

(2002) 07 AHC CK 0050
In the Allahabad High Court
Case No : C.M.W.P. No. 23899 of 2000

Dhiraj Kumar Dixit

APPELLANT

Vs

General Manager (Personnel), UCO Bank and Others

RESPONDENT

Date of Decision : 31-07-2002

Acts Referred:

Citation : (2002) 4 AWC 2970 : (2003) 1 LLJ 420 : (2003) 1 UPLBEC 20 :
(2002) 3 UPLBEC 2807

Hon'ble Judges : V.M. Sahai, J

Bench : Single Bench

Advocate : D.S.P. Singh and Ratnesh Khare, for the Appellant; Manoj Mishra, S.C., for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai, J.—The father of the petitioner was working on the post of Assistant Cashier in the UCO Bank, Chowk, Varanasi, He died in harness on 6.2.1997. The petitioner on 20.5.1997 claimed appointment on compassionate ground. His application remained pending. He filed Writ Petition No. 1765 of 2000, which was disposed of by this Court on 17.1.2000 directing the petitioner to make a fresh representation, which was to be decided by the General Manager (Personnel), UCO Bank, Calcutta. The petitioner made a fresh representation and sent it by registered post along with a copy of the order passed by this Court on 29.1.2000 and 1.2.2000. But since the representation was not decided, he sent reminders on 3.3.2000 and 7.3.2000. The General Manager by his order dated 19.4.2000 rejected the representation of the petitioner on the ground that total income of the family of the deceased was more than 60% of the last drawn gross salary of the deceased, therefore, the petitioner was not eligible for appointment on compassionate ground in the bank, as per the scheme of bank. The petitioner has challenged the Scheme for Recruitment of Dependants of Deceased Employee on Compassionate Ground (in brief Scheme), Annexure-1 to the petition and the order dated 19.4.2000 passed by respondent No. 1, Annexure-5

to the writ petition.

2. Shri D. S. P. Singh, learned counsel for the petitioner has urged that provident fund, gratuity, family pension, group insurance or insurance policy cannot be considered for determining the financial or family income of the family of the deceased nor it can furnish a ground for rejecting the appointment on compassionate ground. He further urged that the scheme made by the bank is ultra vires and arbitrary. On the other hand, Shri Manoj Mishra learned counsel appearing for respondents has urged that the head office of the bank had framed a scheme on 21.9.1999 for recruitment of dependants of deceased employees on compassionate ground and the norms for eligibility had been laid down in the scheme which provides that if the monthly income of the bereaved family is 60% or more than the gross salary, the deceased employee was drawing at the time of his death, then such cases will not be considered for compassionate appointment. As the monthly income of family of the petitioner calculated in accordance with formula given in the scheme was above 60% of the last drawn gross salary of the deceased employee, the petitioner was not entitled for compassionate appointment. He urged that the bank has framed the scheme in pursuance of the decision of Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, which lays down in paragraph 7 that rules or executive instructions have to be framed by the public authority for providing employment on compassionate ground. He also placed reliance on the decision of the Apex Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, and urged that the High Court while considering appointment on compassionate ground cannot go behind the scheme framed by the bank for giving appointment on compassionate ground and no mandamus can be issued directing to make appointment forbidden by scheme framed by the bank. The scheme does not suffer from any illegality nor the petitioner is entitled for appointment on compassionate ground.

3. In Umesh Kumar Nagpal (supra), the Apex Court laid down that the object of providing compassionate appointment is not to give a member of such family a post nor mere death of an employee in harness entitles his family to such source of livelihood. The Government or public authority 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, that too, on Class III or Class IV post in non-manual and manual categories. It was emphasised in paragraph 7 that rules or executive instructions have to be issued by the Government or public authority for granting appointment on compassionate ground.

