**(2001) 03 PAT CK 0026**

**In the Patna High Court**

**Case No :** C.W.J.C. Nos. 918 and 13522 of 2000 and 2001

Sanjeev Kumar Sinha and Another APPELLANT

Vs

State Bank of India and Others RESPONDENT

**Date of Decision :** 08-03-2001

**Acts Referred:**

**Citation :** (2001) 03 PAT CK 0026

## Judgement

Radha Mohan Prasad, J.—As in both these writ petitions the question involved is common, they are being disposed of by this common order.

2. In the first writ petition (C.W.J.C. No. 13522 of 2000) the prayer is to quash the order, dated August 17, 2000 contained in Annexure 9 passed by the Managing Director and Group Executive (National Banking), State Bank of India, Mumbai (respondent No. 3), whereby the claim of the petitioner for appointment on compassionate ground after the death of his father Late Gopal Nandan Prasad Sinha in harness on August 30, 1996 has been rejected and the second writ petition (C.W.J.C. No. 918 of 2001) is directed against the order as contained in Ref: PTC/SSW/4209/ 2000-01/HKV, dated December 16, 2000 (Annexure 4), issued by the Divisional Manager, Canara Bank, Patna, informing the petitioner that the competent authority after examining his case has declined to give appointment in the bank on compassionate ground as no indigent circumstances necessitating employment exists in his case and consequently the petitioner has sought for a direction to the respondent-authorities to appoint him on compassionate ground after the death of his father Late Siboo Sharma in harness on December 11, 1999. By way of amendment IA. No. 783 of 2001 has also been filed in the second case challenging the validity of the order, dated December 14, 2000, contained in Annexure 5 issued by the Assistant General Manager, Canara Bank, Bangalore, to the Assistant General Manager, Canara Bank, Staff Section (Workmen), Circle Office, Patna, whereby the competent authority has declined to consider employment to the petitioner on compassionate grounds.

3. In both these writ petitions, the petitioners soon after the sudden death of

their fathers, who were the sole bread earners of their respective families, applied for appointments on compassionate grounds for survival of the families, which have been rejected by the impugned orders. In the first case, the petitioner had come to this Court earlier also in C.W.J.C. No. 6222 of 1999 on rejection of his claim and the same was disposed of vide order, dated April 21, 2000 (Annexure 6), with a direction to the petitioner to make a fresh representation to the Managing Director of the bank disclosing all facts and for its disposal within three months by speaking order from the date of receipt of the representation, whereupon he filed representation and the same has been disposed of by the impugned order.

4. In both these writ petitions, counter-affidavits have been filed on behalf of the respective banks in which more or less common plea has been taken that the object of the scheme is to enable the family to tide over the sudden financial crisis due to the death of the bread earner and that such appointments are not to be given merely on the death of the employees in harness. According to the respondents, the object is to offer such appointment keeping in view the financial condition of the family of the deceased and when the bank is satisfied that the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. In support of this, a reference to the observation of the Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana 1994 (4) SCC 443 : 1995-I-LLJ-798 has been made in the counter-affidavit filed in the second case.

5. In the counter-affidavit filed in the first writ petition it is stated that the deceased died after serving the bank for a period of 30 years 11 months and 13 days and on the date of his death was drawing salary, including allowances, to the tune of Rs. 13,942,31 and when the bank had made full assessment of the financial condition of the family, it was found that the family still had an income from all sources to the tune of Rs. 9,400 per month based on realistic figures such as:

i) Pension 5243.00

ii) Income from rent of the house owned by the deceased employee 1567.00

iii) Interest on terminal benefits 2590.00

9400.00 p.m.

