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UNION BANK OF INDIA AND ORS.

v.

M.T. LATHEESH

AUGUST 18, 2006

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[DR. AR. LAKSHMANAN AND TARUN CHATTERJEE, JJ.]

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Service Law—Appointment—On compassionate ground—Formulation of Scheme by Bank for appointment on compassionate ground—Scheme providing system for computation of financial condition of family for determining the entitlement—Claim for such appointment—Declined by Competent Authority—Such appointment allowed by Single Judge and Division Bench of High Court—On appeal, held: Claimant was not entitled to appointment on compassionate ground in view of the financial condition of the family—Such appointment being an exception to the general rule should be exercised only in warranting situations—It cannot be claimed as a matter of right.

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Constitution of India, 1950—Article 14—Right to equality—Applicability—Scope of—Held: Article 14 cannot be extended to legalize illegal orders.

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Appellant-Bank formulated a scheme for employment on compassionate grounds in terms of the judgment of this Court in *Umesh Kumar Nagpal v. State of Haryana and Ors.*, [1994] 4 SCC 138. The Scheme provided for system for computation of the financial condition of the concerned family for determining the entitlement. Income from all sources including the pension, was taken into consideration. The Scheme was subsequently amended providing cash compensation in some of the deserving cases, where compassionate employment was not feasible. The respondent, after death of his father, applied for employment on compassionate ground which was declined by the Competent Authority of the Bank. Respondent filed a Writ Petition in High Court challenging the rejection. Single Judge of the High Court allowed the Petition. Writ Appeal of the Bank was dismissed by Division Bench of High Court on the ground that the amount of terminal benefits of the respondent was paltry; and that the basic pension amount was only Rs. 3,232/-. Hence the present appeal.

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Allowing the appeal, the Court

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HELD: 1. In the present case, by declining the application submitted by the respondent after the proper consideration of the same in the light of the relevant parameters, the appellant-Bank cannot be said to have acted in an arbitrary manner regardless of the constitutional principles. [714-G-H]

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2. 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 fact should not be disturbed. Single Judge and the Division Bench of High Court 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 it for such appointment. Even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. The principles regarding compassionate appointment that compassionate appointment being an exception to the general rule, the discretion has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. [714-H; 715-A-C]

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3. When an employee dies, any one of the dependent, mentioned in clause 2 (c) of the appointment on compassionate ground scheme formulated by the Bank, can forward an application as per the said scheme. Consequently, the dependent does not automatically become entitled to get employment. The right that accrues on the applicant is a right to get preferential treatment against the general principle of appointment, subject to the discretion of the Bank. Further the possession of relevant qualification does not create any vested right on the applicant to get appointed to a post specified by the scheme.

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[706-B-D]

Umesh Kumar Nagpal v. State of Haryana and Ors., [1994] 4 SCC 138; *General Manager (D&PB) and Ors. v. Kunti Tiwary and Anr.*, [2004] 7 SCC 271 and *Punjab National Bank & Ors. v. Ashwini Kumar Taneja*, [2004] 7 SCC 265, relied on.

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Balbir Kaur v. Steel Authority of India and Ors., [2000] 6 SCC 493, distinguished.

4. The Division Bench of High Court has failed to notice the fact that

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A the fresh employment with the bank has reduced considerably and the grant of employment on compassionate grounds to all the cases shall shut the door for employment to the ever-growing population of unemployed youth, more particularly, when the industry is being asked to reduce the employees by offering retirement schemes. The Division Bench has failed to appreciate the fact that the scheme for compassionate employment is very elaborate and it provides for determination of the financial conditions of the family on various factors and takes into consideration the income of the family from all sources. **B** The High Court also has not noticed that the impugned judgment shall open a Pandora box of litigation and all the persons who have been denied any such employment shall take recourse to the similar litigation. [705-E]

C 5. Division Bench has arrived at a wrong finding that the amount of terminal benefits of the respondent is paltry and calculated family pension of Rs.100/- per day thereby holding that the family of the respondent is in penury whereas in fact the family is receiving monthly pension of Rs.5,179/- in addition to the terminal benefits already received. Division Bench came to a **D** wrong finding that the terminal benefits were calculated at Rs.5,60,910.35 but the family was paid Rs.74,910/-. After adjusting all the loan amounts, the terminal benefits paid to the dependents of the deceased employee are Rs.5,47,495/- which amount was actually paid to the family. This lump sum amount would also generate the reasonable monthly interest amount which **E** was also considered by the competent authority in computing the recurrent income to the family. [705-E-H]

