



2026:AHC-LKO:19504

AFR

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - A No. - 6977 of 2023**

Prashant Rao

.....Petitioner(s)

Versus

Union Of India Thru. Secy. Ministry Of Finance,  
New Delhi And 4 Others

.....Respondent(s)

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|---------------------------|-----------------------------------------------------------------------|
| Counsel for Petitioner(s) | : Amrendra Nath Tripathi, Aviral Singh,<br>Vijay Nandan Mani Tripathi |
| Counsel for Respondent(s) | : A.S.G.I., Anil Kumar Srivastava, Neeraj<br>Awasthi                  |

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**Court No. - 18**

**HON'BLE SHREE PRAKASH SINGH, J.**

1. Heard Dr. Amrendra Nath Tripathi, learned Senior Advocate, assisted by Mr. Sanjeev Kumar Mishra, learned counsels for the petitioner, Mr. Anil Kumar Srivastava, learned counsel for the respondent-Insurance Company, no one is present for Union of India.

2. By means of the present writ petition, the petitioner has assailed the order dated 17-07-2023 passed by opposite party no. 4, as well as the order/letter dated 27-06-2023 passed/issued by Head Office, after summoning the same.

3. Dr. Amrendra Nath Tripathi, learned Senior Counsel appearing for the petitioner has drawn attention of this court towards the order/letter dated 27-06-2023, appended at page 7 of the supplementary counter affidavit filed by the respondent-insurance company and argued that the rules prevalent for considering the appointment on compassionate ground says that if the spouse is working and earning equal to or more than the gross emoluments at the entry stage of assistant cadre, the application of any other family member shall be rejected, though the spouse is neither 'working' nor 'earning', as after the death of father of the applicant, the mother is getting the pension which will not come under the purview of salary. He submits that the father of the petitioner died in harness, on 02-06-2020 and on 15-06-2020, the petitioner moved an application for appointment on compassionate ground in regional

office of the respondent-insurance company, which was rejected on 27.06.2023, after the several reminders were sent and same was communicated vide letter dated 17-07-2023. He submitted that the ground, which is taken for rejection of the claim of the petitioner apparent from the order dated 27-06-2023, is that considering the pension being received by the mother of the petitioner as working and earning member of the family, but the same is unfounded and is against the settled proposition of law.

4. He argued that infact the pension has been observed as a periodical payment as is granted in respect of right, privilege, prerequisite, on account of past services.

5. He has drawn attention of this court towards the law settled by the Hon'ble Apex Court in the case of **Govind Prakash Verma Vs Life Insurance Corporation of India and Others**, reported in (2005)10 Supreme Court Cases 289.

6. Placing reliance on the above quoted judgment, he submitted that the scheme of compassionate appointment is over and above, whatever is admissible to the legal representatives of the deceased employee as benefits of service, which receives on the death of the employee. He contended that the appointment cannot be refused for the reason that family receives certain amounts under the rules, as service benefits. He further submitted that the amount, which was being paid as family pension to the widow of the deceased or on account of the terminal benefits under the rules, must not be considered as earning of the family.

7. Adding his arguments, he submitted that there is no application of mind of the respondent-authorities while passing the order dated 27-06-2023 has taken note of clause 10.1 of the Scheme of compassionate appointment applicable to the employees of the United India Insurance Company, therefore, the authorities have misread the provision as is prescribed for the appointment, on the compassionate ground. He submitted that the orders impugned are not only erroneous, but, it also goes against the settled proposition of law and therefore, same are unsustainable.

8. Concluding his arguments, he contented that the orders impugned is evident that no reason whatsoever, is assigned and in a cursory manner, the claim of the applicant for appointment has been rejected. He added that every order has to stand on its own legs as is long settled law which is

missing in the present matter, thus, submission is that the order is unsustainable.

