

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.22993 of 2019

Prashant Kumar @ Prasant Kumar S/o Late Ranjan Kumar resident of Village
Aruara, P.S. Ariyari, District Sheikhpura.

... .. Petitioner/s

Versus

1. The Allahabad Bank through its General Manager (H.R.), Head Office- 2 N.S. Road, Kalkata.
2. The General Manager (H.R.) Allahabad Bank Head Office N.S. Road, Kalkata.
3. The Senior Manager, Terminal Dues Section Head Officer Kalkata.
4. The Zonal Manager, Allahabad Bank Zonal Office Devdoot Complex 1st Floor 15 Radha Rani Sinha Road Bhagalpur.
5. The Assistant General Manager (T.D) Zonal Office Devdoot Complex, 1st Floor, 15 Radha Rani Sinha Road, Bhagalpur.
6. The Senior Branch Manager, Allahabad Bank at Raniganj Branch.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Krishna Kant Singh, Advocate
For the Respondent/s : Sri Ashok Kumar Chaudhary, Sr. Advocate
Dr. Binod Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
ORAL JUDGMENT

Date : 29-03-2022

In the instant petition, petitioner has prayed for the following reliefs:-

“(i) For issuance of an appropriate writ in the nature of certiorari for quashing the order dated 27. 8. 2019 passed by the respondent Assistant General Manager T. D) Contained in his Ref. No. HO/Admin/TD/2019-20/Comp. Apptt./28512 dated 27. 8. 19 whereby and where under respondent Assistant Manager has been pleased to reject the Claim of appointment on Compassionate Ground on nonest ground.



(ii) Further for issuance of an appropriate Writ in the nature of MAN-DAMUS Commanding and directing the responding authority to appoint the petitioner on Compassionate ground due to death caused by harness of father of the petitioner. Who was discharging his duty as Executive officer (ex. C.C.) in the respondent bank.

(iii) Further for issuance of any other writ/ writs, order /orders, direction/ directions for which petitioner shall be found entitled Under the facts and circumstances of the case as stated herein below under principle of equitable Justice.”

Petitioner's father while working in the respondent-bank service died on 24.12.2016, thereafter, petitioner submitted application for compassionate appointment on 28.09.2018. The petitioner's claim for compassionate appointment has not been considered in the light of Paragraph 17 of the Circular dated 03.08.2015. It relates to payment of lumpsum ex-gratia amount in lieu of compassionate appointment.

Learned counsel for the petitioner submitted that Policy/Relief scheme of ex-gratia amount of compassionate appointment was launched on 03.08.2015 vide Circular No. 13846/PA/2015-16-26 furnished to the counter affidavit filed on behalf of the respondent-bank. Para 17 of the Circular is relating to payment of lumpsum ex-gratia amount in lieu of compassionate appointment. The criteria is general income criteria for ex-gratia



may be granted to the family of the employee in the manner and subject to fulfilling specified criteria, i.e., if the monthly income of the family from all sources is less than 60% of the last drawn gross salary (net of taxes) of the employee.

Learned counsel for the petitioner submitted that the aforesaid clause is not attracted in the case of compassionate appointment and it is in respect of ex-gratia amount in lieu of compassionate appointment. It is further submitted that the eligibility criteria for compassionate appointment is Para 5 namely eligibility in which the clauses imposed in the Para 17 has not been reiterated so as to take note of Para 17 in respect of compassionate appointment, therefore, Para 17 is restricted to only ex-gratia amount in lieu of compassionate appointment and not for either of the scheme. Therefore, decision of the respondent in not providing compassionate appointment to the petitioner is contrary to the aforesaid clause of the Circular dated 03.08.2015 in so far as compassionate appointment.

Per contra, learned counsel for the respondent-bank resisted the petitioner's contention and submitted that for the purpose of compassionate appointment the respondent-bank was required to take note of general income criteria stated in Para 17.1 of the Circular dated 03.08.2015 and it is in respect of compassionate



appointment, therefore, there is no lacuna in not providing compassionate appointment to the petitioner. Learned counsel for the respondent-bank relied on Hon'ble Apex Court decisions in the case of **State of Himachal Pradesh & Anr. vs. Shashi Kumar** reported in **(2019) 3 SCC 653**. The relevant paragraphs 19, 30, 31, 32& 33 read as under:-.

“19. The policy in the present case which was formulated on 18-1-1990 categorically speaks of providing employment assistance to dependants of government servants who have died while in service, “leaving their families in indigent circumstances”. The policy, in other words, is designed to meet the needs of those families where the death of a government servant has left them in indigent circumstances, requiring immediate means of subsistence. The policy recognises in Para (10) that the benefits which are received by a family on account of welfare measures are required to be considered. Among them, the policy stipulates that family pension and death gratuity are required to be taken into account in assessing the financial circumstances of the family. The policy does not preclude the dependants of a deceased employee from being considered for compassionate appointment merely because they are in receipt of family pension. What the policy mandates is that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of subsistence. The receipt of family pension is, therefore, one of the considerations which is to be taken into account. Para



(10)(c) of the policy sets out the measures provided by the State which have a bearing on the financial need of the family.

30. Dealing with the applicability of the subsequent scheme, a Bench of two Judges of this Court held, following the earlier decision in SBI v. Jaspal Kaur, that the cause of action to be considered for compassionate appointment arose when the earlier scheme was in force. Hence, the claim could not be decided on the basis of the subsequent scheme which provided only for the payment of ex gratia. Moreover, as a matter of fact, the subsequent scheme was superseded in 2014 by reviving the scheme for the provision of compassionate appointment.

