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*Before S. S. Nijjar & S. S. Saron, JJ.*

SANJEEV KUMAR.—*Petitioner*

*versus*

UNION OF INDIA AND OTHERS.—*Respondents*

C. W. P. NO. 14167 OF 2006

7th September, 2006

*Constitution of India, 1950—Art. 226—Father of petitioner while working as Head Guard in SBI died in harness—Claim for appointment on compassionate grounds—Rejection of—Object of granting compassionate appointment under the Scheme of Compassionate Appointment introduced by Bank is to enable the family to tide over the sudden crisis—Aim & object of granting compassionate appointment is not to replace the deceased employee with a dependent of the deceased—Petitioner failing to make out a case of any exceptional hardship for appointment on compassionate grounds—Rejection of claim for compassionate appointment after taking into account financial condition of petitioner's family—Petition dismissed.*

*Held*, that the aim and object of granting compassionate employment is not to replace the deceased employee with a dependent of the deceased. It is to be granted only where family is suffering from abject penury and is without any source of livelihood. The respondents have passed a speaking order. The respondents have considered the claim of the petitioner on the basis of the judgment of the Supreme Court in the case of General Manager (D&PB) and others *versus* Kunti Tiwary and another, Civil Appeal No. 126 of 2004 arising out of SLP (C) No. 2644 of 2003. The financial position of the family of the deceased employee at the time of his death was determined by the respondents. It would not be possible to hold that the petitioner has made out a case of any exceptional hardship for out of turn appointment on compassionate grounds.

(Paras 11, 13 & 14)

H. S. Sharma, Advocate, *for the petitioner.*

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**JUDGMENT**

**S. S. NIJJAR, J.**

(1) The petitioner claims appointment on compassionate grounds. The claim of the petitioner has been rejected by respondent No. 2 i.e. State Bank of India by order dated 12th January, 2006 which has been communicated to the petitioner through Letter No. R-1/Staff/8453, dated 19th January, 2006. He claims a writ in the nature of mandamus directing the respondents to consider the petitioner against a post commensurate to his educational qualifications.

(2) We may briefly notice the facts leading to the claim made by the petitioner.

(3) The father of the petitioner was appointed as Guard in the establishment of respondent Nos. 2 and 3. He died in harness at the age of 50 years on 26th March, 2001 while working as Head Guard in the Board of respondent No. 3 i.e. Assistant General Manager, State Bank of India, Region-1, Zonal Office, Haryana, Panchkula, (Haryana). On 28th January, 2002 the petitioner sent a representation to the respondents for appointment on compassionate grounds. He claims that the deceased i.e. his father is survived by his widow, two sons and one daughter. The sons had to abandon the study after the death of their father because of financial crisis. The widow of the deceased was given monthly pension of Rs. 2,858. The request of the petitioner was declined by respondent No. 2 by order dated 28th January, 2002, a non-speaking order. The petitioner filed CWP No. 7503 of 2002 challenging the aforesaid order. The writ petition was allowed by order dated 5th December, 2002 by passing the following order :—

“The petitioner sought appointment on compassionate grounds on the plea that his father who was a Head Guard in the Bank has died on 25th March, 2002 while in the service of Bank leaving the family in penury. Appointment to the petitioner was denied by order Annexure P—2 dated 7th July, 2002. Although the aforesaid order given no reasons for declining the petitioner’s request but in the reply it has been pleaded that the family was not in distress as they were drawing family pension and interest on the other monetary benefits released to the family. Details have been given in paragraph 3 of the reply. We find, however, that the case is covered in favour of the petitioner by the

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judgment of this Court in CWP No. 5326 of 2002 titled **Naveen Kumar versus Union of India and others**, decided on 25th August, 2003 and CWP No. 12552 of 2001 titled **Sukhdev Singh versus Union of India and others**, decided on 9th September, 2003, wherein it has been held that while assessing the income of the family of the deceased ; family pension is not to be counted towards the income of the family so as to deny appointment to a member of the family.

We accordingly, following the judgments aforesaid quash the order Annexure P—2 and direct the respondent to reconsider the matter in the light of the observations made in those judgments within a period of three months from the date of receipt of a certified copy of the order. No order as to costs. Dasti.

(Sd.) . . . ,

H. S. Bedi,  
Judge.

(Sd.) . . . ,

Kiran Anand Lall,  
Judge.”

(4) The respondents instead of complying with the aforesaid directions of this Court, filed S.L.P. No. 9088 of 2004 challenging the aforesaid judgment. The S.L.P. was disposed of on 21st October, 2005 by directing the authorities concerned to re-consider the appointment on compassionate grounds in the light of the decision of the Supreme Court in the case of **General Manager (D&PB) and others versus Kunti Tiwary and another (1)**, within a period of three months. In compliance with the aforesaid order of the Supreme Court, the respondents have passed an elaborate speaking order dated 12th January, 2006, again rejecting the claim of the petitioner for appointment on compassionate grounds. The petitioner has now challenged the aforesaid order which is attached as Annexure P—2 by filing this petition under Articles 226/227 of the Constitution of India.