**9.** On the other hand, Mr. Anil Kumar Srivastava, learned counsel appearing for the respondent-insurance company has opposed the contentions aforesaid and has drawn attention of this court towards the averments made in paragraph nos. 7 & 9 of the Counter Affidavit. He argued that the appointment under the Scheme of Compassionate appointment, cannot be a tool of a back door appointment/entry into the public appointment and it is not a fundamental right, but, merely a statutory right. He further submitted that the appointments in the public service are made strictly on the basis of open invitation and the appointment on compassionate ground under "the scheme", is based, in favour of the dependants of the employees, leaving their family in penury and without means of any livelihood and so far as the present case is concerned, there is no such circumstances prevailing as is apparent from the documents, produced before the authority concerned, while taking the decision.

**10.** In support of his contentions, he has placed reliance on the Judgment of the Hon'ble Apex Court reported in **(2007) 9 Supreme Court Cases 571, State Bank of India and Others Vs Jaspal Kaur** and has referred paragraph nos. 20 to 25 of the said Judgment, which are extracted hereinunder:-

*"20. The law with regard to employment on compassionate grounds for dependants of a deceased employee was laid down by this Court in Umesh Kumar Nagpal v. State of Haryana [(1994) 4 SCC 138 : 1994 SCC (L&S) 930 : (1994) 27 ATC 537] , where this Court observed that: (SCC pp. 139-40, para 2)*

*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 dependants of employees dying in harness and leaving their family in penury and without any means of livelihood.*

*21. This Court has further observed in G.M. (D&PB) v. Kunti Tiwary [(2004) 7 SCC 271 : 2004 SCC (L&S) 943] that: (SCC p. 274, para 9)*

*"The particulars of their income have been noted in their application and it certainly could not be said on the basis thereof that the respondents were living hand to mouth. The Division Bench erred in diluting this criteria of penury to one of 'not very well-to-do'."*

*22. It was again observed in 2005 by this Court in State Bank of India v. Vikas Dubey*

[ CA No. 7003 of 2005 dated 21-11-2005 reported at (2007) 9 SCC 579] , also followed the decision in Kunti Tiwary case [(2004) 7 SCC 271 : 2004 SCC (L&S) 943]

23. 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 penurious, such appointments cannot be made. In the present case the financial condition of the respondent's 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.

24. The competent authority of the Bank had to consider the case of the respondent as per the 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 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.were taken into consideration by the competent authority and based on these details appointment was declined to the respondent on compassionate ground.

25. 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 v. M.T. Latheesh [(2006) 7 SCC 350 : 2006 SCC (L&S) 1646] , where the Court observed that: (SCC p. 365, para 37)

"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."*

**11.** Referring the aforesaid, he submits that the present case is squarely covered with the ratio of the Judgment abovesaid and therefore, no interference is warranted.

**12.** Having heard learned counsels for the parties and after perusal of records, it transpires that the father of the petitioner died in harness, on 02-06-2020 and thereafter, an application was moved by the petitioner, for appointment, on compassionate ground, but the same has been rejected on unfounded ground.

**13.** The fact remains that the mother of the petitioner was employed and she has been retired and is getting pension. When the father of the petitioner died on 02-06-2020, he left behind him the legal heirs namely, Smt. Prem Kumari Rao(wife), Siddhant Rao(Son) and Prashant Rao(Son).

**14.** The petitioner claimed appointment under the Scheme for Compassionate Appointment, 2014 (hereinafter referred to as "Scheme, 2014"), framed by the Government of India. The "Scheme, 2014", has admittedly been adopted by the respondent-department and the same is applicable to all the employees. The "Scheme, 2014" was subsequently amended on 03-04-2018, w.e.f. 23-03-2018, which was also adopted by the respondent-department, vide the circular dated 07-06-2018. The relevant provisions i.e. Clause 10.1 and 10.2 of the "Scheme 2014", which provides the provision regarding the terms of appointment, are quoted hereinunder :-

10.1

*If spouse is working and earning equal to or more than the gross emoluments at the entry stage of Assistant cadre, application of any other family member shall be rejected. However, if spouse prefers to apply for Appointment over his/her existing Compassionate employment, the same may be considered, subject to the condition that he/she would resign and submit the Relieving Order from the existing employer before joining the Company.*

10.2

*If spouse is working and earning less than the gross emoluments at the entry stage of Assistant cadre, application of any other dependent family member may be considered irrespective of presence of an earning member subject to obtaining No Objection Certificate from the spouse."*

**15.** The order of rejection is apparent that the same has been passed considering the provision of clause 10.01 of the 'Scheme 2014' applicable to the employees of the respondent-Insurance Company, as amended with effect from 23-03-2018. The emphasis has been made in the decision, on the wordings "working and earning" and the amount received as pensionary benefits by the mother of the petitioner has been treated under the purview of 'earning', though the fact remains that the mother of the petitioner, who is receiving the pension, is not a working employee, as the pension is granted after the retirement of an employee and the same is paid for the past services rendered.

