File No. MPP-B(10)-1/2007-I
Government of Himachal Pradesh
Department of MPP& Power

From

The Pr. Secretary (Power) to the
Government of Himachal Pradesh

To

1. The Director Energy,
   Shanti Bhawan, Phase-III, New Shimla,
   Shimla-09.
2. The Secretary,
   HPERC, Khalini,
   Shimla-02
3. The Chief Electrical Inspector,
   Block No.-29, SDA Complex,
   Kasumpati, shimla-09.
4. The Managing Director,
   HPSEBL, Vidyut Bhawan,
   Shimla-04.
5. The Managing Director,
   H.P. Power Corporation Ltd., Himfed Building,
   Panjri Near Old MLA Quarters,
   Tutikandi, Shimla-05.
6. The Managing Director,
   H.P. Power Transmission Corporation Ltd.,
   Barowalia House Khalini, Shimla-02.

Dated Shimla-2, the 01-08-2014

Subject: - Appointment(s) on compassionate grounds to be made as per the decision(s)/direction(s) of the Hon'ble Court(s)-Latest instruction(s) thereof.

Sir,

I am directed to enclose herewith a photocopy of letter No. Fin-F-(9)-1/2014 dated 19th July, 2014 of Pr. Secretary (Finance) to the GoHP alongwith its enclosures on the subject cited above for your information and compliance.

Yours faithfully,

1/8/14
(Kameshwar Dhaulta)
Joint Secretary (Power) to the
Govt. of Himachal Pradesh
Tel. No.:- 0177-2621780

H.P. POWER CORPORATION LTD. Dy No. 4331 Date 15-9-14 SHIMLA-5

Endst. No. As above Dated Shimla-02, the -07-2014

Copy forwarded to the Pr. Secretary (Finance) to the GoHP, Shimla-02 w.r.t his letter referred to above for information please.

(Kameshwar Dhaulta)
Joint Secretary (Power) to the
Govt. of Himachal Pradesh

(P.T.O)

H. P. Power Corporation Ltd.

Endst No. HPPCL/P&A/Policy Circular/14-9679-94 Dt. 16/9/14

(1) All HOPs/HODs HPPCL.
(2) The GM(Civil Design), HPPCL, Sundernagar, Distt Mandi.
(3) The Sr Mgr (IT) HPPCL with a request to upload this notification on official website of HPPCL.
(4) All APOs/POs, Corporate office, HPPCL.
(5) File No. HPPCL/P&A/Notification/Meeting/13.

Dy. General Manager (P & A)
HPPCL, Himfed Bhawan,
Shimla-171005

1-8-14.

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PERSONAL ATTENTION
COURT MATTER

No. Fin-F-(9)-1/2004
Government of Himachal Pradesh
Finance Department
(Expenditure Control - II)

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From

The Principal Secretary (Finance) to the
Government of Himachal Pradesh, SHIMLA -2.

To

1. All the Administrative Secretaries to the Government of Himachal Pradesh, SHIMLA - 2.
2. All the Head(s) of Department(s) in H. P.

Dated: Shimla - 171 002, the 19th July, 2014.

Subject:- Appointment(s) on compassionate grounds to be made as per the decision(s)/direction(s) of the Hon'ble Court(s) - Latest instruction(s) thereof.

Sir,

In continuation of this Department's letter of even number dated 21.12.2012 on the above subject, I am directed to enclose a copy each of Civil Appeal No. 9730 of 2011 titled State Bank of India & Ors Versus Surya Narain Tripathi decided on 11.02.2014 and Civil Appeal No. 6348 of 2013 titled MGB Gramin Bank Versus Chakrawati Singh decided on 07.08.2013 by the Supreme Court of India making it crystal clear therein that the compassionate appointment is basically a way out for the family which is financially in difficulties on account of the death of the bread earner. It is not an avenue for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family

cannot insist that one of them ought to be provided a comparable appointment.

Furthermore, as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i. e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the Scheme. In case, the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date of the cause of action had arisen i. e. death of the incumbent on the post. In such a situation, the case under the new Scheme has to be considered.