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(5) Before we proceed to adjudicate on the merits of this case, we may also notice some other facts relied upon by the petitioner in the writ petition. He claims that he has no source of income after the death of his father who was the only bread winner. The widow has been given a monthly pension of Rs. 2,858 with effect from 31st December, 2001 to 2nd June, 2006. Thereafter, she would be paid Rs. 1,913 till death or re-marriage under the Family Pension Scheme. Now the respondents have vindictively reduced the family pension to Rs. 1,913 with effect from April, 2006. This meager amount is not at all sufficient for the bare survival of the family. The petitioner has passed the Matriculation examination after the death of his father. The High Court in its order dated 5th December, 2003 had directed the respondents to consider the claim of the petitioner on the basis of the decision of this Court in Naveen Kumar and Sukhdev Singh's case (*supra*). Instead of complying with the aforesaid order, the respondents vindictively filed S.L.P. in the Supreme Court. The respondents, mischievously to mis-lead the Court, filed a wrong affidavit by showing the monthly family pension drawn by the widow as Rs. 5,320 when, in fact, the correct amount was Rs. 2,858. This misstatement was repeated before the Supreme Court. The respondents had to apologise for the same in the Supreme Court by filing a rejoinder affidavit dated 16th March, 2005.

(6) We have heard the learned counsel for the petitioner at length and perused the record of the case.

(7) It is submitted by the learned counsel for the petitioner that the decision taken by the respondents repeatedly to deny the appointment on compassionate grounds to the petitioner is arbitrary. The respondents have denied social justice to the petitioner. It is an obligation of the law Courts to apply the law "depending in a manner whichever is beneficial for the society". The reasons stated by the respondents in the impugned order are not relevant. The income of the family is wholly irrelevant for determining as to whether the petitioner can be appointed on compassionate grounds.

(8) We have considered the submissions made by the learned counsel for the petitioner.

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(9) The Supreme Court in the order dated 21st October, 2005 directed the respondents to consider the claim of the petitioner in the light of the decision in the case of Kunti Tiwary's case (*Supra*). The respondents have now considered the claim of the petitioner and rejected the claim for a number of reasons. The respondent-bank had introduced a scheme of compassionate appointment in the year 1997. The scheme was amended/updated from time to time. When the father of the petitioner died, the scheme updated upto 1st January, 1998 was in operation. In the aforesaid scheme, it is provided as under :—

“The object of granting compassionate appointment is to enable the family to tide over the sudden crisis by the death of bread-winner. The mere death of an employee in harness does not entitle his family to such livelihood. The object is to offer compassionate appointment only when the Bank is satisfied that the financial condition of the family is such that but for the provision of the employment, the family will not be able to meet the crisis”.

(10) The aforesaid provision, in our opinion, is in consonance with the law laid down by the Supreme Court in the case of **Umesh Kumar Nagpal versus State of Haryana (2)**. In the aforesaid case, the Supreme Court has categorically held that “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. However, an exception, out of pure humanitarian considerations has been made in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. A provision is, therefore, made to enable the family to make both ends meet. The whole object of granting compassionate employment is 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 the post held by the deceased. Furthermore, 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 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...”. The aforesaid observations make it abundantly clear that the aim and object of granting appointment on compassionate ground is not to replace the deceased employee with a dependent of the deceased. It

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is to be granted only where family is suffering from abject penury and is without any source of livelihood. In the present case, the respondents have passed a speaking order. The respondents have considered the claim of the petitioner on the basis of the judgment of the Supreme Court in the case of **General Manager (D&PB) and others versus Kunti Tiwary and another**, in Civil Appeal No. 126 of 2004 arising out of SLP (C) No. 2644 of 2003. In Kunti Tiwary's case, the claim of the petitioner had been rejected by the respondent-bank under the scheme updated upto 1st January, 1998. The respondents took into account the financial condition of the family and came to the conclusion that it was not living in abject penury and, therefore, appointment on compassionate grounds could not be granted to the son of the deceased. He had, therefore, filed Civil Writ Petition. A Single Judge of the High Court upheld that order. However, reversing the decision, the Division Bench directed the Bank to appoint the son of the deceased in accordance with its policy. The Bank then filed the Special Leave Petition in the Supreme Court. Allowing the appeal of the Bank, the Supreme Court relied upon the earlier decision in Umesh Kumar Nagpal's case (*supra*). The Supreme Court also noticed the express language for appointment on compassionate grounds as contained in the scheme which was effective on 1st January, 1998, the provision is as follows :—

“Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood.”

(11) The scheme clearly provided that in order to determine the financial condition of the family, the following amounts will 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 other 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.

(12) This criteria which is contained in the updated scheme dated 1st January, 1998 has been duly approved by the Indian Banks Association. The respondents have considered the claim of the petitioner on the basis of the law laid down by the Supreme Court in Kunti Tiwary's case (*supra*). It has been observed that the financial position of the family of the deceased employee, at the time to his death, as ascertained from the original record was as under :—

“Assets and liabilities.

(i) Terminal Benefits and Investment :

(a) Provident Fund	..	Rs. 1,90,746.00
(b) Gratuity	..	Rs. 1,09,326.00
(c) Leave Encashment	..	Rs. 57,519.00
(d) NCSs	..	Rs. 7,000.00
Total :	..	Rs. 3,64,519.00

Less liabilities (Loan from Co-op Societies)	..	Rs. 18,500.00
Net surplus	..	Rs. 3,46,091.00

(ii) Monthly family income :

(a) Family pension from Bank	..	Rs. 2,858.00
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Interest income from the terminal benefits of Rs. 3.46 lacs.	..	Rs. 2,587.00
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Total : .. Rs. 5,445.00

(13) Keeping in view the aforesaid facts and circumstances, it would not be possible to hold that the petitioner has made out a case of any exceptional hardship for out of turn appointment on compassionate grounds.

(14) We find no merit in the petition. Dismissed.

**R.N.R.**