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Editorial

SIGNALS THAT WE CANNOT IGNORE!

In October midst of festivity came the good news that India's price inflation eased to a 4-month low of 4.8 percent while wholesale price declined to a minor 0.5 percent. This is a sure relief for the consumer and the policymakers. Core inflation which excludes energy and foodstuff has eased further so has household services inflation. The monetary policy committee of RBI when it meets in the first week of December will look at these figures which are still above its projected 4.0 per cent increase in inflation rate. It will also take into consideration the November figure and will fine-tune its policy tools keeping in mind that the election is round the corner.

We will also keep a close watch on the price movement and the stance of the monetary committee as it vitally affects the operation and profitability of the banking system particularly in a year when wage revision talks are entering into a decisive phase. The perceived retreat of inflation thus may only be fleeting

considering the expected pressure on prices due to the ongoing festival season. The household that seems to have adjusted to the continuous rise in living cost by pulling back all discretionary spending and downsizing essential consumptions are likely to remain cautious rather than loosen their purse anytime soon. For an economy whose resilience relies on its domestic demand buffer against global shocks be it from the Russia-Ukraine war or the Middle-East conflict between Israel and Hamas, the households will remain the major headache for the policymakers in their efforts to contain inflation.

We are noticing that freebies are increasing in the economy as the nation is witnessing the warm-up for the general election in the form of election to 5 state assemblies. This will increase the purchasing power, particularly in the rural area while it may also add to inflationary pressure. A fine balancing by policy intervention is all that is required to keep the tempo of economic growth at the desired level which will also ensure great

A JUG FILLS DROP BY DROP

times ahead for the banking system. For now, we will watch and trust that while the banks will play an effective role in this crucial hour aided by RBI policies, the government will also restrain itself from adopting any nefarious attack on the

public sector character of Indian banking.

#March on comrades,
#NationAgainstPrivatisation
#BankBachaoDeshBachao

AFFILIATE NEWS

We are reproducing the text of the AISBOF Circular sharing the news of the great victory ensuring pension equality in the State Bank of India ending years of discrimination.

PENSION EQUALITY PREVAILS: A TRIUMPH FOR SBI FAMILY

It is with a great sense of satisfaction that we stand on the threshold of clinching one of the most sought-after and cherished accomplishments in the trade union history of the Bank. The issue of payment of pension at a uniform rate of 50% of the average of monthly substantive salary drawn during the last 12 months as against the existing dual rate of 50% & 40% has been persistently demanded by both the Pensioners' Federation and the Officers' Federation of the Bank for more than two decades, and it is only now that we see light at the end of a dark tunnel with the issue standing poised to be resolved to the satisfaction of the concerned parties. The moment is nothing short of being a historical one.

2. Pension has been a part of our legacy, dating back to the days of the Presidency Banks in 1806. Over the years, there have been improvements through court judgments and bilateral settlements. However, disparities arose, notably in 1999, when the ceiling for pension calculation changed, causing a division among our pensioners governing by same pension regulations. This disparity persisted despite the significant improvements brought about in 2006 following a united indefinite strike by both the Officers' and Staff federations.

3. It was disheartening to note that while 83% of all pensioners received pension payments equivalent to 50% of their substantive salary, a smaller subset of 17% of pensioners faced discrimination as they were granted pension at a reduced rate of 40%. This disparity within the pensioners' community persisted and called for further attention.

4. While we are in the service of the Bank, we serve the institution with sincerity and honesty, working hard during the prime of our youth and middle ages with the hope that when we reach the age of superannuation, the institution that we nurtured with the sweat of our brow, shall stand us in good stead in our twilight years. But when a section of our fraternity feels having been discriminated against, a sense of dissatisfaction and heartburn creeps in. Such discrimination goes against the fundamental principles of our Constitution and must be rectified.

5. After the historic 7-day indefinite joint strike in April 2006, the Federation diligently pursued the issues with the SBI management. During every quarterly CNC meeting and follow-up discussions with the management, enhancing superannuation

IN THE SKY THERE IS NO DISTINCTION OF EAST AND WEST

benefits remained a constant and essential agenda item. The then Chairman, Sri. O.P. Bhatt, and Secretary DFS, Sri. Mittal, who also served as Co-Director on the Central Board of SBI, displayed a sympathetic approach towards resolving these issues systematically. The management's recommendations, including those related to the 40/50 issue, were forwarded to the Government as part of this ongoing effort.

