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**(2005) 06 GAU CK 0013**  
**In the Gauhati High Court**

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|---------------------------------|----|------------|
| Partha Sarathi Choudhury        | Vs | APPELLANT  |
| Union of India (UOI) and Others |    | RESPONDENT |

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**Date of Decision :** 09-06-2005

**Acts Referred:**

**Citation :** (2005) 106 FLR 1099

**Hon'ble Judges :** R.B. Misra, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

R.B. Misra, J.—Heard Mr. A.K. Goswami learned Counsel for the petitioner and Mrs. G. Sinha, learned C.G.S.C.

2. In this petition prayer has been made seeking writ of mandamus directing the respondents to appoint the petitioner on compassionate ground and to quash the impugned order dated 14.12.2001 (Annexure 3 to the writ petition) whereby the representation dated 30.12.1992 was rejected by the Chief Engineer, Eastern Command regarding the claim of the petitioner for compassionate appointment.

3. The case of the writ petitioner is that the father of the petitioner, who had served as electrician of garrison Engineers under the Indian Army, had died in harness on 9.12.1992 living behind his wife, three sons and a daughter. The petitioner had filed an application on 30.12.1992 before, the competent authority for appointment on compassionate ground, which was considered and rejected vide order dated 14.12.2001. Paragraph 3 of the impugned order reads as follows:

3. According to available, information, the following is the position/status of the case:

(a) The death of Government servant occurred on 8 December 1992. He was survived by his Wife, 3 sons and 1 daughter.

(b) The family is receiving Rs. 1849/-(min) as family pension. As such it is above

the poverty line as per DOP & T instructions.

(c) The need for immediate assistance by way of compassionate employment to tide over the emergency and crisis is lacking in this case as the death of me Government servant occurred on 8 December 1992 i.e. more than 9 years back.

4. Mr. Goswami, learned Counsel for the petitioner has submitted that the department of Personnel and Training Instructions, Government of India has issued a scheme for appointment on compassionate ground (Annexure-1 to the writ petition) For convenience the instructions indicated therein is quoted below:

DOT & T Instructions and Supreme Court Rulings Regarding the Scheme of Compassionate Appointment.

DOP & T have envisaged the scheme of compassionate appointment as follows:

(a) The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness of who is retired on medical grounds thereby leaving the family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

(b) Providing employment assistance under the scheme of compassionate appointment does not mean employment generation as per existing instructions, guidelines and are not in favour of giving guaranteed compassionate appointment to dependents as a matter of routine.

(c) While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including, the benefits received under the various welfare scheme) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family etc.

(d) In deserving cases even where there is already an earning member in the family a dependant family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other member of the family.

(e) In cases where any member of the family of the deceased of medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate

ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family,

(f) Ministry/Department can consider requests for compassionate appointment even where the death or retirement on medical grounds of a Government servant took place long back say five years or so, while considering such belated requests it should however be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow all these year is should normally be taken as adequate proof that the family had some dependable means of subsistence.

(g) Whether a request for compassionate appointment is belated or not may be decided with reference to the date of death or retirement on medical ground of a Government servant and not the age of the applicant at the time of consideration.

(h) The number of vacancies for compassionate quota should be limited to 5% of the total vacancies in Group "C" and "D" to be filled by direct recruitment only.

5. The learned Counsel for the petitioner has submitted that the above scheme has not indicated anywhere that the family receiving pension could be deprived of the benefit of the compassionate appointment. The said scheme has also not provided that in order to assess financial condition of bereaved family several other aspects i.e. family pension, Gratuity amount received, Employee's/ Employers contribution to PF, Income of family from other sources, size of the family and liabilities, if any etc. are to be considered.

6. The learned Counsel for the respondent has filed reply. Para 4 of I he affidavit reads as follows:

...As per instructions of the Government of India, Ministry of Personnel and Public Grievances and Pension letter dated 13.6.1999. "Mere death of an employee in harness does not entitle his family for such sources of livelihood (by way of compassionate appointment) that it should not be offered as a matter of course irrespective of financial condition of I he family that the only ground which can justify compassionate appointment is penurious condition of the deceased employee's family, that it should be offered only as relief against destitution and it must be remembered that as against the destitute's family of the deceased employee, there are millions of other families which are actually if not more destitute." financial assistance was offered to the family as follows:

(a) DCRC Rs. 43,365.00 (b) GPF Rs. 21,781.00 (c) CCIS Rs. 33,826.00 (d) Leave encashment Rs. 6,276.00 (e) Family Pension Rs. 735.00 upto 31.12.1995 Rs. 1275.00 + DA w.e.f. 1.1.1996 monthly income Rs. 1000.00 from other sources.

As worked out by the Planning Commission the poverty-line income would be below Rs. 1767.20 (Rs. 353.44 x 5) for a family of 5 (five) members and the family has been receiving Rs. 1275/- + DA per month as family pension and Rs.

1000/- per month as income from other sources. The deponent states that the petitioner's case does not deserve consideration for compassionate appointment under the Government guidelines is not correct.