It is, thus, contended that the family even after the death of the breadwinner, who was at best contributing Rs. 13,942.31 per month, the family has still an income of Rs. 9,400 per month. As such, the competent authority on the basis of the objective assessment came to a finding that the financial condition of the family is not such that, but for the employment of the petitioner the family will not be able to meet the crisis. It is further stated that the bank by way of terminal benefits had paid a sum of Rs. 3,43,239 as provident fund, Rs. 2,32,621 as gratuity and Rs. 87,775 as against leave encashment. In addition to it, a family pension of Rs. 5243 per month was also sanctioned in the name of the widow of the deceased. With respect to investment by the deceased employee, it was found that he had made investment in National Savings Certificate to the tune of Rs. 80,000, which on the basis of market value, as in between February 18, 1999 to April 17, 2001, could have yielded a maturity value to the tune of Rs 1,61,200. It is also stated that the deceased had invested a sum of Rs. 29,000 which yielded an income of Rs. 50,000. Besides this, he also had SBI Magnum and SBI Share Certificate whose value was assessed at Rs. 14,400 and on assessment it was found that a sum of Rs. 2,590 towards interest could be earned from the investment, including terminal benefits. The liabilities of the deceased, which were also taken into consideration for ascertaining the true and correct financial condition of the family, have been, mentioned in Para. 12 of the counter-affidavit, which are as follows:

"(i) Housing loan: Rs. 53,469.00

(ii) Festival Advance: Rs. 3,500.00

(iii) Vehicle Loan: Rs. 81,388.00

(iv) OD against NSC : Rs. 33,223.00

(v) Loan from PF: Rs. 60,000.00

(vi) Loan to the supervising staff Co-operative: Rs. 95,920.00"

A plea has also been taken regarding initiation of a departmental proceeding, the punishment imposed and the institution of criminal case against the deceased for denying appointment on compassionate ground. Thus, in substance, the contention in the counter-affidavit is that besides the financial condition of the family being not such that but for the employment of the petitioner, the family will not be able to meet the crisis is also that his father had been subjected to minor punishment and that the service history of the father of the petitioner was a chequered one, in which case prior approval of the Government of India is required to be taken before passing of an order on compassionate appointment. However, it is admitted that the case of the petitioner was never reached up to that stage because the bank is not satisfied about the financial condition of the family for making the petitioner eligible for appointment on compassionate ground keeping in view the financial condition.

6. A reply affidavit has been filed on behalf of the petitioner to the said counter-affidavit in which it is stated that the assessment of the valuation of the house by the respondent has been made much higher than it was assessed by the approved valuer at Rs. 5.60 lakhs. He has also disputed the income shown by the bank as, according to him, the rate of interest on deposits etc. is only Rs. 963, i.e., much less and not Rs. 9400. It is also stated that the personal loans were repaid out of the payment made by the bank on provident fund etc. after death of his father and that the total income or assets are not sufficient to meet the livelihood of six persons.

 

7. In the counter-affidavit filed in the second writ petition, in substance, the contention of the respondents is that the petitioner''s father while working as clerk died on December 11, 1999 i.e. 20 days before he was due for retirement on December 31, 1999. As such, his death before retirement will not change the financial position of the family since his family was given all the eligible terminal benefits that he would have got on retirement. The terminal benefits payable to the dependents were amounting to Rs. 3.70 lakhs (i.e., SPF/Gratuity Privilege Leave Encashment) and the spouse is eligible for pensionary benefits either from the Bank or from Military authorities as the deceased was an ex-serviceman before joining the Bank for which the spouse has to opt for either of the said pensions. It is stated that the dependents own two residential houses one in Patna and another at their native place Begusarai and the dependent family now consists of two members only. It is thus submitted that as the family of the petitioner had financial resources much more than a common citizen to meet the hardship on account of death of the father, the petitioner was not appointed, rightly so, on compassionate ground.

8. A reply affidavit to the said counter-affidavit has been filed on behalf of the petitioner in which the plea of the respondents that there is no indigent circumstances has been denied and it is asserted that a sum of Rs. 1,860 per month has been paid as pension from the Army. It is further stated that the father of the petitioner has taken loan from the bank and as constructed the house at his native village and the quarter in Defence Colony, Kankarbagh had been provided to him by virtue of his being injured in the war of 1971 in Indo-Pak War. As regards the member of family, it is stated that apart from his mother, the petitioner has three sisters, wife and two children and the detail was furnished with the petition dated January 18, 2001 to the Deputy Managing Director of the bank, vide Annexure 6. It is submitted that by virtue of the payment of the legal dues, the right of appointment on compassionate ground cannot be defeated and denied and the Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointment. It is reasserted that after the death of the sole bread earner the family has no means of livelihood or other source of income and are facing the hardship.