4. The Board of the bank in its meeting held on 7.9.1999 has approved the scheme for recruitment of dependants of deceased on compassionate ground which has been circulated to all branches and offices in India by circular dated 21.9.1999. The petitioner has been refused appointment on compassionate

ground for the reason that 6, 191 is receivable by the family of the deceased which is higher than the 60% of the last drawn gross salary of the deceased employee. For better understanding of the case, it is necessary to extract the relevant Rules, 7, 8 and 9 of the scheme, which are extracted below :

" 7. Eligibility for consideration of compassionate appointment/ payment of lumpsum:

(a) Dependants of the employees who die after attaining the age of 55 years are not eligible for compassionate appointment/payment of lump-sum.

(b) If the monthly income of the bereaved family (calculated as per Clause 8 below) is 60 per cent or more of the gross salary which the deceased employee was drawing at the time of his death, such cases will not be considered for compassionate appointment/payment of lumpsum.

(c) If the monthly income of the bereaved family (calculated as per Clause 8 below) is less than 60 per cent of the gross salary which the deceased employee was drawing at the time of his death, such cases will be initially considered for payment of lumpsum as under :

(i) Officer employee Rs. 2 lacs

(ii) Clerical staff Rs. 1.5 lacs

(iii) Subordinate staff Rs. 1 lac

and thereby if the monthly income reaches/crosses 60 per cent of the gross salary which the deceased employee was drawing at the time of his death, such cases will not be considered for compassionate appointment but will be eligible for payment of lumpsum as stipulated above.

(d) In case the payment of such lumpsum amount also does not result in the increase of monthly income to the level of 60 per cent or more of the gross salary of the deceased employee drawing at the time of his death, there would be no payment of lumpsum, but such cases will be considered for compassionate appointment subject to other terms and conditions.

(e) However, dependants of the bereaved family who are being identified for compassionate appointment as per Clause 7 (d) above may opt for lumpsum amount applicable as per Clause 7 (c) above in lieu of compassionate appointment.

(f) Relaxation in norms/ criteria.--The Chairman and Managing Director is authorised to consider giving special relaxation in the age and educational criteria laid down in the Scheme for recruitment on compassionate grounds on the merits/circumstances of each case."

"8. Calculation formula for income.--Following formula would be followed for arriving at the financial position of income of the family :

(a) The total of the following amounts received as Terminal benefits will form the available resources :

- (i) Employees"/ Employers" Contribution to P.F. ;
- (ii) Gratuity ;
- (iii) Additional retirement benefits such as leave encashment etc. ;
- (iv) Any compensation paid by the Bank ;
- (v) Proceeds of L.I.C. policy and other investments of the deceased employee ;

From the above the following outstanding financial liabilities are to be deducted :

- (i) Housing Loan ;
 - (ii) Vehicle Loan ;
 - (iii) Other Loans from Bank ;
 - (iv) Loan from other institutions which are distinctly verifiable ;
 - (v) Unmarried daughters above the age of 18 year - 10 per cent for one unmarried daughter and 15 per cent for two unmarried daughters of the amounts derived from (a) (i to v) above under column "Calculation Formula for Income" ;
- (b) After arriving at the net amount remaining with the family, interest @ 11 per cent per annum be applied to arrive at monthly income of the family by further taking into consideration :
- (i) Net salary of dependant family members viz., spouse/ son/ daughter/ dependant unmarried brother/ dependant unmarried sister ;
 - (ii) Monthly family pension ;
 - (iii) Income of family from any other sources like rent etc. ;
 - (iv) Income from agricultural property/ family business etc.

The dependant applicant for appointment on compassionate ground has to furnish an affidavit duly sworn in before the Metropolitan Magistrate/ 1st Class Magistrate/Notary Public as per format of the Bank."

"9. After ascertaining the eligibility for compassionate appointment/where the dependant becomes eligible in terms of financial position of the deceased family as per Clause 7 (d) above, Bank will issue a letter to the applicant to appear before the Interview Committee."

5. It has been held in the impugned order dated 19.4.2000 that the receivable income of petitioner's family at present is of Rs. 6,191 per month which was higher than 60% of the last drawn gross salary of the deceased employee, Rudra Dutt Dixit.