6. In response to the Federation's request, the then CGM HR, late Sri. B.B. Das, continued to serve on a contract basis for two years even after his official retirement in 2010, assuming the role of an Advisor. He was based in Delhi with the sole purpose of pursuing our pending issues with the Banking Department and DFS. In fact, in 2011, a file was forwarded to the then MoF, late Sri. Mukherjee, from DFS for clearance on one of the crucial matters. The understanding between the Federation and the Management remained consistent: to address these issues in a prioritized and systematic manner.

7. Disheartened by the Government's lackadaisical approach, the Federation of the SBI Pensioners' Association filed a petition before the Hon'ble Supreme Court in 2011, seeking the removal of the 40% clause in pension fixation. Regrettably, when the Department of Financial Services (DFS) learned about our Pensioners Federation's legal action concerning the 40/50 issue, the matter was deemed sub judice, and the file was returned from the Ministry of Finance (MoF) to DFS. Consequently, our Advisor was recalled to Mumbai.

8. In the meantime various other such cases were filed in different High Courts of the country too. In 2013, The Hon'ble Supreme Court transferred all these cases to the Delhi High Court for consideration, where the matter was being argued

since then.

9. Hon'ble High Court of Delhi passed an order on 13.04.2023 directing the Petitioner-Federation of SBI Pensioners' Association to submit a representation to the Ministry of Finance, GOI, highlighting its grievances, and also directed the Ministry of Finance to get the grievances examined by an expert committee which shall submit a report and recommendations to the Court.

10. Accordingly, the Department of Financial Services (DFS) constituted a committee of experts from various departments and representatives of IBA & SBI participated in various meetings since its constitution. The expert Committee provided an opportunity to the Federation of SBI Pensioners' Association and All India State Bank Officers' Federation (AISBOF) to present their case before the Committee. Accordingly, all the concerned parties viz. the IBA, SBI Management, Pensioners' Federation and AISBOF made presentations before the committee.

11. In the crucible of the committee, diverse perspectives were voiced by the Federations with conviction and clarity. Every individual's contribution, from the persistent efforts of our Pensioners Federation to the steadfast support of individuals in the form of rejoinders, was pivotal. The Bank's representation was commendable, the role of the Indian Banks' Association (IBA) constructive, and we were fortunate to have the expertise of Comrade G D Nadaf, former General Secretary AISBOF and Officers' Director on Central Board of Bank to articulate the Federation's stance, a gesture supported generously by the federation leadership. We extended an offer to the Pensioners' Federation, fostering a collaborative spirit that underpinned our deliberations as a Team – **"Team SBI"**.

THERE HAS TO BE EVIL SO THAT GOOD CAN PROVE ITS PURITY ABOVE IT

12. The expert panel after detailed deliberations has brought out a report which was presented to the Hon'ble High Court of Delhi in its hearing on Nov. 7th, 2023. The culmination of these efforts is the positive report from the Department of Financial Services (DFS), which has unequivocally and unanimously recommended the implementation of a uniform rate of 50% in pension fixation, signaling a victory not just for our members but for the entire SBI Family. The recommendation of the Committee has been accepted by the Competent Authority and to give effect to the same, SBI is required to make amendments to relevant regulations as per section 50 of the State Bank of India Act, 1955. It is only a matter of time now when after following the due process of law, the necessary approval shall be granted in the matter and justice will be served to the section of the Pensioners that was being discriminated against.

13. It would be pertinent to mention that our respected Chairman, Sh. Dinesh Khara, played an indispensable role in resolving this long-standing issue and fostering unity within our SBI Family. His unwavering commitment to the cause and his personal intervention were nothing short

of extraordinary. His personal intervention was particularly instrumental in bridging the divides that had persisted for years and our strategic political engagements further cemented our position.