7. According to learned Counsel for in the case of General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, the husband of writ petitioner/widow died while in employment of State Bank of India leaving behind widow, two sons and a daughter. The Bank had formulated a scheme providing for compassionate appointment only where the deceased employee left his family in penury and without any means of livelihood. The wife applied to the appellant Bank for compassionate appointment. On the death of her husband who had received Rs. 3,33,410/- as provident fund, Rs. 1,73,937/- as gratuity and Rs. 1,01,344/- as leave encashment and the writ petitioner owned a house valued at Rs. 4,70,000/-, moreover, there was an investment of Rs. 66,000/- under various heads, and the wife/writ petitioner was receiving a pension of Rs. 5583. Taking note of the assets and liabilities of the deceased, the bank took the view that the financial condition of the family was not penurious, as such, rejected the application for compassionate appointment. A Single Judge of the High Court upheld that order, however reversing the decision, the Division Bench of High Court directed the appellant Bank to appoint the wife writ petitioner in accordance with its policy. On filing the appeal by Bank, the Supreme Court was pleased to allow the appeal and overturned the decision of High Court (D.B.). The Apex Court held that on the basis of the criteria adopted by the appellant Bank, it could not be said that the family of the deceased employee had been left in "penury" or "without any means of livelihood". The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth. The Division Bench erred in diluting that criteria of penury to one of "not very well-to-do".

8. According to the learned Counsel for petitioner the decision in Kunti Tiwary (supra) cannot be made applicable as the same cannot be an indicative factor to deal the present case as the bank in Kunti Tiwary (supra) had adopted resolution vide office memorandum dated 7.8.96 stating that in order to determine the financial condition of the family the following amounts would have to be taken into account:

- (a) Family pension,
- (b) Gratuity amount received,
- (c) Employee's/employer's Contribution to provident fund,
- (d) Any compensation paid by the Bank or its welfare Fund,
- (e) Proceeds of LIC policy and oilier investments of the deceased employee,
- (f) Income of family from other sources,
- (g) Employment of other family members,

(h) Size of the family and liabilities, if any, etc.

9. According to the learned Counsel for the petitioner, the Supreme Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, held that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments 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 crisis. While making such observations, the Hon"ble Supreme Court has considered its earlier judgment and relied upon the earlier judgments, e.g. State of Haryana and Others Vs. Rani Devi and Another, , Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , Umesh Kumar Nagpal Vs. State of Haryana and Others, , Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , Smt. Phoolwati Vs. Union of India and Others, , Union of India v. Bhagwan Singh 1996 (72) FLR 782 (SC), Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , State of U.P. and Others Vs. Paras Nath, , State of Manipur v. Rajaodin 2003 (99) FLR 337 (SC) : 2003 (12) AIC 133 (SC), State of Haryana v. Ankur Gupta 2003 (99) FLR 295 (SC) : 2003 (10) AIC 48 (SC), Haryana SEB v. Naresh Tanwar 1996 (72) FLR 819 (SC), and Haryana SEB v. Hakim Singh 1997 (77) FLR 768 (SC).

10. The object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and not to provide employment. This is because as a rule appointments in public service should be made strictly on the basis of open invitation of applications and no other mode of appointment nor any other consideration is permissible. However, to this general rule which is to be followed strictly in all cases of public appointment, there are certain exceptions carried out in the interest of justice and to meet contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases out of 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 dependents of the deceased employee who may be eligible for such employment. So, the whole object of granting compassionate appointment is to enable the families to tide over sudden crisis. Laying down the above principles in Jagdish Prasad Vs. State of Bihar and Another, , and S. Mohan Vs. Government of T.N. and Another, the Supreme Court has cautioned that the object is not to give a member of such family a post not less than the post held by the deceased employee.

11. Mr. Goswami, learned Counsel for the petitioner has submitted that in Ashwini Kumar (supra), the Supreme Court allowed the appeal of appellant Bank and overturned the decision of the High Court whereby the direction was given to the appellant Bank to consider the case of the writ petitioner for giving

compassionate appointment in the facts and circumstances when the employee died, while working as Grade IV grade in the Bank, leaving behind his mother, widow, two sons and one daughter irrespective of the fact that the family of deceased employee getting retiral benefits, however, their claim for compassionate appointment was denied on the ground that there was no financial hardship to the family as they had received substantial amounts after the death of the writ petitioner's father.

12. I have heard learned Counsel for the parties. I find the DOP & T instructions have not provided specifically that while assessing the financial condition of the family the criteria as indicated in paragraph 7 (Page 273) in Kunti Tiwary (supra) are also to be considered. Only ground for rejection of the claim of the petitioner was that the family was receiving Rs. 1849/- as family pension as well as the death of the employee occurred more than nine years back.

The claimant promptly approached before concerned authority in December, 1992 only and for the reasons best known to the respondent authorities they are sleeping over about 9 years and had endeavoured to dilute the cause of the claim of the petitioner.

13. The Supreme Court has made an observation that the statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. *Commer. Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, Such observations were noted by the Supreme Court in para 8 *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*,

14. The reply of Affidavit-in-opposition has come out with different grounds other than what was indicated in the impugned order dated 14.12.2001. Since there is no specific criteria for assessing the financial condition of the deceased family, the respondents were not fair to ignore the claim of the petitioner. In the facts and circumstances the stand taken by the respondents in the impugned order dated 14.12.2001 is irrelevant and not sustainable in law. Accordingly, the order dated 14.12.2001 (Annexure III to the writ petition) is set aside being contrary to the facts and law. The claim made in the writ petition is liable to be allowed. Therefore, mandamus is being issued to the respondents specifically to the Chief Engineer, Eastern Command, Shillong Zone to consider the case of the petitioner within a period of three months from the date of receipt of a certified copy of this order to be produced by the petitioner.

15. In view of the above, the writ Petition is allowed and the impugned order dated 14.12.2001 is quashed. No order as to costs.