

Amit Jain, Advocate, *for the petitioner*

Arvind Rajotia, Advocate for the respondent-bank

JAGMOHAN BANSAL, J. (Oral)

(1) The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated 26.10.2016 (Annexure P-6) whereby respondent-bank has rejected claim of the petitioner for appointment on compassionate ground.

(2) Jagdish Chander Sharma-husband of the petitioner was working with respondent-Punjab National Bank and he passed away on 25.12.2015. At that point of time, he was 49 years old. He is survived by three children, wife and old age mother. The petitioner, as per compassionate scheme dated 25.09.2014 (Annexure P-2) of the respondent-bank was entitled to compassionate appointment. The petitioner vide application dated 23.08.2016 (Annexure P-3) requested the respondent-bank to consider her for compassionate appointment. The respondent-bank by impugned order dated 26.10.2016 (Annexure P-6) rejected claim of the petitioner. Her application was rejected on the ground that she has received a sum of Rs.45Lacs from Life Insurance Corporation and she is also getting family pension to the tune of Rs.17,539/- per month.

(3) Mr. Amit Jain, Advocate submits that the petitioner is getting pension of Rs.4,236/- per month and respondent-bank has wrongly considered her pension as Rs.17,539/-. The respondent-bank could not consider compensation received on account of death of her husband because the compensation received from the third agencies or retiral benefits received from the employer are independent from the claim for compassionate appointment.

(4) In support of his contention, he relies upon judgment of Apex Court in ***Canara Bank and another versus M. Mahesh Kumar***¹ and judgment of this Court in ***Keshav Sidhu versus Bank of Baroda through its Managing Director and others***².

(5) *Per contra*, Mr. Arvind Rajotia, Advocate submits that the petitioner had received a sum of Rs.45Lacs from the insurance company on account of death of her husband and she was, in any case, getting pension of Rs.4,236/- per month, thus, she does not fall within the definition of indigent person. The respondent-bank, as per

¹ 2015 (7) SCC 412

² 2022 SCC OnLine P&H 3367

policy, extends benefit of compassionate appointment to indigent family members.

(6) I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

(7) For the adjudication of the present petition, it would be appropriate to look at compassionate appointment policy dated 25.09.2014 (Annexure P-2) of the respondent-bank. Paragraph 4 of the policy identifies employees whose family is entitled for compassionate appointment and Paragraph 8 prescribes the eligibility criteria. Paragraph 20 prescribes General Terms and Conditions. Paragraphs 4, 8 and 20 of the said policy read as:

“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.

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.

20. GENERAL:

- i) Appointment made on grounds of compassion shall be done in such a way that persons appointed to the post do have the essential educational and technical qualifications and experience required for the post consistent with the

requirement of maintenance of efficiency of administration.

ii) It is not the intention to restrict employment of a family member of the deceased or medically retired sub- staff employee to an erstwhile sub-staff post only. As such, a family member of such erstwhile sub-staff employee can be appointed to a clerical post for which he/she is educationally qualified, provided a vacancy in clerical post exists for this purpose.

iii) An application for compassionate appointment shall, however, not be rejected merely on the ground that the family of the employee has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family shall be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family etc.

iv) Compassionate appointment shall be made available to the person concerned if there is a vacancy meant for compassionate appointment and he or she is found eligible and suitable under the scheme.

v) Requests for compassionate appointment consequent on death or retirement on medical grounds of erstwhile sub-staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

vi) Compassionate appointment will have precedence over absorption of surplus employees and regularization of temporary employees.”

(8) The respondent-bank has rejected claim of the petitioner on the ground that she is not indigent. The respondent-bank has considered compensation received from LIC as well as Army Pension ₹17,539/-. The relevant extracts of the impugned order read as:

“The proposal was considered by the competent authority wherein it was observed that the condition of the family is not indigent. The family of the deceased employee comprised of wife, 02 daughters aged 23 and 20 years, 01 son aged 18 years and mother 75 years. Terminal dues to the extent of Rs.1.86 lacs have been settled besides other

amount received from LIC is Rs.45.56 lacs. They are in receipt of Army pension of 17539/- per month. Family has own house to live.”

(9) In the present case, petitioner’s husband passed away in 2015 and her claim was rejected on 26.10.2016. She approached this Court on 17.11.2017. There is no lapse on the part of petitioner. The writ petition, since then, on account of multiple reasons is pending before this Court. It is settled proposition of law that no one can be made to suffer on account of lapse on the part of Court. If petitioner is denied effective relief on account of efflux of time, it would not be true justice. It is settled law that justice must not only be done but must also seem to be done. The Supreme Court in *Atma Ram Mittal versus Ishwar Singh Punia*³ has held that a litigant cannot be made to suffer because of act of Court. The relevant extracts of the judgment read as:

“8. It is well-settled that no man should suffer because of the fault of the court or delay in the procedure. Broom has stated the maxim “actus curiae neminem gravabit” — an act of court shall prejudice no man. Therefore, having regard to the time normally consumed for adjudication, the ten years' exemption or holiday from the application of the Rent Act would become illusory, if the suit has to be filed within that time and be disposed of finally. It is common knowledge that unless a suit is instituted soon after the date of letting it would never be disposed of within ten years and even then within that time it may not be disposed of. That will make the ten years holiday from the Rent Act illusory and provide no incentive to the landlords to build new houses to solve problem of shortages of houses. The purpose of legislation would thus be defeated. Purposive interpretation in a social amelioration legislation is an imperative irrespective of anything else.”