F 6. The High Court committed an error in directing the appointment of the respondent under the new scheme of compassionate appointment 2003 although he was not eligible to be appointed. The respondent's case was considered under the old scheme and not under the new scheme which came in later and in any case the respondent is not entitled to claim relief under the new scheme also because the financial status of the family is much above the criterion fixed in the new scheme. The recent development is that the scheme of compassionate employment has been completely scrapped in the appellant-Bank. The Bank has also specifically denied the averment that it **G** has given employment to the persons who have received financial assistance. [710-B-D]

H 7. The Division Bench came to a wrong finding that the persons given employment were kith and kin of four high ranking officials. It cannot be said that since the Bank has made several compassionate appointments quite contrary to the scheme, therefore, the respondent should also be considered

for such appointment on compassionate grounds. Article 14 cannot be extended to legalize illegal orders though others had wrongly got the benefits of that order on some stray incidents earlier. [710-D-F] A

Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions, Punjab and Anr., [1995] Supp 4 SCC 706 and *Gursharan Singh v. New Delhi Municipal Committee*, AIR (1996) SC 1175, relied on. B

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3548 of 2006.

From the Judgment and Order dated 25.2.2005 of the High Court of Kerala at Erankulam in Writ Appeal No. 883/2003D. C

Raju Ramachandra, O.P. Gaggar for the Appellant.

G. Prakash for the Respondents.

The Judgment of the Court was delivered by

DR. AR. LAKSHMANAN, J. Leave granted. D

The present appeal is filed by the Union Bank of India against the final judgment dated 25.2.2005 of the Division Bench of the High Court of Kerala at Ernakulam in Writ Appeal No. 883 of 2003 where the High Court has upheld the judgment of the learned single Judge which ordered the appellant-Bank to grant employment to the respondent in terms of the directions of the learned single Judge on compassionate grounds. E

It is settled law that the compassionate employment has to be granted in very rare necessitous circumstances. F

The appellant-Bank in order to reduce the individual human discretion, had formulated a Scheme for employment on compassionate grounds in terms of the judgment of this Court in *Umesh Kumar Nagpal v. State of Haryana and Ors.*, [1994] 4 SCC 138. The Scheme provides that the compassionate employment is meant only for cases where the bereaved person's family is in grave penury. G

The Scheme further provides the system for computation of the financial condition of the concerned family including the various heads of recurring and fixed incomes receivable by the family to determine their entitlement for the compassionate employment. It is pertinent to mention that the pension H

A was not payable in the Bank prior to 1994 when an option for the same was given to the employees for the first time. The availability of pension to the family of the deceased employee is also one of financial parameters for computation of the financial condition of the family because, as aforesaid, the said option was exercised by less than half of the employees. The said Scheme was subsequently amended in 2003 to provide cash compensation in some of the deserving cases, who were otherwise qualified as per income norms, when the compassionate was not feasible.

C As already noticed, the Bank circulated a Scheme for appointment of dependants of deceased employees on compassionate grounds. A copy of the Circular and the Scheme annexed to the same is annexed as Annexure P-I collectively.

Some of the salient features of the Scheme read thus:

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 “UNION BANK OF INDIA
 DEPARTMENT OF PERSONNEL
 PERSONNEL POLICY SECTION
 SCHEME FOR APPOINTMENT OF DEPENDANT OF DECEASED
 EMPLOYEES ON COMPASSIONATE GROUNDS.

E Whereas it is deemed expedient and necessary to provide for appointment of dependants of deceased employees dying in harness and leaving his/her family in penury and without any means of livelihood the Bank hereby frames the following scheme providing for and regulating the method of appointment in the clerical/subordinate cadre on compassionate grounds of widow, widowers and children/dependents of its employees who die while in service.

