

(2021) 09 SHI CK 0047

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition (Original Application) No.6361 Of 2019

Neel Pardeep

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 17-09-2021

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 142

Citation : (2021) 09 SHI CK 0047

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Pradeep K. Sharma, Suneel Awasthi, Nand Lal Thakur, Kunal Thakur, Sunny Dhatwalia

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. Seeking a direction to the Director of Elementary Education and concerned officer to consider the case for appointment on compassionate ground under kith and kin policy, the son of an employee, who died in harness, had filed Original Application No.5331 of 2015, before the erstwhile Administrative Tribunal.
2. After abolition of the Tribunal, the matter was transferred to this Court and it was re-registered as CWPOA No.6361 of 2019. The Division Bench of this Court has admitted the matter for final hearing.
3. The case of the petitioner is that his father died in harness on 16.10.2002. At that time he was posted as Centre Head Teacher in Government Primary School, Karchham, District Kinnaur, H.P. Thus, the petitioner claimed that he was entitled to employment under kith and kin policy. The petitioner submitted that the State of Himachal Pradesh has framed the Policy for employment assistance to relatives of government servant who dies in harness or permanently disabled or missing. The petitioner claimed to be fully covered under such policy. He stated that he had applied under the said policy and the Deputy Director of Elementary

Education had forwarded his claim to the Director of Elementary Education on 16th May, 2008 vide Annexure A-1. He had also annexed with the application the death certificate of his father, his own senior secondary certificate, Himachali Certificate and Scheduled Tribe Certificate. He had also submitted the report of the Patwari that no member of his family was in Government employment, apart from other certificate that he was unemployed.

4. The petitioner had also annexed the certificate of income, which disclosed that his income from all sources did not exceed Rs.1,50,000/- per annum. The petitioner had also given affidavit of his family members and legal heir certificate etc. His case is that the respondents kept on sitting over his application and did not consider it. Thus, after waiting for sufficient time, he filed an application in the erstwhile Administrative Tribunal on 24.12.2015.

5. The respondents in reply stated that they had initially received a letter in 2003. It was not on the prescribed proforma. Furthermore, there was difference in the date of birth certificate, as such, it was returned in original along with documents. Subsequently, the applicant passed his +2 examination in 2005 and again his case was received on 16.5.2008. However, a perusal of the documents again reveals that there were various objections, which had to be removed by the petitioner-applicant. Thus, the specific stand of the respondent is that the petitioner did not pursue his application because they could not have taken any action on incomplete application, which contained objections. On merits, the stand of the respondents is that appointment on compassionate ground cannot be claimed as a matter of right.

6. The applicant had not filed any rejoinder to the reply.

7. I have heard learned counsel for the parties and gone through the pleadings.

ANALYSIS AND REASONING:

8. The Original Application was drafted in 2015 and it was supported by the affidavit of the applicant-petitioner. The matriculation certificate reveals that the applicant was born on 11/09/1974. Thus, on the date, when his father died in harness on 16.10.2002, at that time, his age was about 28 years, 1 month and 5 days. This fact is corroborated by the affidavit of the applicant annexed with the Original Application, wherein he mentioned his age as 41 years in November, 2015. Thus, the petitioner, after initial application in the year 2003, did not remove any objection and later on applied in the year 2008, at that time he was 34 years of age. After again sitting over his file for as long as seven years, he filed the original application in erstwhile Tribunal in the year 2015. This shows that the petitioner never needed financial support and he was sustaining very well.

9. The jurisprudence behind the compassionate policy is to support those Government Employees, who died in harness, leaving their young wife and children in lurch, to save them from the vagries and to protect them from

financial difficulties, the government did frame compassionate Policy. However, this policy would be applicable only to such people, who need compassion because of financial constraints. Thus, the claim of the petitioner is hit by the principle of delay and laches, his own conduct and sitting over the matter for such a long time, despite being a mature age at the time of death of his father.

10. In *State of Himachal Pradesh v. Shashi Kumar*, (2019) 3 SCC 653, Hon'ble Supreme Court observed that subject to the State's policy, and as an exception to the rule, the employer offers appointment on the compassionate grounds to the dependent of the deceased employee, to protect the family from financial hardship and cater to the immediate financial needs.

11. Even otherwise, the purpose of a compassionate appointment is to relieve unexpected immediate hardship and distress caused to the family on the sudden death of the earning member of a family.

12. In *Umesh Kumar Nagpal vs. State of Haryana*, (1994) 4 SCC 138 the Supreme Court holds as follows:-

[2]. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus 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 on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an

exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. , relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

[3]. Unmindful of this legal position, some governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

[4]. It is for these reasons that we have not been in a position to appreciate judgments of some of the High courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this court in *Sushma Gosain v. Union of India*, (1989) 4 SCC 468, has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV." ...

13. In *Jagdish Prasad vs. State of Bihar*, (1996) 1 SCC 301, the Supreme Court holds as follows:

[2]. The High Court had dismissed the writ petition seeking appointment of the appellant on compassionate grounds. The admitted fact is that he was four years' old at the time when his father died in harness in the year 1971. He filed the writ petition after attaining majority in 1994 for a direction to appoint him on compassionate grounds which was negatived.

[3]. It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de

hors the recruitment rules."

14. In *MGB Gramin Bank vs. Chakrawarti Singh*, (2014) 13 SCC 583 the Supreme Court holds as follows:

[6]. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

[7]. In *Umesh Kumar Nagpal v State of Haryana & Ors.*, (1994) 4 SCC 138, this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:

"2. ...The whole object of granting compassionate employment is, thus, 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. ... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.

4. The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

* * *

6. ... The consideration for such employment is not a vested right.....

The object being to enable the family to get over the financial crisis."

[emphasis added]

[8]. An 'ameliorating relief' should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

[9]. The Courts and the Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments.

[10]. In *A. Umarani v Registrar, Co-operative Societies & Ors.*, (2004) 7 SCC 112, while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

[11]. The word 'vested' is defined in Black's Law Dictionary (6th Edition) at page 1563, as

"Vested-, Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent. Rights are 'vested' when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights."

[12]. In Webster's Comprehensive Dictionary (International Edition) at page 1397, 'vested' is defined as Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest. *Bibi Sayeeda v State of Bihar*, (1996) 9 SCC 516; and *J.S. Yadav v State of Uttar Pradesh*, (2011) 6 SCC 570.

[13]. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law. Unless an accrued or vested right has been derived by a party, the policy decision/ scheme could be changed. (Vide: *Kuldip Singh v Government, NCT Delhi*, (2006) 5 SCC 702)

[14]. A scheme containing an in pari materia clause, as is involved in this case was considered by this Court in *State Bank of India & Anr. vs. Raj Kumar*, 2010 11 SCC 661. Clause 14 of the said Scheme is verbatim to clause 14 of the scheme involved herein, which reads as under:

"14. Date of effect of the scheme and disposal of pending applications: The Scheme will come into force with effect from the date it is approved by the Board of Directors. Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Board will be dealt with in accordance with Scheme for payment of ex-gratia lump sum amount provided they fulfill all the terms and conditions of this scheme."

[15]. The Court considered various aspects of service jurisprudence and came to

the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *State Bank of India & Anr. vs. Raj Kumar*, (2010) 11 SCC 661, this Court held that in such a situation, the case under the new Scheme has to be considered.

[16]. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside."

15. Given above observations, the present writ petition is dismissed. Pending applications, if any, are also closed. No order as to costs.