Thus, in order to avoid un-necessary litigation(s) in such cases vis-à-vis their proper processing at each level of the Government, it has been decided that all the cases seeking employment assistance on compassionate grounds may be examined by the respective Head(s)/Administrative Departments in the light of aforesaid fact(s) viz. mandatory provisions of the policy/instructions of the Department of Personnel about feasibility & indigency of the family of the deceased Government employee vis-à-vis the latest judgement(s) of the Hon'ble Supreme Court of India, including as mentioned above, before sending them to Finance Department.

You are, therefore, requested to kindly ensure strict compliance of the aforesaid instructions of the Government in the Departments working under your control.

Yours faithfully,

Special Secretary (Finance-Exp.) to the
Government of Himachal Pradesh, SHIMLA -2.

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2014 STPL(LE) 48849 SC
[2014(3) SCALE 536]

SUPREME COURT OF INDIA
(H.L. GOKHALE AND KURIAN JOSEPH, JJ.)

STATE BANK OF INDIA & ORS.

Appellants

VERSUS

SURYA NARAIN TRIPATHI

Respondent

C.A. No. 9730 of 2011-Decided on 11-2-2014

(A) Constitution of India, Article 16 - Compassionate appointment - Held that in all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the bread earner - It is not an avenue for a regular employment as such - This is in fact an exception to the provisions under Article 16 of the Constitution - That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment.

(Para 8)

(B) Compassionate appointment - The deceased left behind a large family - The feet however, remains that by now 15 years have gone since then - Besides the Bank has made appropriate financial provision for the family - Held that it is not possible to say that the Court could have directed the Bank to consider compassionate appointment - In the circumstances, the appeal allowed - The judgment rendered by the learned Single Judge as well as by the Division Bench liable to be set aside - The writ petition No.5045 of 1999 filed by the respondent shall stand dismissed.

(Para 9)

Referred:
Umesh Kumar Nagpal vs State of Haryana & Ors. [(1994) 4 SCC 138 =1994(2) SCALE 834];
Union Bank of India & Ors. vs M.T. Latheesh [(2006) 7 SCC 350 = 2006(8) SCALE 145];
State Bank of India & Ors. vs Jaspal Kaur [(2007) 9 SCC 571 = 2007(2) SCALE 397];
Govind Prakash Verma vs Life Insurance Corporation of India & Ors. [(2005) 10 SCC 289];
State Bank of India & Anr. vs Somvir Singh [(2007) 4 SCC 778 = 2007(3) SCALE 42].

JUDGMENT

H.L. Gokhale, J.-This appeal seeks to challenge the judgment and order dated 7th February, 2006 rendered by a Division Bench of the High Court of Allahabad in Special Appeal No.318 of 2004 which confirmed the judgment of a learned Single Judge dated 3rd August, 2014 in Writ Petition No.5045 of 1999.

2. Heard Mr. Vikas Singh learned senior counsel appearing on behalf of the appellants and Mr. Sunny

Choudhary learned counsel appearing on behalf of the respondent.

3. The brief facts of this appeal are that the one B.P. Tripathi the father of the first respondent was working in the State Bank of India from 27.12.1969 and he died while in service on 19.1.1998 after completing more than 28 years of service. At that time he was working as Assistant Manager. The respondent No. 1 who is his son applied for a job on compassionate basis and his application was turned down by the Bank which led to the writ petition. The writ petition was allowed by the learned Single Judge and the appeal of the Bank therefrom was dismissed. Hence his appeal by special leave.

4. It is submitted by Mr. Vikas Singh earned senior counsel appearing for appellants that earlier in the year 1979 there was a different scheme which was prevalent in the matter of compassionate appointment, and amongst others there was a provision for an interview under clause 7.5(f) of the Hand Book on Staff Matters. In 1994 this Court rendered a judgment in Umesh Kumar Nagpal vs. State of Haryana & Ors. reported in 1994 (4) SCC 138 wherein it was laid down that the object of compassionate appointment is meant to enable the bereaved family of the deceased employee to face the sudden financial crisis and not to provide employment as such. This led the Bank to frame another policy in the year 1998. This judgment is referred in the new policy and it is provided therein as an objective that when the Bank is satisfied that the financial condition of the family is such that it requires employment that compassionate appointment will be offered.