F 1. SHORT TITLE AND COMMENCEMENT

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G 2. DEFINITIONS

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H 3. APPOINTMENT UNDER THE SCHEME:

The Bank may, in its discretion, appoint in the Bank in any of the posts mentioned hereunder, the widow or widow or widower or son

(includes legally adopted son) or a daughter of a deceased employee of the Bank or a near relative indicated by the widow/widower (in case the deceased employee has left behind no children of his own eligible for appointment) on whom she/he will be wholly dependent and who would give in writing that he/she will look after the family of the deceased employee, if the widow or widower or son or daughter or a near relative, as the case may be, fulfils the criteria for appointment under the Scheme.

Where the deceased employee was a widow/widower the Bank may exercise its discretion to appoint the next elder in the family. However, in the case of an unmarried deceased employees, the Bank may exercise its discretion to appoint his/her brother or sister subject to clause 5(iii) and (iv) of the Scheme. In the case of a widower, however, (a husband of a deceased female employee) will be considered for appointment on compassionate grounds, only if he was fully dependant upon his wife and is incapable of maintaining himself either for the reason of accident or sickness or otherwise. Such candidate, however, will be eligible for appointment subject to his being found suitable for appointment so as to discharge his duties in the normal circumstances.

The appointment under this Scheme shall be made in clerical and sub-ordinate cadres, which is as under:

- (i) Cashier-cum-Clerk/Typist-cum-Clerk/Telephone Operator.
- (ii) Stenographer and such other posts in clerical cadre.
- (iii) Subordinate Staff.

4. SANCTION FOR APPOINTMENT

Appointment under the Scheme will be made by the Competent Authority. The object of granting compassionate appointment to the dependant of the deceased employee is to enable the family to tide over the sudden crisis, compassionate appointment will be offered by the Bank only in the case where the Bank is satisfied that the financial condition of the family is such that but for the provision of employment, the family will not be able to meet the crisis. While considering such appointment the competent Authority will take into account the following to determine the financial condition of the family:-

- A (a) Family Pension
 (b) Gratuity
 (c) Employees'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 employees
- B (f) Income for family from other sources
 (g) Employment of other family members
 (h) Size of the family and liabilities, if any, etc."

C The father of the respondent who was working as a Clerk-cum-Cashier in the Bank died on 12.8.2001. He was a pension optee.

D On 12.1.2002, the respondent applied for employment in the Bank on compassionate ground. The said request for appointment on compassionate ground was declined by the competent authority of the Bank on the ground that the respondent's family was not indigent. The competent Authority took into consideration the net terminal benefits of Rs. 5,47,495/- received by the family after deducting the liability including the housing loan and personal loan. The competent Authority also considered that the family of the deceased employee at that time had also received monthly family pension of Rs. 4,468-
 E (which at present is Rs. 5, 176/-).

F On 30.7.2002, the respondent filed a writ petition in the High Court challenging the rejection order of the Bank to appoint the respondent on compassionate ground. The Bank filed their counter affidavit to the writ petition. On 26.3.2003, the learned single Judge of the High Court allowed the writ petition on the ground that the respondent being eligible as per the Scheme formulated by the Bank was liable to be appointed on compassionate grounds. The appellant-Bank filed Writ Appeal No. 883 of 2003 before the Division Bench of the High Court along with a miscellaneous application being I.A. No. 181 of 2003 for *ad-interim* stay. The Division Bench of the High Court dismissed the writ appeal by the impugned judgment. Aggrieved by the dismissal of the appeal, the Bank has preferred the above appeal by way of special leave petition in this Court.

G We heard Mr. Raju Ramachandran, learned senior counsel assisted by Mr. O.P. Gaggar, learned counsel appearing for the appellants and Mr. G. H Prakash, learned counsel appearing for the respondent.

Mr. Raju Ramachandran drew our attention to the salient features of the Scheme for appointment of dependant of deceased employees on compassionate grounds. He also invited our attention to the pleadings, the judgments rendered by the learned single Judge and the Division Bench and demonstrated before us that the criteria fixed for considering eligibility for compassionate appointment has not been satisfied in this case by the respondent and, thereof, the respondent is not entitled to any relief in the writ petition as prayed for by him. He also submitted that the compassionate employment in the Bank is meant only for rare cases of complete penury of the dependants of the deceased employee and in facts and circumstances of this case where the family of the employee is getting pension and has other income, such a situation is not present. In support of his submissions, he relied on the following rulings of this Court:

1. *Umesh Kumar Nagpal v. State of Haryana and Ors.*, [1994] 4 SCC 138.
2. *General Manager (D & PB) and Ors. v. Kunti Tiwary and Anr.*, [2004] 7 SCC 271.
3. *Punjab National Bank and Ors. v. Ashwini Kumar Tareja*, [2004] 7 SCC 265.

