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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 31.10.2007.

Lokender Singh son of Late Shri Rattan Lal,  
resident of Village & Post Office Motla Kalan, District Rewari,  
Haryana.

...Petitioner.

vs.

State Bank of India and another

...Respondent.

Coram: **Hon'ble Mr. Justice K.S.Garewal.**  
**Hon'ble Mr. Justice R.S.Madan.**

Present: Mr.D.S.Nirban, Advocate, for the petitioner.  
Mr.Nitan Kumar, Advocate, for the respondents.

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**R.S.Madan, J.**

By invoking jurisdiction of this court under Articles 226/ 227 of the Constitution of India the validity of the order dated 5.5.2005 / 9.5.2005 (Annexure P11), has been questioned by the petitioner and he has also prayed for issuance of a writ in the nature of mandamus directing the respondents to appoint him on the post of Clerk/ Cashier on compassionate grounds.

Brief facts of the case are that Rattan Lal father of the petitioner was a regular employee of respondent no.2. He was working as Head Armed Guard. He expired on 6.5.2001 after putting in more than 15 years of service with respondent no.2. Atro Devi widow of Rattan Lal i.e. the mother of the petitioner submitted an application through respondent no.2 to respondent

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no.1 whereby she surrendered her claim for compassionate appointment in favour of her elder son (petitioner). Copy of the application is Annexure P1. Thereafter, the petitioner submitted an application (Annexure P2) to respondent no.1 through respondent no.2 for appointment on compassionate grounds. The petitioner filed fresh application on the proforma prescribed as desired by the respondent- bank vide letter no.3413 dated 13.9.2001 (Annexure P3). The said application was forwarded to respondent no.1 on 4.12.2001 by respondent no.2. In response to the letter dated 11.12.2001, respondent no.2 clarified the objections raised by respondent no.1 and forwarded the case of the petitioner for appointment on compassionate grounds vide letter no.22/290 dated 9.1.2002 (Annexure P6). The petitioner received letter no.221 dated 22.4.2002 (Annexure P7) from the respondent-bank declining his case on the grounds that his case for appointment on compassionate grounds is against the observations made by the Supreme Court and instructions of the Bank. The petitioner who is possessing degree of Bachelor of Arts also holds Diploma in Net Work Centered Computing from NIIT Delhi, which according to the petitioner is sufficient to secure the appointment as Clerk/ Cashier in the bank.

The petitioner after serving a legal notice dated 5.8.2004, filed Civil Writ Petition No.1429 of 2005, whereby a direction was issued by this court to the respondents vide order dated 25.1.2005 to decide the representation/ legal notice of the petitioner. The respondent-bank after considering the legal notice, declined the case of the petitioner for appointment on compassionate grounds vide order dated 5.5.2005/ 9.5.2005 (Annexure P11) by observing that income of the family is Rs.2539/- p.m. for the surviving family members of the deceased employee living in own

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house and having agricultural land is sufficient to meet both ends and cannot be considered to be penurious for the purpose of appointment on compassionate grounds. It is this order which is now under challenge before this court.

The respondent-bank contested the writ petition by filing written statement, wherein it was projected by way of preliminary objection that the petitioner is not entitled to the relief claimed. The respondent-bank framed a scheme for appointment on compassionate grounds for the dependents of deceased employees on 1.1.1998 (Annexure R1) pursuant to the decision of the Apex Court in Umesh Kumar Nagpal vs State of Haryana 1994 (4) SCC 138, wherein it was held that, “appointment by way of compassionate appointment is an exception carved out of the general rule for appointment on the basis of open invitation of application and merit. This exception was to be resorted to in cases of penury where the dependents of an employee are left without any means of livelihood and that unless some source of livelihood was provided a family would not be able to make both ends meet.”

Keeping in view the aforementioned guidelines, a memorandum was also circulated on 7.8.1996 to all the Banks emphasising that the observations of the Apex Court would have to be complied with. The Indian Banks' Association also adopted the directive of the Apex Court in Umesh Kumar Nagpal's case (supra) in the scheme which was proposed for appointment of heirs of deceased employees. In order to consider the financial condition of the family, it was recommended in that proposal that the following amounts would have to be taken into account:-

- i) Family pension.

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- ii) Gratuity amount received.
- Iii) Employee's/ employer's contribution to provident fund.
- iv) Any of the compensation paid by the Bank or its Welfare fund.
- v) Proceeds of LIC policies and other investments of the deceased employee.
- vi) Income of family from other sources.
- vii) Income of other family members from employment or other sources.
- viii) Size of the family and verifiable liabilities, if any.