5. It is the case of the Bank that as far as the present appointment is concerned all relevant factors were considered. It was noticed that the salary of the deceased at the time of his death was Rs. 8,970/-. His family was given an amount of Rs. 5,98,092/- plus 0.25 lakh as terminal benefits. If the said amount was to be invested properly, it would get interest at least of Rs. 5,000/- p.m. This was apart from the family pension of Rs. 4208+Admissible D.A. The Bank, therefore, took the view (hat the circumstances do not warrant the compassionate appointment for the respondent which was applied for.

6. Mr. Vikas Singh learned senior counsel pointed out that this Court has specifically gone into these aspects in the case of Union Bank of India & Ors. vs. M. T. Latheesh reported in 2006 (7) SCC 350 wherein the benefits which would be received by the deceased employee were gone into and on that footing the Court came to the conclusion that if the benefits are comparable, then there is no case for comparable appointment. The same view has been repeated in the case of appellant State Bank itself in the case of State Bank of India & Ors. vs. Jaspal Kaur reported in 2007 (9) SCC 571.

7. Mr. Sunny Choudhary counsel appearing for the respondent, on the other hand, submitted that this was a hard case, and the deceased has left behind a large family. Apart from the widow, he had two sons and five daughters and three of them were unmarried. Considering this fact it was expected that the Bank should provide appointment to one of the members of the family when the main bread earner had passed away. We relied upon the judgment of this Court in Govind Prakash Verma vs. Life Insurance Corporation of India & Ors. reported in 2005 (10) SCC 289 where a view has been taken that the compassionate appointment cannot be refused on the ground that another member of the family had received appropriate employment and the service benefits were adequate. We may humbly state that this view runs counter to the view which was taken earlier in the case of Umesh Kumar Nagpal which was not cited before the Court in Govind Prakash (supra). The subsequent two judgments which were referred above also take the same view as in Umesh Nagpal (supra). Mr. Vikas Singh has drawn our attention to the judgment in the case of State Bank of India & Anr. vs. Somvir Singh reported on 2007 (4) SCC 778 where the 1998 scheme has been considered.

8. In all the matters of compassionate appointment it must be noticed that it is basically a way out for the family which is financially in difficulties on account of the death of the bread earner. It is not an avenue

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for a regular employment as such. This is in fact an exception to the provisions under Article 16 of the Constitution. That being so, if an employer points out that the financial arrangement made for the family subsequent to the death of the employee is adequate, the members of the family cannot insist that one of them ought to be provided a comparable appointment. This being the principle which has been adopted all throughout, it is difficult for us to accept the submission made on behalf of the respondent.

9. As stated earlier, the deceased left behind a large family. The feet however, remains that by now 15 years have gone since then. Besides the Bank has made appropriate financial provision at par with similar arrangement that was noted by this Court in the case of M.T. Latheesh (supra). Therefore it is not possible for us to say that the Court could have directed the Bank to consider compassionate appointment. In the circumstances, the appeal is allowed. The judgment rendered by the learned Single Judge as well as by the Division Bench are set aside. The writ petition No.5045 of 1999 filed by the respondent shall stand dismissed.

10. Although we are allowing this appeal, Mr. Vikas Singh very fairly stated that looking at the difficulties of the family, and that the respondent was required to go through the litigation upto the Supreme Court, the Court may consider granting appropriate litigation expenses to the respondent. We quite appreciate this gesture and order that the appellant Bank will pay an amount of Rs. 1 lakh to the respondent on this count. However, we make it clear that this order on costs is made in consideration of the special facts of this case.

ORDER

1. Leave granted.

2. This appeal has been preferred against the impugned judgment and order dated 27.1.2010 passed by the Division Bench of the High Court of Rajasthan at Jodhpur in D.B.Civil Special Appeal (Writ)No.798 of 2009 upholding the judgment and order of the learned Single Judge dated 27.7.2009 passed in Writ Petition No.7869 of 2008 by which the respondent had been directed to be appointed under a scheme for compassionate appointment.

