

Allahabad High Court

Pankaj Kumar Son Of Late Buddha ... vs Prathama Bank Through Its ... on 18 April, 2006

Author: T Agarwala

Bench: T Agarwala

JUDGMENT Tarun Agarwala, J.

1. Since the controversy involved is common in all these writ petitions, the same is being decided by a common judgement. For facility, the facts in the case of Pankaj Kumar is taken into consideration.

2. It transpires that the petitioner's father was working as an Assistant Manager in the bank and died on 8.2.2003. An application was moved by the widow praying that her son may be given an appointment on compassionate ground. The bank, rejected the application, on the ground that the monthly income of the family was more than Rs. 5,000.00 per month and, therefore the family condition was not penurious.

3. The petitioner has challenged the impugned order on the ground that the scheme framed by the bank for the appointment on compassionate ground was arbitrary and violative of Article 14 of the Constitution of India. The scheme takes into consideration the terminal benefits while calculating the net monthly income of the family which could not be done inasmuch as the family pension and other terminal benefits are over and above the scheme for compassionate appointment. The learned Counsel for the petitioner submitted that the fixation of the amount of Rs. 5,000.00 under Sub-clause (e) of Clause 7 of the Scheme was arbitrary and, therefore prayed, that the scheme, in so far as it takes into consideration the terminal benefits, while calculating the net monthly income, should be declared arbitrary and void and, further prayed, that the impugned order should be quashed on this ground.

4. On the other hand, the learned Counsel for the respondents submitted that the Scheme framed by the Bank was in consonance with the directions made made by the Supreme Court in various judgements and that the impugned order had been passed in consonance with the scheme framed by the Bank. The learned Counsel further submitted that the scheme was fair and sound and was neither arbitrary nor was it violative of Article 14 of the Constitution of India.

5. Before proceeding further it, would be necessary to quote a few provisions of the Scheme framed by the Bank for the appointment on compassionate ground, which are as under:

03-Appointment under the scheme-

The Bank may, at its discretion, appoint in the Bank, in any of the posts mentioned hereunder, the widow or a son or daughter of a deceased employee of the Bank or a near relative nominated by the widow on whom she will be wholly dependent and who would give in writing that he or she would look after the family of the deceased employee, if the widow or son or daughter or a near relative, as the case may be, fulfills the criteria for appointment under the scheme. Where the deceased employee was a widower or a bachelor, the Bank may exercise its discretion in this regard, by making enquiries of the next elder in the family. The appointment under this scheme shall be made

in clerical and subordinate cadres which is as under-

(i) Clerk

(ii) Clerk - Cum - Typist

(iii) Stenographer

(iv) Driver

(v) Sweeper/Messenger

05. Method of Appointments-

(x) In case a widow, son or daughter is already in employment whether in Bank or elsewhere, the Bank may, at its discretion, consider giving employment to another son or daughter after taking into account the individual circumstances of each case, i.e., the income of the member of the family already employed, the size of the family, the assets/and liabilities of the family and other relevant consideration. Provided that in case, there is no other son or daughter eligible for such appointments the widow or son or daughter employed elsewhere and who is otherwise eligible for appointment in the Bank may be given the option of joining the Bank.

07. In the light of observations of Hon'ble Supreme Court on Compassionate appointment Bank will follow the rules mentioned here under:-

Exception to the rule of appointment in public services, there can be the compassionate appointment in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. The objective is thus to enable the family to tide over the sudden crisis.

Mere death of an employee in harness does not entitle his family to such source of livelihood.

(iii) Bank may examine the financial condition of the family of deceased and 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.

(iv) Lowest post in manual and non-manual categories alone can be offered on compassionate grounds.

(v) The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

(c) Necessary proof regarding the outstanding assets and present monthly income would be called by Bank from the dependents. For the purpose of certifying immovable assets and monthly income, as per current practice, Bank would continue to demand the certificate of competent Revenue Authority not below the rank of Tehsildar.

(d) Dependents would also be advised to submit details of Movable, Immovable property and terminal benefits (Received and Receivable) alongwith details of outstanding liabilities of deceased employee.

(e) For deciding the penurious condition, the Net income of the deceased's family from all sources should be-

(i) Below Rs. 5000/= per month where the deceased employee is an officer.