14. Rome was not built in a day. To achieve significant milestones, one has to remain focused, show sincerity of purpose, work hard with an intelligent approach, persevere, present credible arguments & possess negotiating skills. These all are the hallmarks nurtured at AISBOF day in and day out. The resolution of this long pending demand is a testament to our unity and unwavering commitment to the welfare of our members. It embodies our foundational belief that together we can overcome the greatest of challenges.

Let us carry forward this spirit in all our future endeavors.

#OurUnityLongLive

Yours comradely,

Sd/-
(Deepak Kumar Sharma)
General Secretary

ECONOMY

We are reproducing an article by Shri Debashis Basu originally published in Business Standard exposing the hollow claim of the government that IBC is helping the banking industry in recovering the NPAs. The article has established with reasoning that IBC is actually helping the crony defaulters in further looting the public money under the guise of Debt Resolution.

HOW TO LOOT THE PUBLIC SECTOR BANKS

More than two years ago, I wrote about the case of C&C Towers Ltd, (CCTL) which had signed a 20-year concession agreement with Greater Mohali Area Development Authority (GMADA) in

April 2009 for an inter-state bus terminal, three multi-storied towers with retail and office spaces, multiplex, five-star hotel, banquet hall, supermarkets, and a helipad on top of one of the

OVERCOME ANGER BY LOVE, EVIL BY GOOD

towers. The project turned bankrupt, went into liquidation and was admitted for debt resolution. On 19th October, the Chandigarh bench of the national company law tribunal (NCLT) passed an order which, once again, shows how scandalous the whole process of bank lending to debt resolution is, despite grand claims that the Insolvency & Bankruptcy Code (IBC) launched in 2016 would lead to a significant change in bankruptcy resolution.

Consider the case of CCTL. The 19th October NCLT order says that, against an admitted claim of over ₹ 579 crore, the resolution plan could provide for only ₹ 81.5 crore or just 14.08%.

Commenting on the meagre recovery, a bankruptcy expert says: "I have not come across such loot in an urban infrastructure project."

How did this happen? The same way thousands of other projects have been bankrupted: collusion between bankers and borrowers.

The moment CCTL bagged the large multiplex project, it immediately gave an advance of ₹110.78 crore as pre-construction advance and ₹ 63.30 crore as mobilisation advance to a group company, C&C Construction Limited (a listed firm which is also bankrupt). The bankers did not stop this. As always, a bunch of public sector banks: State Bank of India, State Bank of Hyderabad, State Bank of Patiala, Punjab National Bank, and Punjab and Sind Bank sanctioned money in November 2010. CCTL also collected ₹ 490 crore from 400 property-buyers. Construction was inordinately delayed, leading to GMADA issuing a termination notice in April 2016 and invoking bank guarantees of ₹ 11.90 crore. A corporate insolvency resolution process (CIRP) started on 10 October, 2019.

Daylight Robbery

The initial aggregate claims of all creditors admitted were ₹ 580.12 crore while capital work-in-progress was put at ₹ 399.89 crore. However, the actual allocation to the creditors (fixed deposit-holders, allottees, GMADA, statutory dues, etc) under the resolution plan turned out to be just 14.05%. What were bankers doing? What were the engineers of GMADA doing? The answer is crystal clear in all such bankruptcy cases (especially in real estate involving PSBs), but it is one that we don't want to see: rampant fraud and corruption by everybody involved.

Consider these details of related-party transactions. CCTL had extended an advance to the extent of 35% of the contract price to C&C. The transaction auditor has pointed out that the general business/ industry practice is to advance 15% to 20% of the contract value. As much as ₹ 25.93 crore of the advance is still unadjusted against construction. CCTL had also made an excess payment of ₹ 40.87 crore to C&C over and above bills and mobilisation advances allowed. No lender approval has been sought for this payment, says the NCLT order.

As per the terms of the contract, CCTL had a right to impose and levy liquidated damages of 0.25% of the contract value per week or part of a week, a maximum of up to 5% of the total contract value, i.e. ₹ 15.82 crore in case of default by the contractor (C&C). The work was scheduled to be completed within 18 and 30 months from 16 December, 2009, for ISBT and the hotel & commercial complex, respectively. Despite inordinate delay, CCTL has not imposed any liquidation damages on C&C.

