

CASE NO.:
Appeal (civil) 5256 of 2004

PETITIONER:
Punjab National bank & Ors.

RESPONDENT:
Ashwini Kumar Taneja

DATE OF JUDGMENT: 16/08/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

(Arising out of SLP (C) No. 934/2004)

ARIJIT PASAYAT, J

Leave granted.

Punjab National Bank, (hereinafter referred to as the 'employer') calls in question legality of the judgment by a Division Bench of the Rajasthan High Court at Jodhpur affirming the order passed by learned Single Judge holding that the respondent herein is entitled to be appointed on compassionate grounds.

Backgrounds facts in a nutshell are as follows:-

Respondent's father died on 3.12.1999 while working as a class IV employee of the employer-Bank leaving behind him, his mother-widow, two sons and one daughter. On 5.1.2000, the widow of the deceased-employee made a representation to the Bank on behalf of her elder son, (respondent herein) for employment on compassionate grounds. The request was turned down on 10.3.2000 and 17.3.2000 on the ground that there was no financial hardship to the family of the deceased and they had received substantial amounts after the death of the respondent's father. A writ petition was filed by the respondent before the Rajasthan High Court. By order dated 19th August, 2003, the Writ Petition was allowed with a direction to forthwith consider the case of respondent herein for compassionate appointment and provide him suitable job. The order was challenged in Letters Patent Appeal. By the impugned judgment the same was dismissed. It was held that retiral benefits received by the heirs of the deceased employee cannot be made a ground for rejecting application for compassionate appointment.

In support of the appeal learned counsel for the appellants submitted that the approach of the High Court is erroneous. When the object of compassionate appointment is kept in view with reference to the amounts received by the heirs of the deceased-employee, it was submitted that there was no financial hardship. Learned counsel for the respondent submitted that the amounts like gratuity, provident fund etc. have no relevance for determining the question whether compassionate appointment is to be made. It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises.

As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi's case* (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *Life Insurance Corporation of India v. Asha Ramchandrar Ambekar (Mrs.) and Anr.* (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

In *Smt. Sushma Gosain and Ors. v. Union of India and Ors.* (1989 (4) SCC 468) it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in *Phoolwati (Smt.) v. Union of India and Ors.* (1991 Supp. (2) SCC 689) and *Union of India and Ors. v. Bhagwan Singh* (1995 (6) SCC 476). In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192); it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

In *State of U.P. and Ors. v. Paras Nath* (1998(2) SCC 412) it was held that the purpose of providing employment to the dependant of a government servant dying-in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such

appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

These aspects were highlighted in *State of Manipur v. Md. Rajaodin* (2003 (7) SCC 511), *State of Haryana & Anr. v. Ankur Gupta* (2003 (7) SCC 704), *Haryana State Electricity Board v. Naresh Tanwar* (1996 (8) SCC 23) and *Haryana State Electricity Board v. Hakim Singh* (1997 (8) SCC 85).

One other thing which needs to be considered is whether the retiral benefits are to be taken into consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in *The General Manager (D&P.B.) & Ors. v. Kunti Tiwary & Anr.* (Civil Appeal 126 of 2004 disposed of on 5.1.2004). It was categorically held that the amounts have to be taken into consideration. In the instant case, there was a scheme called 'Scheme for Employment of the Dependents of the Employee who die while in the service of the Bank Service on Compassionate Grounds' (in short the 'Scheme') operating in the appellant no. 1\026Bank which categorically provides as follows :

"FINANCIAL CONDITION OF THE FAMILY

The dependents of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following:

- (a) Family pension;
- (b) Gratuity amount received;
- (c) Employee's/ Employer's contribution to PF;
- (d) Any compensation paid by the bank or its Welfare Fund;
- (e) Proceeds of LIC policy and other investments of the deceased employee;
- (f) Income for family from other sources;
- (g) Employment of other family members;
- (h) Size of the family and liabilities, if any, etc."

It is most respectfully submitted that the Board of Directors of the petitioner bank had approved the abovesaid scheme, which was based upon the guidelines circulated by Indian bank Association to all the Public Sector Banks which in turn are based upon the law laid down by this Hon'ble Court in the case of *Umesh Kumar Nagpal Vs. State of Haryana & Ors.* reported as 1994 (4) SCC 138. The Scheme after approval was circulated vide PDCL 6/97 read with PDCL 11/99 dated 17.4.1999."

Learned counsel for the respondent stated that in case of similarly situated persons compassionate appointments have been made by the Bank. But the appellants have justified the non-consideration of the respondent's appointment on compassionate grounds on the ground that the other cases related to non-pensionable category and unlike the case of the respondent, the other persons who were extended the benefits were not receiving any pension .

View taken by the learned Single Judge and affirmed by the Division Bench by the impugned judgment cannot be sustained and both the order of the learned Single Judge and the judgment of the Division Bench are accordingly set aside.

Our judgment, however, will not stand in the way of the respondent's case being considered sympathetically under any scheme or by any administrative

decision in accordance with law.

The appeal is allowed with no orders as to costs.

JUDIS