(ii) below Rs. 3500/= where the deceased employee is a clerical staff.

(iii) Below Rs. 2500/= where the deceased is a subordinate staff.

Net income of the family may be calculated by taking into account (i) Notional interest income calculated at the rate of 8.5% per annum, subject to applicable interest rates from time to time, on the next terminal benefits and other cash assets (ii) Pension (iii) Other income, if any. Following illustration showing the calculation may be taken for arriving at next income on exemplary basis.

ASSETS		LIABILITIES	
Gratuity	2,00,000	Housing loan	2,50,000
EPF	50,000	Demand loan	50,000
EDLI	53,000	Conveyance loan	75,000
Staff Welfare Scheme (KKY)(if applicable)	90,000	KKY loan	20,000
LIC (if any)	75,000	Festival Advance	10,000
P.L. encashment	50,000	ODD etc.	30,000
Bank deposit/NSC etc.	50,000	Other borrowings (with proof)	50,000
Total	5,68,000	Total	4,85,000
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Net Liquid Assets- (568000-485000)		Rs. 83,000.00	
Net Monthly Income calculated 8.5 %p.a.		Rs. 588.00	
Monthly Pension (from EPF)		Rs. 2,500.00	
Total Monthly Income		Rs. 3,088.00	

Thus the income of the family of deceased comes to Rs. 3088.00 and it may be taken into consideration for deciding factor (depending upon the cadre of the deceased employee) for ascertainment of penury condition of the deceased's family.

6. From a perusal of the aforesaid provisions of the scheme, it is clear that a discretion has been given to the Bank to appoint a member of the family of a deceased employee on compassionate ground, who fulfils the criteria for an appointment under the Scheme. No vested right has been given to an heir of the deceased for an appointment on compassionate ground. The appointment on compassionate ground is not given to an heir as a matter of right and, only a discretion is given to the Bank to give or not to give an appointment on compassionate ground. However, the discretion given to the Bank has to be exercised fairly and not arbitrarily. The criteria which has to be considered is, the income of the members of the family, the size of the family, the assets and the liabilities of the family and other relevant consideration. Under Sub-clause (e) of Clause 7 of the scheme, a formula has been given to arrive at the net income of the family. Clause 7 of the scheme clearly indicates, that the appointment on compassionate ground would only be considered, if the bank finds that an employee, dying in harness, had left his family in a penurious condition. If the net income is below Rs. 5,000.00 per month, of the family of the deceased employee, who was an officer, below Rs. 3500.00 per month in the case where the deceased employee, was a clerical staff and, below Rs. 2500.00 where the deceased employee was a subordinate staff, in that event, compassionate appointment would be given.

7. From a perusal of the scheme, I find that the scheme is neither arbitrary nor is it violative of Article 14 of the Constitution of India.

The method of calculation of the net income is fair and proper.

8. The submission of the learned Counsel for the petitioner that terminal benefits could not be taken into consideration while considering the penurious condition is patently erroneous.

9. In *Umesh Kumar Nagpal v. State of Haryana and Ors.* , the Supreme Court held that an appointment on compassionate ground in public service is an exception to the general rule of appointment on the basis of open invitation and merit. This exception was only to be resorted to in cases of penury where the dependants of an employee was left in penury and without any means of livelihood. The judgment further contemplated that before giving an employment on compassionate ground, the employer must examine the financial condition of the family. The Supreme Court held-

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 provisions 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.

10. In *General Manager (D&PB) and Ors. v. Kunti Tiwary and Anr.* , the Supreme Court while reiterating the decision in Nagpal case (supra), further recommended that while considering the financial condition of the family, the employer was required to take into the consideration the family pension, gratuity, Provident Fund, any compensation paid by the Bank or its Welfare Fund,

proceeds of Life India Insurance Corporation Policy, the income from family from other sources, employment of other family members, the size of the family; and liabilities, etc.

11. In Punjab National Bank and Ors. v. Ashwini Kumar Taneja , the Supreme Court held that the scheme framed by the bank taking the retirement benefits into consideration, while dealing with the prayer for compassionate appointment, was sound and valid. The Supreme Court affirmed the scheme which took into consideration the family pension, gratuity, proceeds of LIC, Income from other sources, etc., while considering the financial condition of the family.