31. Hence, the issue which has been dealt with in Canara Bank is whether the application for grant of compassionate appointment could have been rejected on the basis of a scheme which had come into force after the date of submission of the application. That, as this Court observed, was the main question which fell for consideration. The Bench of two Judges, however, also noted that it was urged on behalf of the appellant Bank that the family of the respondent was in receipt of family pension. This, the Court held, was of no consequence in considering the application for compassionate appointment.

32. The learned Senior Counsel appearing on behalf of the appellants has sought to distinguish the above observations, in the judgment in Canara Bank, by submitting that it is not the case of the State of Himachal Pradesh that mere receipt of family pension would disable an applicant from submitting an application



for compassionate appointment or preclude consideration of the claim. On the contrary, the submission which is urged is that the scheme requires consideration of all relevant sources of income and hence, receipt of family pension would be one of the criteria which would be taken into consideration in determining as to whether the family of the deceased employee is in indigent circumstances. We find merit in this submission for the simple reason that it is in accord with the express terms of the scheme of 18-1-1990 as modified by the State. The scheme contemplates that payments which have been received on account of welfare measures provided by the State including family pension are to be taken into account. Plainly, the terms of the scheme must be implemented.

33. For these reasons, we have come to the conclusion that the High Court was not justified, based on the decision in Govind Prakash Verma in issuing a direction to the State to act in a manner contrary to the express terms of the scheme which require that the family pension received by the dependants of the deceased employee be taken into account.”

The aforesaid paragraph speaks of adhering to the relevant provision of law. In the present case, Para 17 of the Circular dated 03.08.2015 is crystal clear for the purpose of providing ex-gratia amount in lieu of compassionate appointment and general income criteria is applicable to ex-gratia.

Heard learned counsel for respective parties.



Short question for consideration in the present matter is whether the petitioner is entitled for compassionate appointment or not? Further general income criteria clause in para 17 is attracted for compassionate appointment or not?

Undisputed facts are that the petitioner's father died while he was in service on 24.12.2016. The petitioner submitted representation/application for providing compassionate appointment on 28.09.2018. The compassionate appointment/ex-gratia amount is governed by scheme called "Compassionate Appointment in Allahabad Bank to incorporate provision for payment of one time lump sum Ex-gratia Amount in lieu of Compassionate Appointment". It was notified on 03.08.2015 and annexed as Annexure-1 to the counter affidavit. For the purpose of the present case, it is relevant to extract Para 5 which reads 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."

The relevant Para 17 and 17.1 reads as under:-

17. PAYMENT OF LUMP-SUM EX-GRATIA AMOUNT IN LIEU



OF COMPASSIONATE APPOINTMENT:

In cases of families fulfilling all the terms and conditions of eligibility for compassionate appointment laid down in this Scheme is not in a position to take up employment, it may choose to exercise option for lumpsum ex-gratia amount in lieu of compassionate appointment and submit application for the same in prescribed format together with affidavits (also in prescribed format). Such application for grant of ex-gratia amount in lieu of compassionate appointment shall generally be submitted by the spouse (i.e., widow or widower, as the case may be). The basis and modalities of computation of such ex-gratia amount in lieu of compassionate will be as under:-

17.1 General income criteria:

Ex-gratia may be granted to the family of the employee in the manner and subject to the ceiling specified below, if the monthly income of the family from all sources is less than 60% of the last drawn gross salary (net of taxes) of the employee.”

Undisputedly, the respondents have evolved policy decision in respect of providing compassionate appointment/ex-gratia amount. The amended circular is dated 03.08.2015. The aforesaid Para 5 is relating to eligibility for the purpose of providing compassionate appointment and no general income criteria is stipulated for compassionate appointment. Para 5 and 17 (supra) are relevant



to the case in hand. It is crystal clear that in lieu of compassionate appointment respondent-bank intends to extend lump sum ex-gratia amount in that event, the legal heirs of the deceased employee are entitled to claim ex-gratia amount. Para 17 is attracted including 17.1 relating to general income criteria and it is to be noted from the Circular dated 03.08.2015. Para 17 is not incorporated under eligibility criteria for compassionate appointment under para 5 of the circular dated 03.08.2015. Therefore, the respondent-bank cannot contend that the family income is less than 60% of the last drawn gross salary net gross income of the employees. Invoking aforesaid clause by the respondent-bank is not attracted in respect of providing compassionate appointment. In other words, eligibility criteria for the purpose of compassionate appointment is only Para 5.1 and 5.2. Therefore, the contention advanced on behalf of the respondent-bank cannot be accepted. It is crystal clear that “payment of lump sum ex-gratia amount in lieu of compassionate appointment and there is no word “Or” so as to interpret for the purpose of compassionate appointment general income criteria or 60% of the last drawn gross salary as stated in Para17 is to be considered. The cited decision has no assistance in view of the Circular dated 03.08.2015 prescribes for the purpose of eligibility criteria for compassionate appointment. The same shall be taken into



consideration namely Para 5 and not Para 17 as contended by the learned counsel for the respondent-bank.

In the light of these facts and circumstances, the petitioner has made out a *prima facie* case for reconsideration of his claim for compassionate appointment. Accordingly, the present petition stands allowed and the impugned order dated 27.08.2019 (Annexure-5) passed by the Assistant General Manager (T.D.), Allahabad Bank, Zonal Office, Bhagalpur is set aside.

The matter is remanded to the respondent-bank to reconsider the petitioner's claim without reference to Para 17 of the circular dated 03.08.2015 for the purpose of compassionate appointment. The above exercise shall be completed and proceed to pass speaking order within a period of two months from the date of receipt of this order.

(P. B. Bajanthri, J)

Vikash/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	N/A