When IBC was operationalised, there were strident assertions that it would lower bad debt and lead to

THREE THINGS CANNOT BE LONG HIDDEN: THE SUN, THE MOON AND THE TRUTH

faster resolution. Some even hoped for significantly higher recoveries. I have argued many times, since 2016, that these are false expectations. The fact is that creditors have only been able to realise 17% of claims through the IBC process. A reply to a Right to Information (RTI) query reveals that the government has written off ₹ 10.41 lakh crore as bad loans since 2014. The reason for this is rampant fraud and corruption involving PSBs, leading to IBC cases. Fraud is pre-planned so that there is very little realisable value. CCTL promoters crafted a contract to drain substantial amounts of money and have got away with it. The bankers and 'independent engineers' of GMADA did not monitor the project and did nothing to prevent money from being drained off to group companies. They are primarily responsible for this fraud, but they got away too.

CCTL is one more example of my central point about IBC, which I have repeatedly made since 2016: the source of humungous bad loans that are written off periodically has nothing to do with poor

bankruptcy laws, as claimed by bankers such as Arundhati Bhattacharya, former SBI chairperson. Yet, there is widespread opposition (even articulated by former governor Raghuram Rajan) to criminal action against bankers because they would like to label these as normal 'business failures'.

Meanwhile, the resolution process itself is a big mess. Orders are arbitrary and contradictory. All cases are way behind deadlines. The Supreme Court (SC) even had to issue notices to two members of the national company law appellate tribunal (NCLAT) in a possible contempt proceeding against them, for ignoring SC's instructions and pronouncing a judgement in a Finolex Cables case. The root cause of all this mess lies with PSBs. If they are made accountable, bad loan cases will shrink dramatically, recoveries will rise and the NCLT process will be more manageable. Strangely, the government seems uninterested in fixing the way PSBs work.

CIRCULARS

- 41 dated 28th October, 2023** : Text of UFBU Circular No. 2023/16 dated 28.10.2023 on Bipartite talks with IBA, Negotiating Committee Meeting – Round 4
- 42 dated 31st October, 2023** : Circular on Dearness Allowance November 2023 to January 2024
- 43 dated 10th November, 2023** : Text of UFBU Circular No. 2023/17 dated 10.11.23 on Bipartite talks with IBA, Negotiating Committee Meeting – Round 4

BETTER THAN A HUNDRED YEARS OF IDLENESS IS ONE DAY SPENT IN DETERMINATION

JUDICIAL

[2023 (178) FLR 580]
(SUPREME COURT)
B.V.NAGARATHNA and MANOJ MISHRA, JJ.
Civil Appeal No (s) 624 of 2017
June 21, 2023
Between
BANK OF BARODA and others
and
BALJIT SINGH

Compassionate Appointment-Father of respondent died on 16.5.1999-Mother applied on 21.2.2000-Respondent completed matriculation in year 2004-Filed application on 25.3.2004-Claim rejected by Bank-Trial court decreed his suit-Appeal of bank was allowed-High Court however, restored the order of trial court-Hence instant appeal-Held, High Court considered the case *de hors* the terms of policy of Bank-Widow was already employed in health department-Her total income including family pension was 10,323/-Total income was not less than 60% of the total emoluments which was what the deceased was drawing as per scheme-***Respondent's claim for the post of peon could not be considered also on the ground that he was not qualified or eligible to be considered having regard to the family income of respondent***-Order of High Court set aside-Suit dismissed. [Paras 11 to 22]

J U D G M E N T

B.V.NAGARATHNA and MANOJ MISRA, JJ.-

This appeal arises out of a judgment and decree passed by the High Court of Punjab and Haryana in RSA No.338 of 2011 dated 11.12.2015. By the said judgment, the High Court has set aside the

judgment of the First Appellate Court dated 16.12.2009 passed in C.A. No.75 of 2008 and has restored the judgment of the Trial Court passed in Original Suit No.201 of 2005. Consequently, the relief sought for by the respondent in the suit, *i.e.*, declaration and mandatory injunction *vis-a-vis* his appointment in the appellant-Bank on compassionate basis has been granted.

