

AFR

Neutral Citation No. - 2025:AHC:50709

Court No. - 5

Case :- WRIT - A No. - 1680 of 2025

Petitioner :- Chanchal Sonkar

Respondent :- Chairman, State Bank Of India And 5 Others

Counsel for Petitioner :- Ajay Kumar Singh, Ashish Kumar Singh

Counsel for Respondent :- Satish Chaturvedi

Hon'ble Ajay Bhanot, J.

1. By the impugned order date 24.07.2023, the competent authority has rejected the claim of the petitioner for grant of appointment on compassionate ground.
2. The admitted facts of the case are these. The husband of the petitioner was an employee in the respondent Bank. He died on 17.11.2022. The last drawn gross salary of the deceased was 1,18,800.14/-
3. By the impugned order dated 24.07.2023 the claim of the petitioner for grant of appointment on compassionate grounds has been declined on the following footing:

"7.3 Financial Condition of the family:

The family is indigent and deserves immediate assistance for relief from financial destitution. The following guidelines should be taken into account for determining the financial condition/ eligibility for compassionate appointment of dependents of the family:

Compassionate Appointment will be sanctioned to the dependents of the deceased/premature retired employees

where the monthly income of the family will be less than 75% of the last drawn gross salary."

4. Heard Sri Raghav Arora, learned counsel for the petitioner and Sri Pankaj Srivastava, learned counsel for the respondent.

5. Appointments to public posts, government services and to various instrumentalities of the State within the meaning of Article 12 of the Constitution of India are governed and regulated by comprehensive provisions contained in the Constitution. The constitutional scheme envisages an open recruitment and a transparent procedure which enables maximum participation from all the eligible segments of the citizenry at large. The final appointments are made after a fair selection based on competitive merit. While making the said appointments the reservation policy or affirmative action under the Constitution for representation and empowerment of backward classes, SCs/STs and other sections of the society identified as per law have to be duly adhered to. The recruitment and appointment to government services and government undertakings were examined by constitutional Courts in the context of Articles 14, 15 and 16 of the Constitution of India. Holdings of the constitutional Courts have irretrievably entrenched the aforesaid modes and procedures for appointments to posts in the government and Article 12 instrumentalities in the body of the constitutional law.

6. The compassionate ground appointments to the contrary are not made through a transparent and public process of recruitment after inviting the applications from the open market. The appointments on compassionate ground entail deviation from regular processes of recruitment and other relaxations as well. Appointments under the Dying-in-Harness Rules, 1974, are an exception to the aforesaid constitutionally mandated scheme for appointments to posts in the government and in government undertakings. Compassionate appointments emanate from specific service rules holding the field and rationalized by service law jurisprudence evolved by Constitutional Courts.

7. The appointments on compassionate ground passed the test of constitutional validity by a slender margin. The sole justification to make compassionate ground appointments is that the dependants of the deceased employee face unforeseen financial destitution after the death of the latter and need urgent succour. Compassionate appointments are provided to the family to immediately tide over the sudden financial crisis so caused by the death of the employee. This feature alone constituted the kin of a deceased employee into one class and on this sole footing the rationale of compassionate ground appointments was justified by Constitutional Courts.

8. The sole purpose of grant of appointment on compassionate ground is to enable the family to tide over the immediate financial crises resulting from the death of the sole earning member of the family.

9. The discussion has the benefit of authorities in point.

10. Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana**¹ explained the purpose of compassionate in following terms:

"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 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

1 1994 (4) SCC 138

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."

11. A similar sentiment was echoed by the Supreme Court in **Director of Education (Secondary) v. Pushpendra Kumar²** :

"8.The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure 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, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee....."

12. This Court in **Roopam Mishra v. State of U.P. and 4 others³** held as under:

² 1998 (5) SCC 192

³ Writ A No. 15512 of 2019

“16. The purpose of compassionate appointments provides their justification. The death of a bread winner forces the family of the deceased into penury. The immediacy of the financial crisis creates the requirement for urgent redressal. The concept of compassionate appointments is created only to enable the bereaved family to tide over the immediate financial crisis”.