**16.** The words 'pension' and 'earning' as defined in "the Major Law Lexicon" by P Ramannatha Aiyar, as follows:-

*"Pension: A pension is a bounty for the past services rendered to the public. It is mainly designed to assist the pensioner in providing for his daily wants.*

*Earning: That which is earned; reward; that which is gained or merited by labour; the reward for personal services, whether in money or other goods; the price of services performed; gains derived from service or labour without the aid of capital. Sometimes the term means more than the wages of labor."*

**17.** The word 'earning' connotes as to get something in the present, means if services renders praesenti, obtains some return in 'praesenti'. The pension is not received as a bounty, but as a privilege, therefore, the services which has already been rendered in the past, cannot be termed as earning, therefore, a pensioner cannot be treated as an earning person.

**18.** In the instant case, the spouse of the deceased employee i.e. the mother of the petitioner is receiving 'pension', which she receives not for her current working status, rather for her past services. The 'pension' as is held by Hon'ble Apex Court in case of **Shaukat Husain Beg Mirza versus State of U.P. and another** reported in **AIR 1959 All 769**, as follows:-

*""It appears to me that two essentials are necessary in order to constitute a pension:*

*(1) it must be a periodical payment, and*

*(2) it must be a grant not in respect of any right, privilege, prerequisite or office but on political considerations or on account of past services or present infirmities or as a compassionate allowance.*

*It has been held to be a periodical payment of money for past services see Municipal*

*Council, Salem v. Gururajah Rao. It is a bounty for past services rendered to the public or to the State. It is mainly designed to assist the pensioner in providing his daily wants. It is a mere bounty or gratuity given by the government in consideration or recognition of meritorious past services rendered by the pensioner or by some kinsman or ancestor.'"*

**19.** The fact remains that the spouse of the deceased employee i.e. mother of the petitioner is not, working employee, but has been retired, therefore, the retired employee, only because of he/she gets the 'pension', per month, would not be treated/termed as 'working employee'.

**20.** Further the word 'earning' used under the provision of 'scheme 2014', for compassionate appointment, does not cover the 'pension' received by a retired employee. The word 'earning' denotes and contains 'the gain derived from service or labour, without aid of capital' as defined in the Major Law Lexicon" by P Ramannatha Aiyar.

**21.** The Hon'ble Apex Court in case of **Govind Prakash Verma versus Life Insurance Corporation of India and Others** reported in **2005 10 SCC 289** has also held as follows:-

*"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court*

*are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account."*

**22.** It is held that the scheme of compassionate appointment, is a benefit admissible to the legal representative, other than the service benefits payable to the heirs of the deceased employee, therefore, the same cannot be refused on the ground that the family member is receiving the post terminal benefits

**23.** In view of the aforesaid submissions and discussions, I am of the considered opinion that quoting the provisions of clause 10.1 of the scheme 2014, the status of spouse of the deceased i.e. mother of the petitioner, has erroneously been treated as 'working and earning' member of the family.'

**24.** Consequently, this court finds merit in the writ petition, therefore, the orders/letters impugned dated 27.06.2023 and 17.07.2023, are hereby quashed.

**25.** The respondent-authorities are directed to take a fresh decision on the application of the petitioner, dated 15-06-2020, within a period of eight weeks, from the date a certified of this order is produced before them, adhering to the prevalent laws and the observations made hereinabove.

**26.** The writ petition is **allowed accordingly.**

**March 17, 2026**  
AKS

**(Shree Prakash Singh,J.)**