2. Briefly stated, the facts of the case are that the respondent's father who was working in the appellant-Bank, died in harness on 16.05.1999. As on that date, the appellant-Bank had a Scheme in place for appointment of dependents of the deceased employees on compassionate grounds which was issued on 18.08.1998.

3. It is the case of the respondent herein that on the death of the respondent's father in harness, his mother made an application for appointment of the respondent on compassionate grounds to the post of Peon under the 1998 Scheme. The said application for compassionate appointment was filed on 21.02.2000. During the pendency of the said application under consideration, the appellant-Bank announced another Scheme for appointment of the dependents of deceased employees on compassionate grounds on 10.03.2004. Be that as it may, four years subsequent to the death of his

YOU WILL NOT BE PUNISHED FOR YOUR ANGER, YOU WILL BE PUNISHED BY YOUR ANGER

father, another representation on behalf of the Respondent was made to the appellant-Bank on 25.03.2004 in order to bring to the notice of the Bank the fact that he had completed his matriculation in March 2004. Subsequently, the Bank considered the application of the respondent and on 08.06.2004 rejected the same. Being aggrieved, the respondent filed the Original Suit seeking the relief of declaration and mandatory injunction against the Bank. In the said suit, the appellant-Bank filed its written statement and after trial, the learned Trial Judge decreed the suit and directed that the respondent be appointed on compassionate grounds.

4. Being aggrieved by the judgment and decree dated 16.10.2008, the appellant-Bank filed an appeal before the Court of the Additional District Judge, which by its judgment dated 16.12.2009 allowed the appeal and set aside the decree of the Trial Court. The respondent, thereafter, filed a Regular Second Appeal before the High Court of Punjab and Haryana assailing the judgment of the First Appellate Court. The High Court, while considering the Second Appeal formulated two questions of law but while answering the same in substance, considered the questions of law together and by the impugned judgment dated 11.12.2015 set aside the judgment of the First Appellate Court and restored the judgment and decree of the Trial Court. Hence, this appeal by the appellant-Bank before this Court.

5. We have heard Ms.Praveena Gautam, learned counsel for the appellant-Bank and Mr.Himanshu Sharma, learned counsel for the respondent and perused the material placed on record.

6. Learned counsel for the appellant made a two-fold submission while assailing the judgment of the High Court. In the first instance, she submitted that the High Court was not right in answering the second question of law in favour of the respondent without

appreciating the factual aspects of the matter. Elaborating the said contention, she drew our attention to various clauses of the Scheme dated 18.08.1998 which had been issued by the Bank by way of a Circular, to contend that the respondent did not fulfill the criterion regarding financial status of a candidate, within clause (c) of "Important points", which gives the formula to be applied in order to consider the case of a candidate for appointment on compassionate basis. In this regard, she drew our attention to the application made by the respondent disclosing the income of his deceased father as well as the income of the family. She submitted that having regard to the true position of the income of the family, the respondent was not at all eligible to be considered for appointment on compassionate basis.

7. She further submitted that the first question of law has not at all been considered by the High Court in the context of the eligibility of the respondent. Further, our attention was drawn to clause 'A' regarding the educational qualification of the candidate and it was submitted that the respondent had not completed his matriculation within a period of four years from the date of death of his father and hence, was not entitled to be considered for the appointment on compassionate basis as a clerk and was over qualified to be appointed as a Peon.

8. In the above backdrop, learned counsel for the appellant drew our attention to certain judgments of this Court, namely, *General Manager (D&PB) and others v. Kunti Tiwary, Balbir Kaur and another v. Steel Authority of India Ltd. and N.C. Santhosh v. State of Karnataka* which is a judgment of a Three-Judge Bench of this Court, to buttress the submission in support of the proposition that

compassionate appointment is an exception to recruitment and that no vested right is available to a party to seek compassionate appointment as a matter of right. She also submitted that in fact, the suit seeking the relief of declaration and mandatory injunction as against the appellant-Bank was not maintainable.