12. In Smt. Kiran Lata Johari v. Chief General Manager, State Bank of India, Lucknow and Ors. 2003 (5) ESC 168, this Court after considering various case laws, held that the scheme framed by the bank was in consonance with the decision of the Supreme Court and was neither arbitrary nor violative of Articles 14 and 16 of the Constitution of India.

13. From the aforesaid judgments, it is clear that the Supreme Court has categorically held that while considering the financial condition of the family, the employer was required to take into consideration the family pension, gratuity, Provident Fund, etc. Consequently the scheme framed by the bank, in the present case, which takes into consideration the terminal benefit is neither arbitrary nor is violative of Article 14 of the Constitution of India. In fact, the scheme is in consonance with the directions of the Supreme Court as given in various judgments.

14. The learned Counsel for the petitioner has, however, relied upon two judgments of the Supreme Court, namely, in the matter of Balbir Kaur and Anr. v. Steel Authority of India Ltd. and Ors. , in which the Supreme Court held that the family benefit scheme, assuring monthly payment to the family of a deceased employee was not a substitute for a compassionate appointment and, in the case of Govind Prakash Verma v. Life Insurance Corporation of India and Ors. 2005 (10) SCC 289, in which the Supreme Court held that the scheme of compassionate appointment was over and above of whatever was admissible to the legal representatives of the deceased employee and, therefore the compassionate appointment could not be refused on the ground that a member of the family had received a family pension. The Supreme Court held, that the terminal benefits received by the widow could not be taken into account while considering the case for appointment on compassionate ground.

15. In my opinion, the submission of the learned Counsel for the petitioner is patently erroneous. The Supreme Court in the case of Balbir Kaur (supra) considered the family benefits scheme in terms of the NJSC Tripartite agreement of 1989 and in that scenario, held that the family benefit scheme, assuring the monthly payment to the family of a deceased employee, was not a substitute for a compassionate appointment. Similarly, in the matter of Govind Prakash Verma's case (supra), the Supreme Court was interpreting the scheme framed by the Life Corporation of India holding that the scheme of compassionate appointment, framed by the Life India Corporation, was over and above of whatever was admissible to the legal representatives of the deceased's employee. Consequently, in my opinion, the aforesaid two decisions of the Supreme Court are distinguishable and are not applicable to the present case.

16. The learned Counsel for the petitioner has also relied upon a decision of a learned Single Judge of this Court in *Dhiraj Kumar Dixit v. The General Manager (Personnel), UCO Bank, Calcutta and Ors.* 2002(3) E.S.C. 505, in which it was held that the Clause 7 and 8 of the Scheme, which took into consideration the retirement benefits like Provident Fund, pension, gratuity, Insurance., for determining the family income, was arbitrary and violative of Article 14 of the Constitution of India. In my view, the said judgment stands impliedly overruled in view of the subsequent decision of the Supreme Court in the matter of *Kunti Tewari (supra)*, *Punjab National Bank (supra)* and *Smt. Kiran Lata Joshi (supra)*

17. In the present case, the scheme framed by the Bank contemplates taking into consideration the terminal benefits and, after calculating the net income of the family, an appointment on compassionate ground could be given, if the bank finds that the family was living in a penurious condition. If the financial condition was sound and was not penurious, the Bank in its discretion, would not be obliged to grant an appointment on compassionate ground.

18. In *Regional Manager, A.P. SRTC, Nellore and Anr. v. C.M. Pavana Kumari*, the Supreme Court held that no direction can be issued to appoint a person on compassionate ground dehors the scheme framed by the employer, nor the Court had a power to modify the scheme or rules framed in this regard.

19. In view of the aforesaid, I do not find any illegality in the impugned order, as the same was passed in terms of the scheme framed by the Bank. The respondents found that the financial condition of the family was sound and was not in a penurious condition. The Bank rightly exercised its discretion in not giving an appointment to the petitioner on compassionate ground.

20. In view of the aforesaid, the petitioners are not entitled for any relief. The writ petitions are dismissed. However, in the circumstances of the case, there shall be no order as to cost.