Mr. Raju Ramachandran has also demonstrated before us with facts and figures that the respondent was not eligible for compassionate employment on the financial parameters.

Per contra, Mr. G. Prakash, learned counsel appearing for the respondent submitted that the respondent's father was sanctioned a total amount of Rs. 5, 06, 910/- under various heads including gratuity, Provident Fund etc. and that the Provident Fund Scheme was solely based on the employee's contribution and out of the total amount mentioned above an amount of Rs. 4,86,000/- was deducted towards liability by the Bank itself and the net amount received on the death of his father was Rs. 74,910/- and that the family of the deceased consists of wife, unmarried daughter and 3 unemployed sons including the respondent herein and the deceased's wife is a chronic asthmatic patient and the family is having no earning member and the sole income is the family pension received by the mother of the respondent which comes to Rs. 3, 232/- and is likely to be reduced after 7 years. He further submitted that the respondent belongs to the Scheduled Caste category and that none of his family members is employed and that the application submitted by the respondent was rejected by the Bank without giving any reason. After referring

A to the Scheme formulated by the Bank, he further submitted that the learned single Judge after taking into consideration the entire circumstances allowed the writ petition filed by the respondent directing the Bank to give compassionate appointment and that the appeal preferred by the Bank was also dismissed by the Division Bench, therefore, this Court exercising its jurisdiction under Article 136 of the Constitution of India will not interfere with the concurrent findings rendered by the High Court. He further submitted that the Bank has given appointment to persons who had received financial assistance and were well off in life. He also placed before us the copies of the appointment orders issued after rejecting the claim of the respondent to some other persons on compassionate grounds and that the appointment given will clearly go against the contention of the Bank that there is no vacancy at present and the subsequent compassionate appointment given to the abovementioned persons is discriminatory and is in violation of Articles 14 and 21 of the Constitution of India. When the financial status of the respondent is compared to the abovementioned persons, the respondent's family is having only ten cents of land and a small house situated therein and is living with the meager income of pension. Concluding his arguments, he submitted that the contention of the Bank that the respondent is not entitled for compassionate appointment Scheme is unsustainable and that the respondent is not given any lump sum payment as offered to the others in the event of not taking compassionate appointment. He cited the decision of this Court in *Balbir Kaur and Anr. v. Steel Authority of India Ltd and Ors.*, [2000] 6 SCC 493 in support of his contention which held that the denial of compassionate appointment in deserving cases is denial of social and economic justice as enshrined in the Constitution and that the respondent is a deserving candidate for compassionate appointment and has been discriminated in the matter of appointment by the Bank and both the learned single Judge and the Judges of the Division Bench concurrently found that for eking out livelihood, there is no sufficient income for the family of the respondent.

We have carefully considered that rival submissions with reference to the records. The impugned judgment of the Division Bench is based on a number of wrong facts which are contrary to the facts available on records. First, the terminal benefits paid to the dependents for deceased employee are Rs. 7,18,751/- which after adjusting the pending housing loan and personal loan amount comes to Rs. 5,47,495/- This sum was actually paid. Secondly, the family of the deceased employee was given family pension of Rs. 4,468 (Rs. 3232 basic and Rs. 1236 DA) at the time of death which as of now is Rs. 5,176/- Thirdly, the mention that the Bank has provided employment to kith

and kins of four dependents of high ranking officers is also wrong. In fact only three dependents of the deceased employees have been provided compassionate employment. One of them was a sub-staff employee, lower in rank than the father of the respondent. Second was dependent of a clerical staff employee and third is the dependent of a junior most grade officer. Two of them are scheduled castes. And lastly, the description of the dependents of the deceased employee is also wrong. The deceased employee is survived by widow, three sons and one daughter and not one son and three daughters as held. A B