6. The learned counsel for the bank has explained in the supplementary counter-affidavit as to how the 60% of the family income or financial income of deceased's family had been worked out. The amount received by the petitioner's family as stated by the bank is as under :

PF amount

:

Rs.

1,42,410.22

Gratuity amount

:

Rs.

1,00,000.00

Leave Encashment

:

Rs.

81,075.52

Proceeds of L.I.C.

:

Rs.

1,66,244.30

Other investments

:

Rs.

50,000.00

Total income of the deceased

:

Rs.

5,40,720.04

?A

The amount of loan, etc., taken by the deceased has been deducted as per the scheme with up-to-date interest from the aforesaid total amount of Rs.

5,40,720.04. The amount deducted by the bank from the total income of the deceased is as below :

House building loan

:

Rs.

58,068.00

Consumer loan

:

Rs.

5,058.00

Loan from other Institution (supported with documents)

:

Rs.

38,000.00

Deduct 10% for one unmarried daughter

:

Rs.

54,072.00

TOTAL

:

Rs.

1,55,198.00

? B

The total income of the family of the deceased employee after the aforesaid deduction is (A - B) Rs. 5,40,720.04 - Rs. 1,55,198 = Rs. 3,85,522.00. On this amount as per the scheme, the interest at the rate of 11% comes to Rs. 42,407.00 per annum and per month interest would be Rs. 3,533.91. The family of the petitioner is getting a monthly family pension of Rs. 2,548.70. The total amount received by the family of the petitioner thus comes to Rs. 6,082.61 per month.

7. The gross salary of the deceased Rudra Dutt Dixit was Rs. 9,810. The 60% of this gross salary comes to Rs. 5,886. As per the calculations of the bank, the receivable income of the family of the deceased is Rs, 6,082.61 per month which

is higher than Rs. 5,886 per month. Therefore, the family is receiving more than 60% of the salary notionally of the gross salary of the deceased and as such, the petitioner was not entitled to be appointed in service of the bank under the scheme on compassionate ground.

8. The constitutional goal of setting up a socialist State and assurance in the Directive Principles of State Policy and Fundamental Rights guaranteeing equality and right to livelihood had been forgotten by the employers of public authorities of the welfare State. The State took lead and framed various schemes for the welfare of its citizens. One such measure was for providing social security to dependants of its employees who died in harness. It framed rules and issued orders for providing employment on compassionate ground to one member of his family to grant immediate relief to the family in penury. Appointment on compassionate ground is a measure of socio-economic justice, which inheres economic security to the family of the deceased employee. It is well-settled that appointments in public service should be made by an open invitation on merit, from the open market. An exception to this rule has been provided by the Government for appointment on compassionate grounds. The object for granting appointment on compassionate ground is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood. Such appointments are made purely on humanitarian consideration with an object to provide the family some source of livelihood. The appointment is given by making a departure from the general provisions for making appointment to a post. This policy of Government was adopted by different bodies including banks. But in course of time, this provision became a source of recruitment. Its misuse in some cases resulted in Umesh Kumar Nagpal's case (supra) by the Apex Court. The decision was accepted by Central Government and it issued circular on 28.11.1994 to ministries and departments for making rules for appointment on compassionate grounds in the light of the decision of the Apex Court. Indian Banks' Association issued a circular to public sector banks on 23.8.1996 to amend their policy and schemes, for compassionate appointment.

9. The impugned scheme has been framed by the bank in pursuance of the circular issued by the Central Government on the basis of judgment given by the Apex Court. Before dealing with paragraphs 7 and 8 of the scheme, it is necessary to emphasise that the Apex Court itself accepted that there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of dependants of an employee dying-in-harness and leaving his family in penury and without any means of livelihood. The Court, therefore, recognised the necessity of compassionate appointments. It only placed restrictions not to make it a source of recruitment by giving one post to the family of the deceased, without due regard to income of the family and the time lapse in the death of the deceased and grant of appointment. The rule-making authority had to keep these guidelines while framing any scheme. But if

