

(2025) 03 SHI CK 1185
In the High Court Of Himachal Pradesh
Case No : CWP No.3053 Of 2023

Ajay Chaudhary

APPELLANT

Vs

Himachal Road Transport Corporation And Anr

RESPONDENT

Date of Decision : 17-03-2025

Acts Referred:

Code of Criminal Procedure, 1973 — Section 305, 482
Drugs and Cosmetics Act, 1940 — Section 23(4), 27(b)(ii), 27(d), 34, 34(1)
Companies Act, 1956 — Section 2(13)
Negotiable Instruments Act, 1881 — Section 141

Citation : (2025) 03 SHI CK 1185

Hon'ble Judges : Rakesh Kainthla, J

Bench : Single Bench

Advocate : Shalini Thakur, Shashi Shirshoo

Final Decision : Disposed Of

Judgement

Sandeep Sharma, J

1. By way instant petition, petitioner has prayed for following main reliefs:

“(i) That the impugned office order dated 06.04.2021 (Annexure P-7) may kindly be quashed and set aside.

(ii) That the respondent corporation may kindly be directed to consider the case of the petitioner for giving him regular status, from the date, giving him employment on contract basis, i.e. and w.e.f. 12.03.2014.

(iii) That the respondent corporation may kindly be directed to pay all consequential benefits with interest @ 12% per annum in the interest of justice and fair play.”

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by learned counsel for the petitioner is that father of the petitioner, who was serving as Conductor with Respondent Corporation on

regular basis, died during the course of employment on 24.12.2003. Since on afore date, petitioner herein was minor, he was unable to apply for appointment in terms of policy for appointment on compassionate grounds formulated by the Corporation at that time. However, after his having attained majority, petitioner applied for employment under the Kith and Kin Policy (in short the "Policy") in the year 2008. Screening Committee of the corporation having taken note of the instructions contained under the aforesaid Policy, recommended the case of the petitioner for compassionate appointment against the post of Conductor alongwith others on contract basis. Petitioner was appointed on contract basis and his services were regularized vide order dated 5.7.2017 as per Policy of regularization framed by the government. Since petitioner had applied for employment under the Policy prior to July 2008 coupled with the fact that at the time of death of his father, there was no policy to provide appointment on compassionate grounds on contract basis, he made representation to the Respondent-Corporation to regularize his services from the date of his initial appointment, but since such prayer of him was not acceded to, he was compelled to approach this Court by way of CWP No. 434 of 2020, titled Ajay Chaudhary v. Himachal Road Transport Corporation, which came to be disposed of with a direction to the Respondent-Corporation to consider and decide the case of the petitioner in terms of judgment passed by the Hon'ble Apex Court in Civil Appeal Nos. 1557-1564 of 2019, titled Himachal Road Transport Corporation v. Lakh Ram etc. etc., decided on 5.2.2019.

3. Pursuant to aforesaid direction issued by this Court, Respondent-Corporation re-considered case of the petitioner for regularization from the date of initial appointment, but vide office order dated 6.4.2021 (Annexure P-7), rejected the same on the ground that State Government had introduced the contractual policy vide notification dated 12.12.2003, whereafter amendments were made in the Recruitment & Promotion Rules, providing therein for appointment on compassionate grounds on contract basis. In the afore background, petitioner has approached this Court in the instant proceedings, praying therein to set-aside aforesaid order and issue direction to the respondents to grant him regularization from the date of his initial appointment.

4. Reply filed by the respondents if perused in its entirety, nowhere disputes facts as have been recorded herein above, however, an attempt has been made to refute the claim of the petitioner on the ground that since at the time of initial induction of the petitioner in service, amendment in Recruitment & Promotion Rules stood made, thereby incorporating provisions of compassionate appointment on contract basis, petitioner herein cannot be permitted to have benefit of policy prevalent at the time of the death of the father of the petitioner.

5. Mr. Vikas Rajput, learned counsel for the Respondent-Corporation, vehemently argued that petitioner applied for employment under the Policy after attaining age of majority and as such, he was rightly appointed on contract basis initially and subsequently, regularized on completion of three years service in terms of

Policy formulated by the State Government for regularization of contractual employees after completion of three years. He further submitted that case of the petitioner is not covered by the law settled in Lekh Ram's case (supra), because employment case of the petitioner was received on 16.7.2008 i.e. after amendment of the relevant rules whereas case of the persons who were party in Lekh Ram (supra) were received prior to 3.8.2006.

6. Having perused judgment rendered by the Hon'ble Apex Court in Lekh Ram (supra), this court is persuaded to agree with Mr. Manohar Lal Sharma, learned counsel for the petitioner that case of the petitioner was required to be considered in terms of the policy in vogue at the time of death of his father i.e. 24.12.2003. Admittedly, policy, which was in force at the time of the death of the father petitioner, did not provide for compassionate appointment on contract basis, rather at that particular time, appointments, if any, under Kith and Kin Policy were being made on regular basis. Policy prevalent at the time of death of father of the petitioner was amended by the Corporation on 12.12.2003, but such amendment was effective w.e.f. 2.8.2006. If it is so, case of the petitioner, whose father admittedly had expired on 24.12.2003, was required to be considered in light of Kith and Kin Policy prevalent at the relevant time.