13. The need to make appointments on compassionate grounds in conformity with the Rules governing the grant of such appointments was emphasized by the Supreme Court in **the Director of Treasuries in Karnataka & Anr. v. Somyashree**⁴ by summarizing the law as follows:

“7.....(i) that the compassionate appointment is an exception to the general rule;
(ii) that no aspirant has a right to compassionate appointment;
(iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
(iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State’s policy and/or satisfaction of the eligibility criteria as per the policy;
(v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.”

14. Similarly, the necessity to strictly adhere to rules relating to compassionate grounds was succinctly summarized by the Calcutta High Court in **Ipsita Chakrabarti v. State of West Bengal**⁵. **Ipsita Chakrabarti (supra)** upon consideration of holdings of various Constitutional Courts held:

“(a) Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process.

4 Civil Appeal No. 5122 of 2021

5 2018 (2) Cal LT 177 (HC)

(b) The right of a dependent of an employee who died in harness for compassionate appointment is based on the scheme, executive instructions, rules etc. framed by the employer and there is no right to claim compassionate appointment on any other ground apart from the above scheme conferred by the employer.

(c) Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground it should be kept confined only to the purpose it seems to achieve, the idea being not to provide for endless compassion.

(d) Compassionate appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family.”

15. Furthermore, the Calcutta High Court in **Sri Bijon Mukherjee v. The State of West Bengal and others**⁶ again stated what is by now the settled position of law that the appointments on compassionate ground must be made only in conformity with the specific rules applicable to the employee :

“26. After observing the ratio and the legal positions contended by the Counsels appearing on behalf of the parties as well as the precedents examined above, I am persuaded to opine that appointment on compassionate grounds seeks to relieve the immediate financial hardship faced by the dependants of the deceased. It acts as an exception to Articles 14 and 16 of the Constitution as the defendant are given preferential appointment ahead of other equally meritorious candidates similarly placed and hence it cannot be claimed as a right. With the object of appointment on compassionate grounds in mind, it is palpably clear to me that this appointment must be done in accordance with the rules for such appointment. The dependant seeking such appointment must be eligible for such consideration and facing financial hardship to the extent delineated by the rules.”

16. **Ipsita Chakrabarti** (supra) and **Sri Bijon Mukherjee** (supra) were followed by the Calcutta High Court in **Ankita Saha and Anr. v. The State of West Bengal and Ors**⁷

⁶ 2018 (3) Cal LT 136 (HC)

⁷ WPA No. 12287 of 2019 (Calcutta High Court)

17. The concept of compassionate ground appointments is a welfare measure taken by a model employer. However, there is a caution. An overliberal interpretation of the right to the appointments on compassionate ground will open a floodgate of such appointments and turn them into a veritable source of recruitment. An unjustified generous approach in compassionate ground which is not consistent with the applicable service rules will confer benefit to underserving and ineligible candidates, and simultaneously deny the rights and lawful claims of eligible and meritorious candidates from getting appointment to government posts. The merit is not to be assumed from parentage but has to be achieved through open competition. Treating compassionate ground appointments as an unconditional and vested right and making it a source of recruitment will shear the thin veil of legality which protects such appointments from the vice of unconstitutionality. The very concept of compassionate ground will then be exposed to the wrath of Articles 14, 15, 16 of the Constitution of India.

18. The purpose of grant of compassionate ground appointments can be subserved and their constitutionality can be saved only by strict compliance of the rules governing the grant of compassionate ground appointments.

19. The preceding discussion discloses that determination of the financial condition or the nature of financial crises being

faced by the family after the death of employee is thus a mandatory pre condition for appointment on compassionate grounds.

20. Financial penury has not been defined in the holdings of various constitutional courts. The same has to be examined in light of applicable provisions of law. The compassionate ground appointments are not intended to create a windfall for the kin of the deceased. The employer is only required to assess the financial condition which keeps the kitchen fire burning. Further the aforesaid provisions are liable to be strictly adhered to in light of the cases in point discussed earlier.