9. *Per contra*, learned counsel for the respondent supported the judgment of the High Court which has restored the judgment of the Trial Court and had directed the appellant-Bank to consider the case of the respondent on compassionate grounds. He brought to our notice, the fact that as on the date of the respondent's father's death *i.e.*, 16.05.1999, the respondent had already passed 8th Standard and thereafter, he also acquired his matriculation and intimated to the Bank that he had the eligibility to be considered for compassionate appointment. He further submitted that the application which was filed on compassionate basis was filled up by the Bank itself and the details stated in the said application were not accurate and that the respondent was entitled to be considered for an appropriate post in the appellant-Bank.

10. Learned counsel further submitted that the delay in consideration of the respondent's application, coupled with the fact that the rejection of the application without any reasoning had caused prejudice to the respondent and that there is no merit in the appeal and, therefore, the same may be dismissed.

11. Having heard the learned counsel for the respective parties, we find that the following points would arise for our consideration: -

(1) Whether the High Court was justified in setting aside the judgment of the First

Appellate Court and restoring the judgment and decree of the Trial Court while answering the questions of law in favour of the respondent and against the Bank?

(2) What order?

12. It is necessary to reiterate that the appointment of a candidate on compassionate basis does not create any vested right and that it is only when a candidate is covered under all clauses of the Scheme applicable at the relevant point of time that he/she could be considered for compassionate appointment.

13. *In Balbir Kaur v. Steel Authority of India Ltd.*, (supra) it was observed that the family benefit scheme assuring monthly payment to the family of deceased employee on the facts therein was not a substitute for compassionate appointment by the Steel Authority of India – Respondent in the said case. The said case proceeds on its own facts. The said judgment can be distinguished from the facts of the instant case as the 1998 Scheme specifically disentitles a candidate for compassionate appointment benefit on the application of the formula for calculation of monthly income if the same is not less than 60% of the total emoluments which the deceased was drawing at the time of his death. The object is that it is only when a deceased employee's family is in penury and without any source of livelihood when the employee died in harness, compassionate appointment can be considered. Since appointment on compassionate basis is an exception to the general rule for appointment by an open invitation, the exception has to be resorted to only when the candidate and his family is in penury so as to provide immediate succor on the death of the employee in harness. The same

has been observed in *General Manager (D&PB) v. Kunti Tiwary (supra)*. In *N.C. Santhosh v. State of Karnataka* (supra) a three- Judge Bench of this Court reiterated that appointment on compassionate basis is a concession and not a right and the criteria laid down in the Rules and Schemes applicable must be satisfied by all aspirants. Therefore, the case for compassionate appointment has to be considered in accordance with the prevalent Scheme. Similarly, in *State of Himachal Pradesh v. Shashi Kumar*, (supra), this Court has observed that compassionate appointment being an exception to the general rule, the dependents of deceased government employee are made eligible by virtue of the policy of compassionate appointment and they must fulfil the terms of the policy which are framed by the States/Employers.

14. It is to be noted that in the instant case, the respondent filed a suit for declaration and mandatory injunction seeking appointment on compassionate basis which was decreed by the Trial Court and upheld and affirmed by the High Court. In *State of Himachal Pradesh v. Parkash Chand*, it has been categorically held that a direction by a High Court to consider cases for compassionate appointment dehors the terms of the policy is impermissible as it would amount to re-writing the terms of the policy. This aspect has been overlooked by the High Court in the instant case. In a similar vein, in *Indian Bank v. Promila*, it has been observed that eligibility for compassionate appointment must be as per the applicable scheme and the courts cannot substitute a scheme or add or subtract from the terms thereof in exercise of judicial review. The aforesaid dicta would also apply to a suit filed seeking the relief of compassionate appointment.

15. In this regard, reference could be made to the judgment of this Court in *State of Himachal Pradesh v. Shashi Kumar* wherein at Paragraphs

18-19 the aforesaid terms have been clearly stated. 16. Therefore, it is necessary to consider the Scheme which is applicable to the respondent in the instant case. It is not in dispute between the parties that the Scheme dated 18.09.1998 which has been issued by way of a Circular is applicable to the case of the respondent. Under the said Scheme, both the educational qualification as well as qualification *vis-a-vis* the income of the candidate making an application for compassionate appointment have been prescribed and they are to be considered by the employer. In this context, it would be useful to refer the judgment of the High Court which has raised two questions of law which are as follows:

- i) Whether the case of the appellant can be considered for compassionate employment *vis-a-vis* the Scheme which was in vogue at the time when Balbir Singh died or subsequent to that?
- ii) Whether advancement of family pension can be the ground for non-suiting the case of compassionate employment?