The Division Bench, in our opinion, has failed to notice the fact that the fresh employment with the bank has reduced considerably and the grant of employment on compassionate grounds to all the cases shall shut the door for employment to the ever-growing population of unemployed youth more particularly when the industry is being asked to reduce the employees by offering retirement schemes. The Division Bench has failed to appreciate the fact that the scheme for compassionate employment is very elaborate and it provides for determination of the financial condition of the financial conditions of the family on various factors and takes into consideration the income of the family from all sources. The High Court also has not noticed that the impugned judgment shall open a Pandora box of litigation and all the persons who have been denied any such employment shall take recourse to the similar litigations. This apart, the Division Bench has also arrived at a wrong finding that the amount of terminal benefits of the respondent is paltry and calculated family pension of Rs. 100/- per day thereby holding that the family of the respondent is in penury whereas in fact the family is receiving monthly pension of Rs. 5,179/- in addition to the terminal benefits already received. The Bench has also wrongly considered the basic pension amount of Rs. 3,232/- as the full pension amount and has ignored the dearness allowance payable on the same. In the instant case, the Division Bench came to a wrong finding that the terminal benefits were calculated at Rs. 5,60,910.35 but the family was paid Rs. 74,910/- After adjusting the loan amount, the terminal benefits paid to the dependants of the deceased employee are Rs. 7,18,751/- which after adjusting the pending housing loan and personal loan amount are Rs. 5,47,495/- which was actually paid to the family. This lump sum amount would also generate the reasonable monthly interest amount which was also considered by the competent authority in computing the recurrent income to the family. The Division Bench, in our opinion, came to a wrong finding that the person given employment were kith and kin of four high ranking officials and erroneously held that the appellant acted arbitrarily and capriciously and H C D E F G

A was indifferent to the needs of his employees and caring only for the high salaried officers of the same bank. It is a matter of record that the amount of pension alone was about 60% of the last drawn salary of the deceased employee and besides that the employee's dependants, had received a lump sum monetary benefits of Rs. 5,47,495/- after offsetting the housing loan and personal loan outstanding which could also generate a substantial monthly income if invested wisely. The High Court also committed an error in directing the appointment of the respondent under the new scheme of compassionate appointment 2003 although he was not eligible to be appointed.

C When an employee dies and any one of the dependent mentioned in clause 2 (c) of the appointment on compassionate ground scheme formulated by the Bank can forward an application as per the said scheme. Consequently the dependent does not automatically become entitled to get employment. The right that accrues on the applicant is a right to get preferential treatment against the general principle of appointment, subject to the discretion of the Bank. Further the possession of relevant qualification does not create any vested right on the applicant to get appointed to a post specified by the scheme.

E It is submitted that the dependent of a deceased employee will not get any vested or hereditary right to succeed the deceased in the matter of employment. What he is entitled to is a preferential treatment for appointment as against the general principle of appointment. The employer is not under obligation to grant appointment to the dependents. The duty of the employer is only to properly consider the application.

F It is also not true that terminal benefits have been the sole reason to decline appointment to the applicant as stated in the O.P. by the respondent. According to clause 4 of the Scheme for compassionate appointment formulated by the Bank, the competent authority would take into consideration the following factors while considering a claim for compassionate appointment.

- (a) family pension
- G (b) gratuity
- (c) employees contribution to the Provident fund
- (d) any compensation paid by the bank or its welfare fund
- H (e) proceeds of LIC policy and other investments of the deceased employee

(f) Income for family from other sources

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(g) Employment of other family members

(h) Size of the family and liabilities if any etc

Thus it is submitted that terminal benefits are not the sole criteria to judge whether employment is to be granted or not. The respondent Bank takes into account all the relevant consideration subject to the policy of appointment to the bank service including computerization and consequential substantial reduction of staff and also the scheme of voluntary retirement introduced to reduce the number of employees.

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It is submitted that the scheme or compassionate appointment, being an exception to the general rule of appointment has to be applied cautiously. For the whole of Kerala the Bank had identified only 4 vacancies in the category and 4 persons from the sub staff who were waiting for promotion for a number of years were selected and included in the promotion list. On account of the earlier order passed by the Court with respect to compassionate appointment, two persons had to be promoted. Thus out of the 4 eligible persons awaiting promotion only two were given promotion as they could not be appointed since their place was given on compassionate appointees.