9. Thus, in substance, the disputes in both the writ petitions are as to whether the dependants after the death of the sole breadwinner can be denied of compassionate appointment on the ground that the retiral benefits and the property acquired by him are sufficient to meet the immediate crisis of the family.

10. Learned counsel for the petitioners in both the cases have submitted that the Family Benefit Scheme cannot be in any way be equated with the benefit of compassionate appointment and that the Supreme Court in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, has held that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick, to the justice administration system or the legal

 

justice and that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law Courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law Court would be to administer justice having due regard in that direction. It is, thus submitted that monetary benefit is not the replacement of the bread earner but it would only bring some solace to the situation.

11. On the other hand, learned counsel appearing for the bank have submitted, that the appointments on compassionate grounds in the bank are guided by the scheme framed on the basis of the guidelines issued by the Ministry of Finance, which is the nodal agency and under the said guidelines/scheme, the bank is required to examine the case of compassionate appointment keeping in view 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. This has been evolved in pursuance of the principle decided by the Apex Court in the case of Umesh Kumar Nagpal v. State of Haryana (supra) in which the Apex Court has discussed the whole object of granting compassionate appointment and has held that grant of such employment is to enable the family to tide over the sudden crisis and not that to give a member of such family a post much less a post for post held by the deceased. Learned counsel of the bank have submitted that in the said case the Apex Court has categorically held that mere death of an employee in harness does not entitle his family to such source of livelihood. In fact, the Government authority 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. It is submitted that in the said case the Apex Court has held that 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. It is further submitted that in fact, in the said case the Apex Court has held that offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV is legally impermissible and also that compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. According to the Apex Court, the consideration for such employment, is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner. The Apex Court held that the compassionate employment cannot be claimed and offered whatever be the lapse of time and after the crisis is over. Learned counsel for the bank have also referred to the Division Bench judgment of this Court in case of Ashok Kumar Choudhary Vs. The State of Bihar

 

and Others, and submitted that in the said case it has been held that the employment is a national wealth and it should be shared by all on the basis of their merit and qualification. It has also been held that the Constitution prohibits giving preference in the matter of employment on the ground of descent. Sympathy and benevolence have some role to play in the matter of compassionate appointment but they cannot play the role to such an extent that they destroy the concept of equality forming the basic feature of the Constitution. It is, thus, submitted by the learned counsel for the respondents that in the facts and circumstances of the present cases, the petitioners cannot get the benefit of compassionate appointment as the family of the deceased cannot be said to be facing any financial crisis. In the second case, learned counsel for the bank has placed more additional emphasis on the fact that hardly 20 days were left for the deceased to attain the normal age of superannuation and hence the stoppage of income is not sudden and it is quite natural mat the family is ready to face the retirement due on December 31, 1999. It is submitted that in fact, monetary benefit to the family was hardly affected due to sudden death only 20 days prior to his retirement. It is thus submitted that it cannot be a case where this Court will consider, to provide appointment on compassionate ground.

12. This Court finds substance in the said submission of the learned counsel for the bank in the second case that when hardly 20 days were left for the deceased to attain the normal age of superannuation, it would not amount to sudden stoppage of income and that there was any occasion for consideration to enable the family to tide over the sudden crisis necessitating grant of appointment on compassionate grounds. There were hardly 20 days left for the deceased to attain the normal age of superannuation, whereafter nobody is entitled to claim for appointment on compassionate grounds. Having regard to the fact that it was known to the family that the deceased was to retire within 20 days only and the family presumably is ready to face the retirement due on December 31, 1999, the stoppage of income cannot be said to be sudden adversely affecting the source of livelihood of the family. On this ground alone, in my opinion, the petitioner of the second case cannot claim appointment on compassionate ground as in the facts and circumstances aforementioned, there cannot be any question of the family facing any financial crisis on account of sudden death of the sole breadwinner. It has rightly been submitted by the learned counsel for the bank that in view of the law settled by the Apex Court, grant of employment on compassionate grounds is to enable the family to tide over the sudden crisis and not that to give a member of such family a post much less a post for post held by the deceased.