The recommendation of the Indian Banks' Association was accepted in the policy/ scheme which was finally formulated on 1.1.1998, where the same criteria for determining the financial condition of the family was laid down. Another revised scheme for appointment on compassionate grounds for dependents of deceased employees/ employees retired on medical grounds was issued on 11.3.2003 (Annexure R2). In view of the recommendation of the Association which was adopted by the respondent-bank in the original scheme (Annexure R1), the respondents considered the case of the petitioner for appointment on compassionate grounds after taking into account his financial condition. The financial condition in the case of the petitioner was assessed by the respondent-bank in Annexure R3, the same is reproduced as under:-

**"I. ASSETS & LIABILITIES**

*Terminal benefits paid & investments*

*Rs.02.75 lacs*

*Liabilities*

*Rs.00.48 lacs*

Net surplus

Rs.02.27 lacs

**II MONTHLY FAMILY INCOME**

a) Family pension from Bank

Rs.1089/-

b) Income from Agri. Land

Rs. 300/-

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c) Interest on net surplus	Rs.1150/-
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Total income	Rs.2539/-
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The respondents also submitted that the family of the deceased members was consisting of his widow, two sons and a daughter-in-law. Keeping in view the observations made by the Apex Court, the respondents took up the stand that penury condition of the family of late Shri Rattan Lal could not be said to be a family without means of livelihood. Therefore, the competent authority was right in declining the case of the petitioner for compassionate grounds.

It is further the case of the respondent-bank that the object of compassionate appointment is to enable the family to tide over the sudden crisis due to the death of the bread-winner. The father of the petitioner died on 6.5.2001 and a period of about six years have already elapsed and no sudden crises can be said to have existed. The consideration for compassionate employment is not a vested right which can be exercised at any time in the future. In the policy of the respondent-bank, it has been noted that compassionate appointment can be sought within a reasonable time.

It is pertinent to mention here that vide letter dated 22.4.2002 (Annexure P7), the petitioner was informed that his case for compassionate appointment have not found favour with the competent authority. He has challenged the said order after a period of three years on 6.12.2005 and no explanation was given about this delay. With these pleas in the written statement, the respondents prayed for dismissal of the writ petition.

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We have heard the learned counsel for the parties and have carefully gone through the records.

On behalf of the petitioner, it is contended by the learned counsel for the petitioner that the income of the family from all sources have been assessed as Rs.2539/- per month as detailed in Annexure P11, which is under challenge, is meagre in these days when the prices of all essential commodities are increasing day by day. It is very difficult for the members of the family in these days to make both ends meet with this amount. Therefore, the case of the petitioner has not been considered sympathetically by the respondent-bank and has been rejected in a cavalier manner. It is not disputed that the father of the petitioner died on 6.5.2001 and the application (Annexure P1) for appointment on compassionate ground was made by his widow for elder son. This application, however, did not find favour with the respondents in granting the petitioner appointment on compassionate grounds vide Annexure P7. Aggrieved by this order, the petitioner approached this court by filing Civil Writ Petition No.1429 of 2005, which was filed after serving legal notice to the respondents. This court was pleased to dispose of the said writ petition with a direction to the respondents to decide the legal notice. Despite the directions of this court, the respondents did not gave the appointment to the petitioner on compassionate grounds but took up the shelter of policy dated 1.1.1998 and rejected his claim.

Learned counsel further contended that the petitioner is a Graduate and also a Diploma holder in Net Work Centered Computing from NIIT Delhi and his case was strongly recommended by the Branch Manager. Despite that he was unable to get the desired relief. The petitioner has

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moved the authority within prescribed limit of six months from the date of death of his father, therefore, his case has to be considered sympathetically.

On the other hand, it was contended by the learned counsel for the respondents that in State Bank of India and another vs Somvir Singh, Civil Appeal no.743 of 2007 (arising out of SLP (C) No.802 of 2006), the Apex Court has approved the scheme for appointment of dependents of the deceased employees on compassionate grounds framed by the respondent-bank keeping in view the guidelines given by the Apex Court. The competent authority while considering the application for compassionate appointment found that the dependents of the deceased employee are not living in penury and without any means of livelihood. Thus, the authority did not commit any error in rejecting the case of the petitioner after considering the monthly income including the pension which according to the respondent bank is sufficient to make both ends meet. It is in this very judgment that the Apex Court held that, “It is well settled that the hardship of the dependent does not entitle one to compassionate appointment de hors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to scheme which the High Court altogether ignored while remitting the matter for fresh consideration by the appellant-Bank. It is not a case where the dependents of the deceased employee are left without any means of livelihood and unable to make both ends meet.”

The petitioner being a Graduate as well as Diploma holder in Net Work Centered Computing from NIIT Delhi could find job for him in the open market when multinational companies are arriving in the country to start their business. The petitioner is a able bodied person. Almost a

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period of six years have passed from the date of death of his father, the family has over come from the destined period of grief. The appointment on compassionate grounds cannot be taken as a matter of right. This court has considered all the aspects appearing in the case and found that the case of the petitioner is fully covered by Somvir Singh's case (supra). Being a Graduate in Arts and Diploma holder from NIIT Delhi, he must also be serving somewhere to earn his livelihood.

Keeping in view the facts and circumstances appearing in the case, it is not a case where powers under Articles 226/ 227 of the Constitution of India should be exercised. Consequently, this petition fails and dismissed as such.

**(R.S.Madan)**  
**Judge**

31.10.2007.  
vs.

**(K.S.Garewal)**  
**Judge.**