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The Senior Manager (Personnel) of the appellant-Bank filed an additional affidavit on 11.04.2005 explaining the circumstances under which some compassionate appointments referred to in the impugned judgment were granted. It is also a matter of fact that the dependants of three persons only and not four persons as mentioned in the impugned judgment were provided with compassionate employment and the three persons are each dependants of a peon, clerk and a junior most officer and not the high ranking or influential persons as mentioned in the impugned judgment and that two of the said persons belonging to Scheduled Castes.

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In the case of those three persons who were provided with compassionate employment the net terminal benefits of the deceased employee after making deductions from the liabilities towards the bank for housing loan and other loan was Rs. 15,684/- Rs. Nil and Rs. Nil respectively. The compassionate employment to the persons Ms. K.K. Rasanna was provided on reconsideration of her case as per the directions of the High Court vide judgment dated 21.03.2003 in writ petition No. 22190/2002 filed by her. The other two cases came up for consideration under the new scheme where on adopting the criterion fixed in the new scheme, the total income of the family

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A after clubbing the monthly pension and the interest income on the aforesaid lump sum terminal benefits was less than 60% of the last drawn salary of the said employee and therefore the widow became eligible to either a lump sum payment to make up the deficit of 60% or appointment under new compassionate employment scheme on being found suitable.

B The respondent filed an additional affidavit on 25.11.2004 in the High Court. The High Court during the course of the hearing of the writ appeal granted permission to the respondent to file an additional affidavit mentioning additional facts in relation to the appointment made by the Bank under the scheme though terminal and other benefits were given to the dependants of deceased employees. He furnished certain details in the said affidavit.

C A counter affidavit was filed by the Bank to the said additional affidavit denying the averments and allegations and also furnishing all the details as to how the competent authority had declined to give compassionate appointment to the respondent. Similarly placed persons were offered with compassionate appointment according to the appellant is not true and in supersession of the scheme for appointment of dependants of the deceased employees on compassionate grounds circulated by staff circular No. 4341 dated 19.02.1997 the Bank had formulated a new scheme for compassionate appointment/relief to dependant of the deceased employees and circulated through staff circular No. 4989 dated 22.07.2003 which scheme was implemented with effect from 30.05.2003. The Bank has also explained the circumstances under which one Smt. Thangan Mohan was granted the benefits of compassionate appointment and also to Ms. Razna who died in harness while in the service of the Bank. It was also submitted that the persons of the choice of the Bank were not granted employment as alleged by the respondent and that the offer of lump sum financial assistance was on the basis of the new scheme and that the Bank never treated the respondent in a discriminatory manner and that no such consideration or preference prevailed with the Bank as alleged by the respondent.

G When the matter was pending in this Court, a rejoinder affidavit on behalf of the Bank was filed. The total amount sanctioned under different benefits and credited into the savings bank a/c No. 7088 in the name of the mother of the respondent at Kannur Branch of the Bank in the following manner.

Sr. No.	Date	Particulars	Amount	
i.	24.8.2001	Death Relief Fund	Rs. 22,500.00	A
ii	6.10.2001	LIC (group policy)	Rs. 67,226.00	
iii	1.11.2001	LIC (group policy)	Rs. 1,12,516.00	B
iv	29.11.2001	Employees Provident Fund	Rs. 1,75,666.64	
v	12.12.2001	Gratuity	Rs. 1,83,001.70	
vi	15.1.2002	Leave Encashment	Rs. 57,849.00	C
vii	18.4.2002	SBS	Rs. 99,993.75	
Total			Rs. 7,18,753.09	

Out of the above amount a sum of Rs. 1,03,754/- was adjusted towards the balance housing loan taken by the deceased employee and a sum of Rs. 67,502/- was adjusted towards the other pending loans leaving a net sum of Rs. 5,47,495/- in the hands of the widow of the deceased. In fact an additional sum of Rs. 17,699/- was further paid by the staff members of bank which was sent by a demand draft number 093408 dated 4.10.2002 though the same was not pleaded. The said widow placed a sum of Rs. 5,25,00/- in the fixed deposit in the same branch. The allegation that only a sum of Rs. 74,910 was left with the bereaved family is totally wrong. The widow of the deceased employee was sanctioned pension of Rs. 4,468/- at the time of the death and the said pension amount at the time of filing of this petition was Rs. 5,176 per month. It is pertinent to mention that the family gets a recurring income on the net terminal benefits of Rs. 5,47,495/- when the same are invested in any of the investment scheme. The monthly interest income on the said lump sum benefit at the rate of 9% was calculated to be Rs. 4,106/-. This coupled with the pension of Rs. 4,468/- at the time of consideration of his application (Rs. 5,176/- at the time of filing of the petition) can yield total recurring monthly income of Rs. 8,754/- which was much more than the last drawn net monthly salary of the deceased employee. The last drawn salary of the deceased employee after deductions was Rs. 7,477.50 only. Moreover the deceased employee had constructed a house after taking loan and the said loan, as aforesaid, also stood repaid. Therefore, the respondent was not found eligible for compassionate employment on the financial parameter. The competent