the scheme framed by the bank is examined, it has done away with compassionate appointments. Clauses 7 and 8 of the scheme have already been extracted. The one deals with the eligibility for compassionate appointment and the other with calculation of financial position of the income. Clause 7 (a) provides that dependants of those employees who die after 55 years are not eligible for compassionate appointment or payment of lumpsum. There is no rationale for this cut-off date. The objective is to provide employment to dependant of deceased employee dying-in-harness who is in service. This provision attempts to discriminate between employees dying after attaining age of 55 years. The appointment is granted on the financial condition of the family and not on the age of the employee. Since the question does not arise directly in this case, it is not necessary to say any further. Clause 7 (b) provides if the monthly income of the bereaved family is 60% or more of gross salary, which the deceased employee was drawing at the time of his death, he would not be considered for compassionate appointment. Clause 7 (c) provides that where the monthly income of the bereaved family is less than 60% of the gross salary which the deceased employee was drawing at the time of his death, such cases will initially be considered for payment of lumpsum : (i) Officer employee Rs. 2 lacs ; (ii) Clerical staff Rs. 1.5 lacs ; (iii) Subordinate staff Rs. 1 lac, and thereby if the monthly income reaches/crosses 60% of the gross salary which the deceased employee was drawing at the time of his death, such cases will not be considered for compassionate appointment and they will be eligible for payment of lumpsum amount mentioned above. Clause 7 (d) provides that if the claim of the dependant does not fall in Clauses 7 (a) to (c), such cases will be considered for compassionate appointment. Clause 7 (e) provides that the dependant whose case falls in Clause 7 (d) may opt for lumpsum amount as mentioned in Clause 7 (c). For calculating the 60% income of the bereaved family, the calculation formula for income has been mentioned in Clause 8 of the scheme. From a perusal of the scheme, it becomes clear that the scheme does not permit an appointment on compassionate ground except in cases falling in Clause 7 (d), which would not only be rare but it would be impossible for any dependant to be eligible under this clause.

10. Clause (a) of paragraph 8 provides the formula for arriving at the financial income of the family. It includes the amount received as employee's contribution to the provident fund, gratuity, group insurance, L.I.C., etc. None of these are income either under statutory provisions or in general law. Every employee of the Bank while in service contributes to provident fund under the Employees Provident Fund Rules. He also contributes to Group Insurance or Life Insurance. Gratuity is paid by the employer voluntarily to the employee in return to the service rendered under the Payment of Gratuity Act, 1972. After his retirement, he receives the amount of provident fund, gratuity, group insurance, L.I.C. and other retirement benefits. It provides him security in old age. But if the employee dies while in service, his family loses the sole breadwinner of the family. The family is completely shaken. The widow or the children are left in the lurch, not

knowing how to make their both ends meet. The family all of a sudden finds itself to be without any source of livelihood. Keeping such contingencies in mind, the Government framed welfare scheme for providing appointment on compassionate grounds. But how the welfare scheme had been given a go by the bank is demonstrated by the scheme. The bank has almost ensured that it will not give any appointment on compassionate grounds. The family of the deceased employee, who had served the bank, will naturally receive the amount of provident fund, gratuity, group insurance, L.I.C. and other benefits of service to which the employee was entitled. Under the scheme, the bank adds these amounts and deducts the loans taken by the employee from the bank. It also calculates 10% amount for one unmarried daughter or 15% for two unmarried daughters on the gross amount which was payable to the family and deducts it, along with the loan amount, from the gross amount. On the balance amount obtained, 11% per month interest is calculated and notional receivable income is found. Thereafter, the monthly interest is added to the family pension and income of family is obtained by the bank. Then it is compared to 60% of the last drawn salary of the deceased employee. If the notional receivable interest plus family pension is equal or more than 60% of the last drawn salary of the deceased employee, then the compassionate appointment is refused. If it is less than 60%, then an amount is offered in lumpsum so as to bring the income of the family to 60% or more, again the compassionate appointment is denied. If the deceased employee is above 55 years, the dependant is not eligible for compassionate appointment. There may be a rare case that will fall in Clause 7 (d) but in that case too, it appears, that the bank desires that the dependant may take lumpsum amount in lieu of his claim for appointment. And if he insists for appointment and claims some relaxation, then only the Chairman and Managing Director had been given power to grant relaxation under Clause 7 (f).

