

2025:PHHC:064354



**IN THE PUNJAB AND HARYANA HIGH COURT AT
CHANDIGARH**

102+234

CWP-11309 of 2021 (O&M)

Date of Decision: 14.05.2025

DEEPAK KUMAR

... Petitioner

VERSUS

BANK OF BARODA AND OTHERS

... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.

Present: Mr. S.K. Nehra, Mr. Viren Nehra, Mr. Rahil Mahajan,
Mr. Arjun Dosanj and Mr. Akash Gahlawat, Advocates
for the petitioner.

Mr. Naman Jain, Advocate for the respondents.

VINOD S. BHARDWAJ, J. (ORAL)

CM-19593-CWP-2024

Allowed as prayed for.

Replication to the written statement along with Annexures P-13 to P-15 is ordered to be taken on record subject to all just exceptions. Registry is directed to tag the same at appropriate place of the paper book.

MAIN CASE

Challenging the order dated 22.08.2018 (Annexure P-4) and the order dated 12.02.2021 (Annexure P-12), whereby the application of the petitioner for compassionate appointment has been rejected, the instant petition has been filed.

Learned counsel for the petitioner contends that the petitioner's father, Ramesh Kumar, was working as a Senior Manager with the respondent

Bank, and he expired on 25.12.2017 while he was posted in Ludhiana. He contends that the petitioner's father has six legal heirs, which include two elder sisters of the petitioner, (who were married prior to the death of his father), the petitioner's widowed mother, the petitioner himself and his two younger sisters. He contends that the petitioner submitted an application for the grant of compassionate appointment in terms of the Scheme for Compassionate Appointment dated 18.02.2016, which was applicable at the time of the death of his father. It is contended that the petitioner otherwise fulfilled the eligibility conditions as prescribed thereunder; however, notwithstanding the same, the claim of the petitioner for compassionate appointment has been rejected vide order dated 22.08.2018. The reasons assigned thereunder read thus: -

- “1. Mrs. Balbiri Devi spouse of deceased is in receipt of an amount of Rs.25232/- as monthly pension. The family has also received full amount of Terminal Benefit of Rs.40.44/- lakhs without any deduction towards any liability. Further taking into account the notional interest on terminal benefits the monthly income of the family is arrived at approx. Rs.50341/-.*
- 2. In view of the above, your family does not seem to be indigent and does not require immediate assistance for relief from financial destitution, in terms of "scheme for Compassionate Appointment/Payment of Ex gratia financial relief to the dependents of deceased employees on compassionate grounds" circulated vide BCC:BR:108:82 dated 18.02.2016.”*

He further submits that the respondents had granted compassionate appointment to the son of one Raj Kumar-the Chief Manager and that on coming to know of the same, the petitioner submitted another letter/ representation to the

respondents, claiming that his case too ought to be considered for compassionate appointment, however, vide order dated 12.02.2021, the said representation was declined by stating that each case has to be considered on its specific facts and that the claim of the petitioner was rejected after assessing the financial condition of his family, his assets and liabilities and that there was no occasion to revisit the earlier decision taken by the Competent Authority. The operative part of the same reads thus: -

“In your letter, you have informed that your family is indigent and there is no earning member in your family. We have sympathy with the family for the personal loss, we wish to inform that the bank has processed your application for Compassionate Appointment as per the details submitted by you and the financial condition of the family at the time of death of Late Mr. Ramesh Kumar. The decision taken therein along with the reasons has already been taken and intimated to you vide our letter No.BR/SAMLUD/2018-19/037 dated 27.09.2018.

In reference to your letter dated 29.12.2020, it is noted that the reasons mentioned in the letter are not substantive and are not supported by any document to re-visit the decision which has already been taken.

Further you have compared your case with the appointment made by the Bank with respect to other deceased employee. The Compassionate appointment cases are considered are considered after assessing the financial condition of the family, assets & further liabilities of the family amongst other/relevant factors prevailing at the time of death of the employee. Hence, comparison of your case with any other case/s will be irrelevant as each and every case is evaluated independently, as per the financial condition of the family.

In this regard, we express our inability to re-visit the decision of the Competent Authority in the matter and the decision communicated

earlier vide letter No.BR/SAMLUD/2018-19/037 dated 27.09.2018 remains unchanged.”