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A authority of the bank had to consider the case of the petitioner as per the laid down parameters more particularly mentioned in the petition and the recurrent income derivable by the family. All these factors weighed in the minds of the competent authority while deciding the case for compassionate employment.

B From the foregoing facts and circumstances, it is seen that the respondent's case was considered under the old scheme and not under the new scheme which came in later and in any case the respondent is not entitled to claim relief under the new scheme also because the financial status of the family is much above the criterion fixed in the new scheme. It is also pertinent to mention that in the new scheme only the widow is entitled for compassionate employment and not the offspring like the respondent. The respondent, in any case, is dis-entitled to seek employment under the new scheme. The recent development is that the scheme of compassionate employment has been completely scrapped in the appellant-Bank w.e.f. 21.12.2005 as circulated vide staff circular 5236 dated 29.12.2005. The Bank has also specifically denied the averment that the Bank has given employment to the persons who have received financial assistance.

E Learned counsel for the respondent contended that the Bank has made several compassionate appointments quite contrary to the scheme and, therefore, the respondent should also be considered for such appointment on compassionate grounds. It is well settled that Article 14 cannot be extended to legalize illegal orders though others had wrongly got the benefits of that order on some stray incidents earlier.

F This Court in *Harpal Kaur Chahal (Smt) v. Director, Punjab Instructions, Punjab and Anr.*, [1995] Supp 4 SCC 706 held that illegality once committed cannot be pleaded to legalize other illegal acts. This Court also held that where the High Court applying a wrong test found certain ineligible candidates to be eligible and upheld their appointment, such a judgment could not constitute a ground for this Court to extend the benefit thereof to other candidates appointed illegally.

G In *Gursharan Singh v. New Delhi Municipal Committee*, AIR (1996) SC 1175, this Court held as under:

H "The guarantee of equality before law is a positive concept and it cannot be enforced by a citizen or Court in a negative manner. To put it in other words, if an illegality or irregularity has been committed in

favour of any individual or a group of individuals, the others cannot invoke the jurisdiction of the High Court or of the Supreme Court, that the same irregularity or illegality be committed by the State or an authority which can be held to be a State or an authority of the Constitution, so far such petitioners are concerned, on the reasoning that they have been denied the benefits which have been extended to others although in an irregular or illegal manner. Such petitioners can question the validity of orders which are said to have been passed in favour of persons who were not entitled to the same but they cannot claim orders which are not sanctioned by law in their favour on principle of equality before law. Neither Art. 14 of the Constitution conceives within the equality clause this concept nor Art. 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continuance and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination.”

In *Umesh Kumar Nagpal v. State of Haryana and Ors.*, (Supra) this Court considered a case of compassionate appointment and the factors necessary for being taken into account before offering compassionate appointment. This Court held that merely death of an employee does not entitle his family to compassionate employment and that the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee’s death. This Court also held as under:

“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 post held by the deceased. What is further, 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 posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered

A on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.”

B In *General Manger (D&PB) and Ors. v. Kunti Tiwary and Anr.*, (Supra), the Chief General Manager of the Bank rejected the application for compassionate appointment on the ground that the financial condition of the family could not be termed as to be penurious challenging this order of rejection the respondent filed a writ petition which was rejected by the learned Single Judge but the Division Bench, however, overturned the decision of the learned Single Judge and allowed the appeal and consequently directed the appellant-Bank to appoint the respondent in accordance with its policy. This Court held as under:

C 6. “The policy in question was framed by the appellant Bank pursuant to the decision of this Court in *Umesh Kumar Nagpal v. State of Haryana* where this Court has said 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.