11. The decision of the Apex Court in Umesh Kumar Nagpal's case, had been misconstrued by the bank. The employer was to ensure the financial condition of the family of the deceased but this decision did not permit the respondents to consider the notional income of the family of the deceased. In any case, it could not frame a scheme and provide for inclusion of such sum to determine financial position of family, which is not income. When the Government framed the welfare scheme of compassionate appointment, it was conscious that every employee who dies-in-harness, his family would receive lumpsum amount, which includes provident fund, gratuity, group insurance, family pension, etc. Neither in Umesh Kumar Nagpal's case nor in the later decisions of the Apex Court, which followed it, had laid down that the provident fund, gratuity, group insurance, family pension, etc. received by the family of the deceased employee in lumpsum had to be taken into account for determining the financial condition of the family. What was laid down by it was that family condition of the deceased had to be examined. But the scheme goes beyond it and adopts a method of calculating income which defeats the entire basis of compassionate appointment.

12. Almost a similar controversy arose before the Apex Court in Balbir Kaur and

Another Vs. Steel Authority of India Ltd. and Others, . The Steel Authority of India introduced a Family Benefit Scheme to the effect that the family of the deceased being unable to obtain regular salary from the management could avail the Scheme by depositing the lumpsum provident fund and gratuity amount with the Company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. The Court held as below :

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

The Apex Court further held that payment of gratuity is not a charity but a statutory right given to the employee. It has to be paid to the employee on his retirement or to his dependants on his death. It further held that the Employees Provident Fund and Miscellaneous Provisions Act, 1952, is a beneficial piece of legislation. It can be described as a social security statute. Its object is to ensure the employee's better future on his retirement and his dependants on his death. Statutory obligations under this Act cannot possibly be deferred in the event of untimely death of a worker or employee. The family needs money in lumpsum. Availability of this amount is the only insulating factor to the grief stricken family. The amount is payable in lumpsum. The amount acts as a buffer amount when the employee retires or dies. Non-payment may result in hardship to the family. From the law laid down by the Apex Court, it is clear that provident fund and gratuity cannot be included to calculate the income of the family of the deceased. Even the amount received due to compulsory insurance or leave encashment cannot be deemed to be income.

13. Today most of the services, whether Government or in public sector or even otherwise are pensionable and there is a provision for family pension. Every employee from peon in Class IV to head of department in Class I contributes to Provident Fund, is entitled to gratuity and is compulsorily insured. If these amounts which are payable to the family on death of the employee are clubbed together and a notional 11% interest is calculated on it to arrive at 60% of the gross salary drawn by the deceased, then there would hardly be any dependant who could be entitled for compassionate appointment.

14. Family pension is paid to the widow of the deceased. This is also a social security for the employee's widow. The calculation of 11% interest on the

amount received by the family of the deceased and the Family Pension is not only against the letter and spirit of the Apex Court judgment but is contrary to basic philosophy of socio-economic Justice. Further 11% interest was not paid even on Fixed Deposit Receipts in 1999. Today it is much less. The provisions for calculating 11% interest is. thus, arbitrary.

15. For these reasons, this writ petition succeeds and is allowed. Clauses 7 and 8 of the Scheme for Recruitment of Dependents of Deceased Employee on Compassionate Ground Annexure-1 to the writ petition are struck down as arbitrary and irrational. Consequently, the impugned order dated 19.4.2000 passed by respondent No. 1 Annexure-5 to the writ petition is quashed. The respondents are directed to consider the representation of the petitioner afresh within six weeks and grant compassionate appointment in Class III or IV according to his eligibility.

16. The petitioner shall be entitled to his costs.