3. Facts and circumstances giving rise to this appeal are that: A. Father of the respondent who was working as a Class III employee with the appellant Bank died on 19.4.2006 while in harness. The respondent applied for compassionate appointment on 12.5.2006. B. During the pendency of the application filed by the respondent, a new scheme dated 12.6.2006 came into force with effect from 6.10.2006. Clause 14 thereof provides that all applications pending on the date of commencement of the scheme shall be considered for grant of ex-gratia payment to the family instead of compassionate appointment. C. As the appointment on compassionate ground was denied to the respondent, he preferred the writ petition before the High Court and the learned Single Judge took the view that as the cause of action had arisen prior to the commencement of the new scheme, therefore, the case was to be considered as per the then existing scheme i.e. the 1983 Scheme which provided for compassionate appointment and not for grant of ex-gratia payment. The Court directed the appellant not only to consider the case of appointment of the respondent on compassionate grounds but rather directed the appellant to appoint him. D. Aggrieved, the appellant challenged the said order by filing the Special Appeal which has been dismissed vide impugned judgment and order dated 27.1.2010 concurring with the judgment and order of the learned Single Judge. Hence this appeal.

4. We have heard learned counsel for the parties.

5. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.

5.1. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds.

5.2. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

6. In Umesh Kumar Nagpal v State of Haryana & Ors., (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

"The whole object of granting compassionate employment is, thus, to enable the family to tide

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2013 STPL(LE) 47930 SC
[JT 2013 (12) SC 81 = 2013 AIR(SCW) 4801 = 2013(10) SCALE 223 = AIR 2013 SC 3365]

SUPREME COURT OF INDIA
(DR. B.S. CHAUHAN AND S.A. BOBDE, JJ.)

MGB GRAMIN BANK

Appellants

VERSUS

CHAKRAWARTI SINGH

Respondents

Civil Appeal No.6348 of 2013 (*Arising out of SLP(C)No.13957/2010*)-Decided on 7-8-2013.(From: Rajasthan)

(A) Constitution of India, Articles 14 and 16 - Compassionate appointment - Vested right - Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution - Compassionate appointment cannot be claimed as a matter of right as it is not a vested right - It is an exception carved out in order to remove the financial constraints on the bereave family, which has lost its bread-earner - Mere death of Government employee in harness does not entitle the family to claim compassionate employment and the financial condition of the family of the deceased employee has to be examined - Only if authority is satisfied that without providing employment, the family will not be able to meet the crisis, that a job to be offered to the eligible member of the family.

(Para 5)

(B) Constitution of India, Articles 14 and 16 - Scheme of Compassionate appointment - Change in scheme during pendency of application for compassionate appointment which provided for grant of ex-gratia payment to the family instead of compassionate appointment - In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date of cause of action had arisen i.e. death of the incumbent on the post - Impugned order passed by the High Court not sustainable and set aside - The case of the respondent to be considered under the new Scheme .

(Paras 13 to 15)

Cases Referred:
1. J.S. Yadav v State of Uttar Pradesh [JT 2011 (5) SC 186] (Para 11)
2. State Bank of India & Anr. v. Raj Kumar [(2010) 11 SCC 661] (Para 12)
3. Kuldip Singh v. Government, NCT Delhi [JT 2006 (6) SC 199] (Para 11.1)
4. A. Umarani v. Registrar, Co-operative Societies & Ors. [JT 2004 (6) SC 110] (Para 9)
5. Bibi Sayeeda v. State of Bihar [JT 1996 (4) SC637](Para11)
6. Umesh Kumar Nagpal v. State of Haryana & Ors. [JT 1994 (3) SC 525] (Para 6)

Advocate(s): Mr. Anil Kumar Sangal, Mr. Siddharth Sangal, Advocates for the Appellant.
Mr. Vasudevan Raghavan, Advocate for the Respondent.

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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..... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned..... The only ground which can justify compassionate employment is the penurious condition of the deceased's family. The consideration for such employment is not a vested right. The object being to enable the family to get over the financial crisis."

(Emphasis added)

7. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

8. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

9. In A. Umarani v Registrar, Co-operative Societies & Ors., AIR 2004 SC 4504, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

10. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as 'vested', Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights.

11. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. (Vide: Bibi Sayeeda v State of Bihar AIR 1996 SC 516; and J.S. Yadav v State of Uttar Pradesh (2011) 6 SCC 570)

11.1. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: Kuldip Singh v Government, NCT Delhi AIR 2006 SC 2652)

12. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in State Bank of India & Anr. vs. Raj Kumar (2010) 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications:

The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compasionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme

for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

14. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside.

15. The respondent may apply for consideration of his case under the new Scheme and the appellant shall consider his case strictly in accordance with clause 14 of the said new Scheme within a period of three months from the date of receiving of application.

16. With these observations, appeal stands disposed of.