Learned counsel for the petitioner refers to the Scheme for Compassionate Appointment and draws the attention of this Court to Clauses 5, 10.1, 12 and 16.3, which are extracted as under: -

“5. ELIGIBILITY

5.1 *The family is indigent and deserves immediate assistance for relief from financial destitution; and*

5.2 *Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules which are as under at present:*

(a) *Applicant should be an Indian Citizen*

(b) *Age:*

<i>For Clerical Cadre</i>	<i>For Subordinate Cadre</i>
<p><i>Minimum 18 years. The upper age limit will be as per the rules applicable from time to time to direct recruitment in clerical cadre.</i></p> <p><i>Where no dependent of the deceased employee within the prescribed age limit is available for employment, the maximum age limit may be relaxed, wherever found to be necessary. The lower age limit will however, in no case be relaxed below 18 years of age.</i></p> <p><u>Note:</u> <i>In case of dependents belonging to Scheduled Castes/Tribes/OBCs, the existing concession as per government guidelines for Scheduled Castes/Tribes/OBCs for upper age limit</i></p>	<p><i>SAME AS IN CASE OF CLERICAL CADRE</i></p>

<i>will continue to apply.</i>	
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(c) *Educational Qualifications:*

<i>For Clerical Cadre</i>	<i>For Subordinate Cadre</i>
<i>Pass in Graduation would be necessary for all dependents including widows.</i>	<i>A Pass in Xth Standard Examination or its equivalent. However, Competent authority may relax the educational qualifications criteria for Widow/Widower only, wherever necessary, to a minimum requirement of simple knowledge of reading and writing English or vernacular language provided she can perform the duties of that cadre.</i>

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10. WHERE THERE IS AN EARNING MEMBER

10.1 *In deserving cases, even when there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with the prior approval of the competent authority of the Bank who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified, having regard to the number of dependents, assets and liabilities left by the employee, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the employee and whether he should not be a source of support to other members of the family.*

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12. PROCEDURE

- a) *The prescribed proforma will be used by the Bank for ascertaining necessary information and processing the cases of compassionate appointment*
- b) *An officer from the HRM Department of the Bank will meet the members of the family of the employee in question*

immediately after his/her death and advice in person about the requirements and formalities to be completed by him/her

c) The applicant will be interviewed by the Selection Committee to be appointed by the Bank, in order to assess his/her suitability for a particular post and also for better appreciation of the facts of the case. For administrative convenience and for speedy disposal of the applications, the composition of the selection committee shall be as under

- 1. General Manager (Zonal Head of the Zone where the deceased employee was last posted)-Chairman of the Committee.*
- 2. Dy. Zonal Manager of the Zone / Regional Head where the deceased employee was last posted.*
- 3. Asstt. General Manager incharge of Zonal HR Department of the concerned Zone or if AGM (HRM) is not available then any other AGM in the Zone as appointed by the respective Zonal Manager.*

(If the deceased employee is working in BCC/ HO/ Baroda Academy/ CIAD/ZIAD, Zonal Head and other members of Zone under whose administrative jurisdiction such unit is attached shall constitute the Selection committee.)

d) The recommendation of the committee will be placed before the Competent Authority for a decision. If the Competent Authority disagrees with the committee's recommendation, the case shall be referred to the next higher authority for a decision.

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16. GENERAL

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16.3 An application for compassionate appointment shall, however, not be rejected merely on the ground that the family of the employee has received the benefits due/ the benefits under the various welfare schemes. While considering a request for appointment on compassionate grounds, 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 schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, etc.

XXX XXX XXX”

Referring to the above, counsel contends that the petitioner fulfilled all the eligibility conditions prescribed under the Scheme for Compassionate Appointment applicable to the respondent Bank and that as per Clause 16.3, the claim of the petitioner could not have been rejected merely on the ground that financial benefits/terminal benefits have been received by the family of the deceased. An objective and balanced decision had to be made on the financial condition of the family by considering its assets and liabilities, including the benefits received under various welfare schemes and all other factors such as the presence of earning members, size of family, etc. It is contended that the respondents have not taken note of the aforesaid aspects while declining the claim of the petitioner and have not taken into consideration the liabilities, which were to be discharged by the family. He contends that the father of the petitioner had taken friendly advances from different relatives at the time of marriage of the two elder sisters of the petitioner and that on receipt of the terminal benefits, an amount of approximately Rs. 16,70,000/- has been repaid to the relatives from whom the advances had been taken. It is thus contended that the respondents have declined the claim of the petitioner for seeking compassionate appointment on notional consideration, which are not based upon an objective assessment of the financial condition of the family of the petitioner and that there are still four dependents of the deceased, which also includes the petitioner herein.

Counsel for the respondents, on the other hand, placed reliance on the reply filed by them and contends that the prime eligibility conditions as per Clause 5 of the Scheme for Compassionate Appointment are that the family has to be indigent and must require immediate assistance for relief from financial destitution. He contends that circumstances of the case including the financial condition of the family was duly taken into consideration by the Competent Authority and it was specifically noticed that terminal benefit to the tune of Rs.40.44 lacs, without any deduction towards any liability, had been released in favour of the petitioners and that the monthly pension was also assessed at Rs.25,232/-. Taking into account the notional interest income on the terminal benefit, the monthly income would work out to be approximately Rs.50,341/-. It is contended that the note "deductions towards liability" had been noticed and as there was no other legally tenable liability, hence, the terminal benefits had been released as a whole and considered rightly.