17. While answering the second question, the High Court has referred to a judgment of the Rajasthan High Court in *Mohd. Farooq Bhati v. S.B.B.J.* which had relied upon the judgment of this Court in *Balbir Kaur* (supra) to hold that the objection with regard to the family income cannot be really considered as an objection to deny compassionate appointment. As far as the first question of law is concerned, the High Court has simply stated that the effective date of consideration of the application for compassionate appointment would be the date on which the respondent's father died. The High Court has stated that the 1998 Scheme was in force as on the date when the respondent's father died and, therefore, the said Scheme would be applicable. However, we find that while

HE WHO SEEKS HAPPINESS BY HURTING WILL NEVER FIND IT

answering the questions of law, the High Court has erred on both counts.

18. In this regard, we would like to consider the issue regarding the consideration of the financial position of the respondent *vis-a-vis* the eligibility to be considered for appointment on compassionate grounds. The relevant clause of the Scheme reads as under:

“b) Dependent of an employee dying in harness can be considered for compassionate appointment provided the family is without means of livelihood and the condition of the family is penurious.

c) Calculation formula for income:

Following formula would be followed for arriving at the financial position or income of the family:

The total of the following amounts received as Terminal Benefits will form the available resources:

- i. Balance of provident fund.
- ii. Gratuity.
- iii. Additional Retirement Benefits.
- iv. Investments made from loan from others.

From the above, following outstanding financial liabilities to be deducted:

- i. Housing loan
- ii. Vehicle loan
- iii. Other loans from bank
- iv. Loan from others

After arriving at the net amount remaining with the family, interest @11% be applied to arrive at monthly income of the family by further taking into consideration:

- (i) Net salary of dependent family members viz., spouse/ son/ daughter/ dependent unmarried brother/dependent unmarried sister.
- (ii) Pension (monthly)
- (iii) Income from savings and other investments.

After arriving at the monthly income as above, if the same is less than 60% of the total emoluments (which the deceased was drawing at the time of death) less Tax @ 15% (if the income is more than ₹ 10,000/- p.m.) the case for compassionate appointment can be considered.”

19. While applying the said formula to the case at hand, it is noted from the details submitted with regard to the deceased employee and his dependents that the income of the widow of the deceased was ₹ 6,845/- per month (basic pay of ₹ 4140/- per month) as she was employed in the Health Department of the State Government, and her family pension was ₹ 3,478/- per month. Thus, the gross total income of the family per month comes to ₹ 10,323/- and the net income is ₹ 7,618/- per month. The said figure has been taken into consideration while applying the formula referred to above and after applying the said formula to the case of the respondent, we find that the monthly income so arrived at is not less than 60% of the total emoluments and thus, the case of the respondent cannot be considered on compassionate basis on that score. The total emoluments of the deceased father of the respondent were ₹ 3,210/- per month at the time

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of his death which is lesser than the total net income of the deceased's family. Thus, the total income of the family is not less than 60% of the total emoluments which the deceased was drawing at the time of his death as per the Scheme under consideration. In that view of the matter, the High Court ought to have taken into consideration the factual details rather than just referring to the judgments in answering the questions of law.

20. As far as the first question of law is concerned, it has been clarified during the course of arguments by the learned counsel for the respondent that the respondent was eligible to be considered for the post of Peon as he had passed 8th standard during the life time of his father and thus, was eligible to be considered to the said post as on the date on which he made the said application. We do not think that the said argument

would be of assistance to the respondent inasmuch as the respondent is not qualified or is eligible to be considered for said post on compassionate basis having regard to the family income of the respondent.

21. In the circumstances, we are of the view that the High Court was not right in answering the questions of law in favour of the respondent and thereby, setting aside the judgment of the First Appellate Court and restoring the judgment of the Trial Court.

22. In the result, the appeal is allowed and the judgment of the High Court is set aside and the suit of the respondent is dismissed.

23. The Parties to bear their respective costs.

24. Pending application(s), if any, shall stand disposed of.

Appeal Allowed.

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