13. Accordingly, the second writ petition, bearing, C.W.J.C. No. 918 of 2001, is dismissed, but without costs.

14. However this Court finds it difficult to accept the contention advanced on behalf of the respondent-bank, in the first case that the retiral benefits and the

 

property acquired by the deceased were sufficient to meet the immediate crisis of the family and that the same can be a ground to deny appointment on compassionate ground. The Apex Court in the case of Balbir Kaur and Anr. v. Steel Authority of India, Ltd., and Ors. (supra), has held that having regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. It has also been held that the introduction of the Family Benefit Scheme, vide Tripartite Agreement, which accepted raising the monthly payment equivalent to the basic pay together with dearness allowances last drawn by the deceased till the normal age of superannuation of the employees in question in lieu of depositing the lump sum provident fund and gratuity amount with the employer cannot be in any way equated with the benefit of compassionate appointment and that the introduction of Family Benefit Scheme cannot be a ground to refuse the benefit, of compassionate appointment. According to the Apex Court the sudden jerk in the family by reason of the death of the bread earner 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 bread earner and insecurity thereafter reigns and it is at that juncture if some lumpsum 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. The Apex Court has held that it is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation. Therefore, in my opinion, mere income of the family may not be enough to tide over the crisis on account of sudden death of the sole breadwinner and to deny a compassionate employment opportunity on that account would not be fair and reasonable in almost every case and even in the case of Umesh Kumar Nagpal v. State of Haryana (supra), the Apex Court has held that that the ground which can justify compassionate employment is the penurious condition of the deceased''s family, that is to say, the want of the deceased''s family and not merely because the family has received by way of death-cum-retiral dues or the family is being paid family pension otherwise in no case, there can be any question of grant of benefit of compassionate appointment as in almost every case family of the deceased gets the death-cum-retiral dues upon the death of such employee.

15. From the facts narrated above in respect of the first case, it may be true that the bank by way of terminal benefits had paid about Rs. 6.50 lakhs and a family pension of Rs. 5,243 per month has also been sanctioned in the name of the widow of the deceased and, further, that the deceased employee had made certain investments which, according to the respondents, yield interest of Rs. 2,590 which, according to the petitioner, yield only Rs. 963 but at the same time the liability regarding housing loan, festival advance, vehicle loan, OD against NSC, loan from P.F. and loan to the supervising staff co-operative, which came to about Rs. 3 lakhs, is admitted by the respondent-bank.

16. In reply affidavit it is stated that the total income or assets are not sufficient

 

to meet the livelihood of six persons. The deceased was earning Rs. 13,942.31 per month, which even according to the stand of the bank, reduced to Rs. 9,400 per month and, according to the stand of the petitioner, it further reduced by about Rs. 1,500. Under such circumstances, in my opinion, the respondent-bank is not justified in contending that the financial position of the family is not such that, but for the employment of the petitioner the family would not be able to meet the crisis, particularly keeping in view steep rise in price and thereby cost of living going up everyday.

17. Learned counsel for the bank also submitted that the petitioner of the first case will not be entitled for compassionate appointment on the ground that his father (deceased employee) had been subjected to minor punishment and that his service history was a chequered one. This Court is unable to accept the said submission of the learned counsel for the bank. It is really surprising as to how such plea is taken to deny appointment on compassionate ground especially when no detail of the same has even been brought on record. In my opinion, such plea cannot come in the way of the dependent seeking appointment on compassionate ground to meet the crisis due to sudden death of the bread earner. In view of the object for grant of employment on compassionate ground, the family of the deceased employee cannot be made to suffer on account of any minor punishment imposed upon the deceased or his service history being a chequered one as it will not be covered by the object of enabling the family to get over the financial crisis which was faced by them at the time of death of sole bread earner. The survival of the family is very much dependent upon the earning of the deceased employee and so long the deceased employee is in service, there cannot by any occasion for any financial crisis being faced by his family. It is only after his sudden death that the family faces financial crisis and as such the family cannot be discriminated in the matter of grant of compassionate appointment on account of any such adverse service record of the deceased.

18. Accordingly, the first writ petition, bearing C.W.J.C. No. 13522 of 2000, is allowed, the impugned order contained in Annexure 9, is quashed and the respondent- bank is directed to consider the case of the petitioner afresh and provide him with appointment on compassionate ground within two weeks of the receipt/production of a copy of this order. However, in the facts and circumstances, there shall be no order as to costs.

 