

(2010) 03 SHI CK 0067
In the High Court Of Himachal Pradesh

Ms. Anchna Kumari

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 17-03-2010

Acts Referred:

Citation : (2010) 03 SHI CK 0067

Hon'ble Judges : Kurian Joseph, C.J;R.B. Misra, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The appellant is aggrieved by the judgment of the learned Single Judge dated 19th May, 2008 in CWP No. 180 of 2006. The appellant is the respondent in the said Writ Petition. The State has challenged the award passed by the Labour Court in the matter of compassionate appointment of the Writ Petitioner. That the appellant is entitled to compassionate appointment is not in serious dispute in view of the eligibility accrued to her on account of the death of her father, who was a Class IV employee. The serious dispute was with regard to the claim made by the appellant for appointment in Class III.

2. The learned Single Judge held that the appointment can only be made to the lowest rung of Class IV post. The basis for the finding of the learned Single Judge was that the petitioner's father was working as T-Mate, which is a Class IV post and hence the claim can only be against Class IV post when the compassionate appointment is sought.

3. Having heard the learned Counsel for the appellant and the learned Senior Additional Advocate General, we are afraid that the stand as reflected in the judgment may not go with the policy framed by the State for compassionate appointment. The policy to the extent relevant as contained in para 2(b), para 4 and para 10(b) reads as follows:

2(b) A daily wage employee who dies while in service after having rendered atleast 5 years service with not less than 240 days on daily waged basis in a year (to be computed as an average of the number of days served in the preceding

three years) leaving his family in immediate need of assistance. In such cases compassionate employment would be on daily wages basis only.

4. Posts to which such appointments can be made. The appointment on compassionate grounds can be made only to the lowest rung of Class IV and Class III posts carrying the pay scale of 300-430(now revised to Rs. 750-1350) and 400-600 or 400-660 (now revised to Rs. 950-1800) respectively. Class III jobs would include all equivalent jobs including technical posts and teachers (Class III) in the scale of Rs. 950-1800 only.

10(b) It is not essential that a son or a daughter or a widow of a deceased class IV employee should be considered for employment against Class IV post only but can be appointed against the lowest rung of Class III post as indicated in Para 4 above for which he is educationally qualified, provided a vacancy in Class III is available.

4. A conjoint reading of the policy would show that it is not as if the compassionate appointment should invariably be made only to the lowest rung of Class IV post. It depends upon the availability of vacancy in the lowest rung of Class III and the qualification of the incumbent concerned who seeks the compassionate appointment. Therefore, at the time when the appellant made the application, in case there was a vacancy available in the lowest rung of Class III and in case the appellant was qualified to hold that post, the appellant should have been offered the said post. The offer of compassionate appointment has nothing to do with the service held by the deceased on whose account the claim for compassionate appointment has arisen. As per the policy framed by the State, it depends only on two factors; availability of the vacancy in the lowest rung of Class III post and the qualification possessed by the incumbent concerned, who makes the claim for compassionate appointment.

5. In the above circumstances, we dispose of the appeal as follows:

6. In case there was a vacancy in the lowest rung of Class III post available at the time when the appellant made an application for compassionate appointment and in case the appellant was qualified to hold the post, the appellant shall be appointed and adjusted accordingly. The needful in that regard shall be done within two months on the production of a copy of this judgment.

7. The appeal is disposed of.