He further contends that the petitioner cannot allege discrimination by comparing two different cases. The burden lies upon the petitioner to establish that he fulfills all the eligibility conditions as per the relevant Clause(s) of the applicable Policy for Compassionate Appointment since the said Policy is not a substitute for regular appointment and the scope of the writ Court against exercise of administrative discretion is limited as per the judgment of Hon'ble Supreme Court in the matter of *State Bank of India and Others Versus Jaspal Kaur* reported as *(2007) 9 SCC 571*. The relevant extract of the same is reproduced hereinafter below: -

“26. Hence a major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial

condition is entirely penury, such appointments cannot be made. In the present case the financial condition of the respondents family is not one of destitution, the appellants have already paid a sum of Rs.4,57,607/- as terminal benefits (after deducting Rs.19,183/- towards liabilities); a sum of Rs.2055/- p.m. was being paid towards family pension and monthly income under Staff Mutual Welfare Scheme and in addition the total monthly income of the family comes to Rs.5855/- (monthly pension of Rs.2055/- + Rs.3800/- p.m. as notional interest on the investment of Rs.4,57,607/-). The competent fact finding authority on the basis of the above financial details had arrived at the conclusion that the financial condition of the family is not penurious and that the family earns sufficient income to maintain themselves. Hence appointment on compassionate ground was not granted to the respondent. We however, do not feel the necessity to interfere with this order of the Bank Authority on the fact situation of this case.

27. The competent authority of the bank had to consider the case of the respondent as per the laid down parameters laid down in the scheme. Accordingly, while deciding on the financial condition of the respondent factors like:

- a) Family Pension*
- b) Gratuity*
- c) Employee's/Employer's contribution to the Provident Fund*
- d) Any compensation paid by the Bank or its Welfare Fund*
- e) Proceeds of LIC Policy & other investments of the deceased employee*
- f) Income for family from other sources*
- g) Employment of other family members*
- h) Size of the family and liabilities, if any, etc.*

were taken into consideration by the Competent Authority and based on these details appointment was declined to the respondent on compassionate ground.

28. Also we are of the view that the specially constituted authorities in the rules or regulations like the competent authority

*in this case are better equipped to decide the cases on facts of the case and their objective finding arrived on the appreciation of the full facts should not be disturbed. Both the Benches of the High Court that heard this present matter have erred in entertaining the claim of the respondent and allowing the claim of the respondent. This was the view taken in a recent decision of this Court in **Union Bank of India and Others v. M.T. Latheesh (supra)**, where the court observed that, "Learned Single Judge and the Division Bench by directing appointment has fettered the discretion of the appointing and selecting authorities. The Bank had considered the application of the respondent in terms of the statutory scheme framed by the Bank for such appointment".*

Referring to the above, counsel contends that the High Court had directed the appointment of respondents therein while setting aside the decision of the respondent-Bank declining the appointment on compassionate grounds after taking into consideration the financial condition of the family. The judgment of the learned Single Judge as affirmed by the Division Bench was a subject matter of challenge in the aforesaid Civil Appeal before the Hon'ble Supreme Court. It was noticed as to what would be the criteria for ascertaining penury, as laid down by the Judgment of the Hon'ble Supreme Court in the matter of **General Manager (D&PB) and Others Versus Kunti Tiwary & Another** reported as **(2004) 7 SCC 271**.

The policy of compassionate appointment of the State Bank of India had a similar clause, as herein, and on taking into consideration that the total monthly income of the family worked out to around Rs.5,855/-, it was held by the Hon'ble Supreme Court that the condition of the family cannot be said to be penurious. The judgments of this Court were set aside by holding that the specially constituted authorities under the rules or regulations are better equipped

to decide the cases on the facts of each individual case, and the High Court has fettered the discretion of the appointing and selecting Authorities by issuing such a diktat.

Further, a reference is also made to the judgment of the Hon'ble Supreme Court in the matter of ***State of Bank of India and Another Versus. Somvir Singh***, reported as ***(2007) 4 SCC 778*** to contend that once the policy of the Bank provides for taking into consideration all the terminal benefits, family pension and income of the family of the deceased from all sources, in concluding as to whether the family has been left in penury without any income and means of livelihood, the same cannot be held to be bad as there is no fundamental right to claim appointment in public service under compassionate appointment and it is to be extended to the family only in an eventuality that the conditions prescribed thereunder are fulfilled. The relevant extract of the same is reproduced hereinafter below: -

*“8. In **Umesh Kumar Nagpal State of Haryana. 1994(3) SCT 174 (SC): [(1994) 4 SCC 138]** this Court held, "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 interest of justice and to meet certain 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 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 dependents 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 held by the deceased." (emphasis added)

9. In **Union Bank of India & Ors. v. M.T. Latheesh. 2006(4) SCT 90 (SC): [(2006) 7 SCC 350]**, this Court while dealing with the similar question observed that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever-growing population of unemployed youth.