(10) The Supreme Court in *M. Mahesh Kumar (Supra)* has categorically held that while determining eligibility for compassionate appointment, terminal benefits received on account of death of employee cannot be taken into consideration. The right of compassionate appointment is independent from retiral or terminal benefits received on account of death of an employee. The relevant extracts of the said judgment read as:

“19. Insofar as the contention of the appellant Bank that

³ 1988 (4) SCC 284

since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of the 1993 Scheme says that in case the dependant of the deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the Bank would keep the appointment open till the minor attains majority.

20. In *Balbir Kaur v. SAIL* [(2000) 6 SCC 493 : 2000 SCC (L&S) 767], while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in para 13, this Court held as under: (SCC p. 503)

“13. ... But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.”

21. Referring to *SAIL* case [(2000) 6 SCC 493 : 2000 SCC (L&S) 767], the High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the Bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground.”

(11) A Coordinate Bench of this Court in ***Keshav Sidhu (Supra)*** relying upon afore-cited judgment of Supreme Court in ***M. Mahesh Kumar (Supra)*** has held that receipt of family pension cannot be a ground to deny compassionate appointment. The relevant extracts of the said judgment read as:

“7. Hence, it is clear that the receipt of any terminal benefits by the family is not any ground, as such, to deny the compassionate appointment. However, the respondents have rejected the claim of the petitioner by giving reference to the amounts received as terminal benefits. On this point, this court finds reliance of the counsel for the petitioner on judgments rendered in Govind Prakash Verma (supra); Canara Bank & another (supra) & Supriya Suresh Patil @ Sow Supriya Pratik Kadam (supra), to be well placed. As per the above said judgments even the family pension could not have been made a ground for denying the compassionate appointment to the petitioner. Needless to say that the family pension is earned by the spouse of the deceased employee in his/her independent statutory rights, having nothing to do with the aspect of the compassionate appointment, if any, as provided under the collateral rules or instructions issued for that specific purpose. Hence, the case of the petitioner has been wrongly rejected by the respondents.

8. In view of the above, the present petition is allowed. The impugned order dated 21.06.2018 (Annexure P-3), is set aside. The respondents are directed to offer an appointment to the petitioner, within a period of three months from the date of receipt of the certified copy of this order.”

(12) In view of afore-cited judgments, the respondent-bank could not consider amount of compensation received from LIC on account of death of petitioner’s husband and family pension from Army. It is apt to notice that petitioner is actually getting pension Rs.4,326/- whereas respondent-bank has considered Rs.17,539/-.

(13) The preamble of the Constitution declares our country a socialist State. Compassionate appointment and *ex-gratia* payment schemes are piece of beneficial legislation and have been made in furtherance of achieving goal set out by our Constitution.

(14) The object of compassionate appointment or *ex-gratia* payment is to protect family of the deceased employee from destitution, penury and starvation. In the object clause of the policy framed by the respondent, it has been specifically noticed that object

of the appointment on compassionate ground is not to give a member of the deceased employee's family a post, much less a post for a post held by the deceased but to provide relief to the family of a deceased employee to tide over the sudden crisis brought about by his/her premature death. The relief envisaged would provide the distressed family immediate succor and financial assistance to recover from the unexpected deprivation of the income of the sole breadwinner of the family.

(15) The Apex Court in *Umesh Kumar Nagpal versus State of Haryana*⁴ has held that appointment on compassionate ground is a concession and cannot be claimed as a matter of right especially after passage of substantial time. The relevant extracts of the said judgment read as:-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public

⁴ 1994 (4) SCC 138

authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

(16) From the perusal of above-cited judgment and policy of the respondent-bank, it is evident that object of the scheme is to protect family of the deceased from being driven to destitution and penury.

(17) In the wake of above discussions and findings, this Court is of the considered opinion that order dated 26.10.2016 (Annexure P-6) deserves to be set aside and accordingly set aside. The respondent-bank is directed to reconsider case of the petitioner in the light of its policy dated 25.09.2014 (Annexure P-2).

(18) It is made clear that respondent would act in a *bona fide* and honest manner and no attempt shall be made to deny substantial benefit on one or another ground. The needful shall be done within 3 months from today.