21. The relevant rules which govern and regulate the appointment on compassionate grounds in the respondent Bank are the Scheme for Compassionate Appointments of Payment of Ex gratia Financial Relief to dependants of deceased employees on Compassionate Grounds, 2022. Clause 5 of the aforesaid scheme provides for the manner of determination of the monthly family income to determine the financial status of the family of the deceased after the death of the latter. The provision being relevant is extracted hereinunder:

"5.1. Monthly Family Income:

The application for Compassionate Appointment/Ex-Gratia financial relief shall be considered only if the family is indigent and deserves immediate assistance for relief from financial destitution. The condition of the family

shall be held indigent only if the monthly income of the family from all the sources is

- a) Less than 50% of the last drawn Gross Salary of the deceased, where the dependent family is survived by only the spouse and/or one child.
- b) Less than 60% of the last drawn Gross Salary of the deceased, in all other cases

If the total monthly income of the family arrived at, is less than 50%/60% of the last drawn Gross salary of the deceased employee, Compassionate Appointment or Ex-gratia financial relief may be granted, subject to fulfillment of other eligibility criteria as detailed herein."

(emphasis supplied)

22. Clause 5 of the said scheme provides for a sound and a rationale criteria for determining the financial condition of the family of the deceased and to make a finding on eligibility for grant of compassionate appointment.

23. This exercise has been undertaken by the Bank. The phrase “monthly income of the family from all the” sources includes financial benefits given to the family of the deceased, the family pension and assets from where income can accrue. Total income of the family as calculated by the bank in accordance with Rule 5.1 is as under:

Name of the deceased	—	Late Dharmendra Kumar
Name and relation of the eligible dependant for compassionate appointment of deceased employee	—	Smt. Chanchal Sonkar
Computation of Monthly income		
I. Monthly Income of the family		
A. Terminal Benefits	—	59,43,651/-
1. Provident Fund	-	28,37,574.00
2. Gratuity	-	12,88,350.00
3. Leave Encashment	-	9,50,401.20
4. NPS Scheme	-	NIL
Sub Total (A)	-	50,76,325.12
B. Liability		
Sub Total	—	50,76,325.12/-
C. Gross corpus available (A-B)	-	50,76,325.12/-
D. Investments (LIC/other polcies)	-	1,04,42,704/-
E. Net corpus available (C+D)	-	1,55,19,029.12/-

- F. Total monthly income of the family from all sources
 - i. Monthly notional interest at the Bank's maximum term deposit rate applicable to public on 80% amount of the net corpus available (E) @ 6.10 (Applicable ROI) – 63,110.71/-
 - 2. Family Pension – 36445.00/-
- G. Total monthly income of the family (1+2+3+4) – 99,555.71/-
- H. (i) Last drawn Gross salary of Late Dharmendra Kumar(sic) – 1,18,800.14/-
- (ii) Last drawn Defence pension (if applicable) – NA
- Total of (I) + (ii) – 1,18,800.14/-
- I. 75% of last drawn Gross salary – 89,100.10/-

24. The aforesaid chart appended to the writ petition has not been disputed by the petitioner.

25. The impugned order clearly discloses the income of the family of the deceased from various sources as contemplated in Clause 5 of the compassionate ground scheme cited earlier. The income of the family of the deceased so calculated is more than 60% of the last salary drawn by the deceased. In fact as per the aforesaid calculations, the family income of the petitioner is more than 75% of the last salary drawn. The income of the family so determined establishes that the family does not face financial destitution as a result of the death of the employee. The respondents in the impugned order have been thus correctly found that the petitioner does not fulfil the criteria for grant of compassionate ground appointment as per the provisions of the compassionate ground appointment scheme applicable to the bank.

26. In wake of the preceding discussion, there is no infirmity in the impugned order. The writ petition is liable to be dismissed and is dismissed.

Order Date :-02.04.2025

Vandit