D 7. In adoption of this principle, an office memorandum was circulated to all banks on 7-8-1996 emphasising that the observations of this Court would have to be complied with. The Indian Banks’ Association also adopted the directive of this Court in *Umesh Kumar Nagpal* case in the Scheme which was proposed for appointment of heirs of deceased employees. In that proposal it was recommended that in order to determine the financial condition of the family the following amounts would have to be taken into account:

- E (a) Family pension.
- F (b) Gratuity amount received.
- G (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.

H

(f) Income of family from other sources. A

(g) Employment of other family members.

(h) Size of the family and liabilities, if any, etc.

(8) This recommendation of the Indian Bank Association was accepted in the Scheme which was finally formulated on 1-1-1998 where the same criteria for determining the financial condition of the family was laid down. It may be noted that the express language for appointment on compassionate grounds reads as follows: B

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

Punjab National Bank and Ors. v. Ashwini Kumar Taneja, (Supra). This civil appeal was filed by the Punjab National Bank in this Court against the High Court judgment. The compassionate appointment sought by the respondent was denied by the Bank on the ground that there was no financial hardship to the family as they had received substantial amount after the death of the respondent’s father. The High Court directed the respondent-Bank to consider his case for compassionate appointment. The High Court further held that the retiral benefits received by the heirs of the deceased employee would not justify the rejection of the application for compassionate appointment the bank then filed the present appeal the appellant’s contended that the approach of the High Court was erroneous and keeping in view the object of compassionate appointment with reference to the amounts received by the heirs of the deceased there was no financial hardship. D E F

Allowing the appeal, this Court held:

“Appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis. G

The High Court’s view that the retiral benefits were not to be taken into consideration while dealing with request for compassionate appointment is contrary to the decision in *Kunti Tiwary* case, [2004] H

A 7 SCC 271. In the instant case, there was a scheme called “Scheme for
 Employment of the Dependants of the Employees Who Die While in
 the Service of the Bank—Service on Compassionate Grounds”
 operating in the appellant Bank which provided for considering the
 case for compassionate appointment provided the family was without
 sufficient means of livelihood specially keeping in view: family pension,
 B gratuity, provident fund and the amounts received under various
 other specified heads. Therefore the view taken by the High Court
 cannot be sustained.”

Learned counsel for the respondent cited the decision in *Balbir Kaur*
 C v. *Steel Authority of India* (Supra) which also deals with compassionate
 appointment. In this case, this Court held that the family benefit scheme
 assuring monthly payment to the family of the deceased employee was not
 a substitute for compassionate appointment and, therefore, compassionate
 D appointment could not therefore, be denied on the ground that the family
 benefit scheme was available and that non-payment of gratuity and provident
 fund to the family at the time of death of the employee runs counter to the
 object of the beneficial legislation contained in the payment of gratuity Act
 and the employees provident fund and Miscellaneous Provisions Act, 1952
 E and that lump sum payment of provident fund is an insulating factor for the
 family to cope with the situation arising out of death of the employees. This
 Court also held that the socialistic pattern of society as envisaged in the
 constitution has to be attributed its full meaning and that the law courts
 cannot be a mute spectator where relief is denied to the horrendous sufferings
 of a family which has lost its bread winner and the constitutional philosophy
 should be allowed to become part of every man’s life and then only the
 constitution can reach everyone. This is a general observation made by this
 F Court in the context of compassionate appointment. The above judgment, in
 our view, is distinguishable on facts and on law. This apart the case on hand
 is directly covered by the scheme formulated by the Bank in regard to the
 compassionate appointment.

G In the present case, by declining the application submitted by the
 respondent after the proper consideration of the same in the light of the
 relevant parameters the appellant-Bank cannot be said to have acted in an
 arbitrary manner regardless of the constitutional principles.

H It is also settled law 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 fact should not be disturbed. 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. After that even though the Bank found the respondent ineligible for appointment to its service, the High Court has found him eligible and has ordered his appointment. This is against the law laid down by this Court. It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new scheme because the financial status of the family is much above the criterion fixed in the new scheme.

In the result, the appeal is allowed and the orders passed by the learned Single Judge and of the Division Bench are set aside. However, there will be no order as to costs.

K.K.T.

Appeal allowed.