7. Though at this stage, Mr. Vikas Rajput, learned counsel for the respondent, attempted to argue that since on 24.12.2003, petitioner had not applied for compassionate appointment on account of his being minor, there was otherwise no occasion for the Respondent-Corporation to consider case of the petitioner in terms of the policy prevalent in the year 2003, which though stood amended w.e.f. 12.12.2003, but was made applicable w.e.f. 2.8.2006, however, aforesaid submission of Mr. Rajput, deserves outright rejection for the reason that once it is not in dispute that application, if any, made by the petitioner for appointment under Policy was required to be considered in terms of policy prevalent at the time of death of the petitioner, coupled with the fact that petitioner after his having attained majority applied for compassionate appointment in terms of Policy prevalent at the time of death of his father, subsequent amendment, if any, made in the policy, as detailed herein above, in earlier part of the judgment, could not be a ground to reject the rightful claim of the petitioner for appointment on regular basis from the date of his initial appointment.

8. By now it is well settled that application for compassionate appointment is required to be decided in terms of policy prevalent at the time of death of a government employee. Reliance in this regard is placed upon judgment passed by the Hon'ble Apex Court in State of Madhya Pradesh and Ors. v. Ashish Awasthi (2022) 2 Supreme Court Cases 157 alongwith connected matter, relevant paras whereof read as under:

"4. The deceased employee died on 08.10.2015. At the time of death, he was working as a work charge employee, who was paid the salary from the contingency fund. As per the policy/circular prevalent at the time of the death of the deceased employee, i.e., policy/circular No.C-3- 12/2013/1-3 dated

29.09.2014 in case of death of the employee working on work charge, his dependents/heirs were not entitled to the appointment on compassionate ground and were entitled to Rs. 2 lakhs as compensatory amount. Subsequently, the policy came to be amended vide circular dated 31.08.2016, under which even in the case of death of the work charge employee, his heirs/dependents will be entitled to the appointment on compassionate ground. Relying upon the subsequent circular/policy dated 31.08.2016, the Division Bench of the High Court has directed the appellants to consider the case of the respondent for appointment on compassionate ground.

5. As per the settled preposition of law laid down by this Court for appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.

6. In the case of *Indian Bank and Ors. Vs. Promila and Anr.*, (2020) 2 SCC 729, it is observed and held that claim for compassionate appointment must be decided only on the basis of relevant scheme prevalent on date of demise of the employee and subsequent scheme cannot be looked into. Similar view has been taken by this Court in the case of *State of Madhya Pradesh and Ors. Vs. Amit Shrivastava*, (2020) 10 SCC 496. It is required to be noted that in the case of *Amit Shrivastava* (supra) the very scheme applicable in the present case was under consideration and it was held that the scheme prevalent on the date of death of the deceased employee is only to be considered. In that view of the matter, the impugned judgment and order passed by the Division Bench is unsustainable and deserves to be quashed and set aside."

9. During the course of the hearing of the petition, learned counsel for the petitioner invited attention of this court to Office Order dated 28.7.2021, issued by the Managing Director of the Respondent-Corporation to the Divisional Manager, Himachal Road Transport Corporation, Shimla/Hamirpur/Mandi/Dharamshala on the subject regarding regularization of Class-III (employees) appointed under kith and kin policy, similarly situated with *Lekh Ram* case. The relevant extract of this communication reads as under:-

"A perusal of this communication demonstrates that the respondent-Corporation has now taken a policy decision to regularize the services of all employees who were appointed under kith and kin policy on contract basis from the date of initial appointment provided the case of the death of the parents happened before 03.08.2006 i.e. prior to adoption of contractual policy notified by the State Government of Himachal Pradesh in 2003 and also the representationists being not a minor before 03.08.2006."

10. The petitioner herein fulfills both these parameters. His father died in harness before 03.08.2006 and by that time, he had attained majority. In the afore background, impugned order thereby rejecting the case of the petitioner is not sustainable in the eye of law and accordingly, same deserves to be quashed

for the reason that petitioner cannot be denied regularization from the date of his initial appointment on the ground that his case was received under the Policy on 16.7.2008. Relevant date for considering case of the petitioner for appointment is date of death of the father of the petitioner and also age of the petitioner on 3.8.2006. In the case at hand, father of the petitioner had expired on 24.12.2003, on which date, Recruitment & Promotion Rules, which erroneously came to be applied in the case of the petitioner, had not been amended and petitioner had attained majority on 3.8.2006, from which date, amended Recruitment & Promotion Rules came into operation.

11. Consequently, in view of the above, this court finds merit in the present petition and accordingly, same is allowed. Impugned order dated 6.4.2021 is quashed and set-aside. Respondents are directed to regularize the petitioner from the date of his initial appointment alongwith all consequential benefits. In the aforesaid background, present petition is disposed of alongwith pending applications, if any.