10. There is no dispute whatsoever that the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment *de hors* the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be."

In rebuttal to the above, learned counsel for the petitioner contends that the eligibility conditions set out in the policy as compared to the State Bank of India are at variance when compared to objective considerations to be taken into consideration under Clause 16.3 of the Scheme for Compassionate Appointment applicable to the respondent Bank.

A specific query was also put to the counsel for the petitioner as to what was the last drawn salary of the petitioner's deceased father, to which it is

informed that the salary was approximately Rs.90,000/- per month at the time of the death of petitioner's father.

I have heard the learned counsel for the respective parties and have gone through the documents and record available on case file with their able assistance.

Even though an ardent effort has been made by the counsel for the petitioner to contend that the private borrowings of the family have not been taken into consideration while assessing the liabilities that were to be discharged by the family and as such, the fiscal health of the family has not rightly been evaluated by the respondent-Authorities, however, the undisputed facts which emerge from a perusal of the same are that the terminal benefits to the tune of Rs.40.44 lacs had been released in favour of the family and that a pension of Rs.25,232/- had also been already assessed and the same is continuously being released per month to the family of the petitioner.

Further, the emphatic reliance on the affidavits submitted by the relatives of the petitioners about having extended friendly loans etc. cannot be taken into consideration as the acceptance of the same may lead to an anomalous/chaotic situation where every person is most likely to indulge in procuring such documents from their friends and family to achieve the object of seeking appointment under the Scheme for Compassionate Appointment. Besides, all these issues would give rise to disputed questions of fact.

The law mandates the Authorities to take into consideration the liabilities that have legal existence and acceptance. Undisputedly, as on the date of death of petitioner's father, there were no legally enforceable statutory liabilities or the liabilities in the form of any loan etc. having been obtained from

any financial institution. The nature of argument advanced by the counsel for the petitioner, if accepted, cannot be gone into by this Court and the verification process thereof can never be undertaken by the Competent Authority. Determination of such facts would always be a long drawn process which can be fraught with mischief, malice as well as impossibilities. Hence, the principle as being universally applied by the respondent-Authorities by reckoning only the legal liabilities which can be undisputedly ascertained through documentation *per se* admissible in law, can be held to be a safe and sound methodology for assessing the final liabilities to be discharged by the family.

It is also noticed by this Court that the monthly income, calculated by assessing the notional interest on the income, came out as Rs.5855/- in the matter of *Jaspal Kaur (supra)* and it was deemed sufficient to conclude that the family was not in penury and as such, the exceptional clauses of Scheme for Compassionate Appointment could not be exploited as a means of seeking appointment to a public post, the claim of the petitioners therein was declined and the judgments passed by this High Court were set aside.

It is also taken into consideration that the abovesaid judgment of the Hon'ble Supreme Court was passed in the year 2007 whereas the claim in the present case is being considered later in point of time, however, even if a decent multiplier of cost of living index is to be applied, yet, the notional income as assessed at Rs.50,341/- cannot be held to be as living in penury or to hold that the family is indigent.

In view of the above and noticing that the Hon'ble Supreme Court has restricted the power of review in matters of compassionate appointment coupled with the observation that the administrative discretion should not

ordinarily be interfered with by the High Court in exercise of its power under Article 226 of the Constitution of India, it would not be appropriate to hold that the discretion exercised by the respondent-Authorities suffers from any grave illegality, perversity or impropriety.

Insofar as the contention of learned counsel for the petitioner about the compassionate appointment having been extended to the dependent of the Chief Manager is concerned, the circumstances under which the dependent son of the Chief Manager had been appointed by the respondent-Authorities are not before this Court nor is the legitimacy or legality of the said decision a subject matter of challenge herein. Hence, the plea of exercising arbitrary discretion cannot be accepted. In any case, it is incumbent upon the person claiming benefit under a specific policy to establish that a right has accrued in his favour in terms of the said policy. A mere extending of such benefit to any other person, under any specific circumstances, cannot create any indefeasible right in favour of the petitioner herein to the appointment notwithstanding the non-fulfilment of the essential terms and eligibility prescribed in the applicable policy.

Finding no such illegality, impropriety or perversity in the order dated 22.08.2018 (Annexure P-4) and order dated 12.02.2021 (Annexure P-12) passed by the respondent-Authorities, the instant writ petition is dismissed at this stage.

MAY 14, 2025.

Rajender

**(VINOD S. BHARDWAJ)
JUDGE**

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*