mechanism to ascertain whether compassionate appointment needs to be extended after ascertaining if the family is in dire need of such appointment. It must not be lost sight of that compassionate appointment is not a substitute for public appointment and is rather an exception to the constitutional mandate requiring equality of opportunity, compassionate appointment is devised as an exception to help the family of deceased employee in distress to tide over the huge financial and sustenance crisis that may emerge on death of the bread earner.

13 The employer would thus be justified to devise a uniform assessment criteria to ascertain whether the family of deceased employee is

actually in distress or is using compassionate appointment as a mode of settling the family members in public office or be perceived as opening of an opportunity to secure a job at the cost of those deserving.

14 Notwithstanding that the position in law requires no further reiteration that a claim for compassionate appointment has to be considered in the light of the Policy that was in force at the time when the death of an employee took place, however, the material question which arises for examination before this Court is as to whether the Circular dated 26.03.2020 is a subsequent scheme/amendment of the Scheme or is laying down of a criteria for consideration and is in continuation to the original scheme itself. While the specific stand of the respondent Bank is that the said circular was in continuation of the erstwhile Scheme and it was permissible within the said Scheme so as to determine objective parameters for ascertaining the financial status of the family, as per Clause 13 of the Scheme of 2014.

15 Counsel for the petitioner has not been able to draw the attention of this Court to any contrary document and has not denied or disputed the same by filing of any rejoinder/counter affidavit. Further, the circular dated 26.03.2020, which has been appended with the written statement as Annexure R-1, has also been considered by this Court and the extract thereof which has been reproduced above shows that in continuation of the Scheme of 2014, the competent authority initiated the process to bring an element of objectivity necessary to maintain uniformity and transparency, if any, of the income and thus decided to set up a standardized formula for assessing the financial

condition, as per the parameters prescribed therein. The introduction of the Scheme as well as the Circular of 2020 itself reflects that the document in fact is in continuation of the Scheme of 2014 itself and is not an independent Scheme in supersession/repeal or modification of the earlier Scheme of 2014 and only a parameter for recording a satisfaction about justification for compassionate appointment on examination of the case under an objective criteria had been determined.

16 I am thus of the view that the laying down of standardized criteria, in furtherance of laying down standards for according satisfaction as prescribed in Clause 13 of the Scheme of 2014 cannot be said to be an examination of the claim under any new Scheme and it essentially remains a consideration of the claim for compassionate appointment under the same Scheme but on a uniform standardized formula to ascertain the satisfaction objectively lest it reflects subjectivity and discrimination against. I thus hold that the rejection of the claim of the petitioner, vide order dated 03.11.2021 on noticing that the mother of the petitioner was working as a Peon with the respondent Bank and was drawing a salary of Rs.45,972/- per month and hence it cannot be said that the financial condition of the family of the deceased was not well and that compassionate appointment cannot be offered to the petitioner, cannot be said to be arbitrary, illegal and discriminatory.

17 Finding no illegality or infirmity in the impugned order or the financial assessment done on the basis of uncontroverted evidence referred to by the respondent bank in the impugned order and that said circular of

2025:PHHC:040002

2020 has to be read supplementary to the Scheme of 2014, the case of the petitioner lacks merit.

18 At this stage, the counsel for the petitioner contends that there has been an addition in the circular of 2020 which also provides for financial assistance while the Scheme of 2014 only contemplated compassionate appointment. I am of the opinion that the above said argument is misplaced. An addition of any benefit in the form of compassionate assistance is in addition to the already provided option of compassionate appointment and it cannot be said to be substantive Scheme. The same would not change the nature of the substantive Scheme. Besides, I find that the aforesaid argument is fallacious since the petitioner himself is not claiming that he is entitled to any financial assistance even under the Circular dated 26.03.2020.

19 The present writ petition is accordingly dismissed.

March 24, 2025. **(VINOD S. BHARDWAJ)**
raj arora **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No