
(2021) 11 SHI CK 0084
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 2772 Of 2021

Rahul Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 29-11-2021

Acts Referred:

Citation : (2021) 11 SHI CK 0084

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Jiya Lal Bhardwaj, Ashwani Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. The case of the petitioner for compassionate appointment has been rejected by the respondents vide order dated 04.12.2020 as communicated to the petitioner on 04.01.2021. Aggrieved, he has preferred the instant writ petition.

2(i) Shri Ram Parkash, father of the petitioner was working with the respondents-department as Mate. He died in harness on 13.09.2013, leaving behind his wife, his daughter and son (present petitioner). On 16.04.2014, the petitioner applied to the respondents-department for compassionate appointment.

2(ii) On 05.11.2018, respondent No.1 conveyed to respondent No.2 the approval of the Government for providing employment assistance on compassionate ground to the petitioner to the Class-III post of Clerk against the available vacancy in the Education-department in relaxation of ceiling of 5% quota meant for such appointments as per the Department of Personnel Office Instructions dated 10.11.2008. The record produced during hearing of the case by the respondents reveals that the approval granted by respondent No.1 on 05.11.2018 was subject to fulfillment of various conditions at the end of petitioner. One of them being that for Class-III post, possession of minimum

educational qualification of 10+2 by the candidate would have to be ensured by the department. The sanction of the Government for appointing the petitioner on compassionate ground to the Class-III post of Clerk was conveyed by respondent No.2 to the Director of Higher Education on 15.11.2018.

2(iii) The respondents-department scrutinized the documents of the petitioner for determining his eligibility for appointment to the post of Class-III (clerk). The minimum educational qualification required for appointment to the post of Clerk was 10+2 pass, whereas the petitioner had passed Prabhakar examination after matriculation. According to the respondents, the petitioner did not satisfy the eligibility criteria for being appointed to the post of Clerk.

2(iv) The Director of Higher Education on 14.02.2019 intimated the respondent No.2 that since the petitioner had passed Prabhakar examination, which was not equivalent to the required qualification of 10+2 for appointment to the post of Clerk, therefore, it was not feasible to implement the approval of the Government for appointing the petitioner to the post of Clerk in Education Department.

2(v) It appears from the record that the petitioner had also given his option on 6.04.2015 to provide him job on compassionate ground on Class-IV post of Beldar. After the rejection of petitioner's case for appointment on compassionate ground against the Class-III post, respondents on the basis of option given by the petitioner considered his case for appointing him as Beldar on compassionate ground.

2(vi) A meeting of Departmental Screening Committee was convened on 26.10.2020. The Committee recommended rejection of petitioner's case for appointment on compassionate ground to the post of Beldar on the ground that he does not meet the income criteria prescribed in the instructions dated 07.03.2019 and 01.11.2019. The recommendations so made by the Screening Committee were conveyed by respondent No.2 to the respondent No.3 and on that basis vide communications/orders dated 21.12.2020 and 04.01.2021, the petitioner was informed that his case for compassionate appointment has been rejected as he does not meet the income criteria prescribed in the instructions issued by the State in the year 2019.

It is in this background the instant writ petition has been filed, seeking direction to the respondents to offer employment assistance to the petitioner on compassionate ground. The substantive reliefs prayed for by the petitioner are as under:-

"i) That a writ in the nature of certiorari may kindly be issued for quashing the decision conveyed vide letters dated 01.12.2020, Annexure P- 7, 21.12.2020, Annexure P-8 and 04.01.2021, Annexure P- 9, issued by respondents No.2 to 4, respectively, to reject the case of the petitioner for providing employment assistance on compassionate grounds to the petitioner.

ii) That a writ in the nature of mandamus may kindly be issued directing the respondents to offer the employment assistance to the petitioner on compassionate grounds to the post of Class-III (Clerk) w.e.f. 15.11.2018 as conveyed, vide Annexure P-1 by respondent No.2, will all consequential benefits."

3. I have heard learned counsel for the parties and gone through the case file as well as the record produced by the respondents.

4. The position which emerges, is that:-

4(a) The State had accorded its approval for providing employment assistance to the petitioner on compassionate ground to the Class-III post of Clerk against the available vacancy in relaxation of ceiling of 5% quota meant for such appointments. Respondents considered the case of the petitioner for appointment against the post of clerk. Since, the petitioner did not possess the essential educational qualification of 10+2, therefore, he could not be appointed as clerk on compassionate ground. The point has not been further asserted/agitated by the learned counsel for the petitioner that the petitioner possessed the required education qualification of 10+2, viz-a-viz his appointment against Class-III post.

4(b) According to the option given by the petitioner, the respondents considered his case for appointment on compassionate ground against the post of Beldar. It is not the case of the respondents that the petitioner did not satisfy any prescribed educational criteria for appointment on compassionate ground as Beldar. The reason for rejection of petitioner's case to be appointed as Beldar on compassionate ground as detailed in the reply and as has come out from the record is that he did not fulfill the income criteria as prescribed by the State in its latest Policy circulated on 07.03.2019 and 01.11.2019. The grounds for rejection as given by the respondents are not in consonance with law laid down by the Hon'ble Apex Court. It has been well settled by catena of judgments that cases for appointment on compassionate grounds are to be considered in terms of Policy prevalent on the date of death of the deceased employee and not on the basis of Policy in vogue at the time of consideration of the case.

It is no longer res-integra that the claim for compassionate appointment has to be decided only on the basis of relevant scheme, which was prevalent on the date in question. Subsequent scheme cannot be looked into for the purpose. It will be appropriate in this regard to refer to (2020) 2 SCC 729 titled Indian Bank and Others Vs. Promila and another, which in turn relied upon (2015) 7 SCC 412, titled Canara Bank Vs. M.Mahesh Kumar. Relevant paragraphs of the same are extracted as under:-

"18. The question of applicability of any subsequent Scheme really does not apply in view of the judgment of this Court in Canara Bank (supra) . Thus, it would not be appropriate to examine the case of the respondents in the context of subsequent Schemes, but only in the context of the Scheme of 4.4.1979, the terms of which continued to be applicable even as per the new Scheme of

5.11.1985, i.e. the Scheme applicable to the respondents. There is no provision in this Scheme for any ex gratia payment. The option of compassionate appointment was available only if the full amount of gratuity was not taken, something which was done. Thus, having taken the full amount of gratuity, the option of compassionate appointment really was not available to the respondents.

19. We may also notice that though the subsequent Schemes were not applicable, even if benefit was sought to be given of those Schemes, initial non-disclosure and subsequent disclosure by respondent No.1, of her employment and her emoluments would disentitle her under those Schemes, too. Thus, when the appellant was calling upon the respondents to apply under the subsequent Schemes, that could have been beneficial to the respondents only if they were entitled to any of the benefits under that Scheme. That could not happen because the benchmark provided in those subsequent Schemes took the emoluments of respondents beyond the prescribed limit, so as to disentitle them from both, compassionate employment and ex gratia payment.

20. We have to keep in mind the basic principles applicable to the cases of compassionate employment i.e. succour being provided at the stage of unfortunate demise, coupled with compassionate employment not being an alternate method of public employment. If these factors are kept in mind, it would be noticed that the respondents had the wherewithal at the relevant stage of time, as per the norms, to deal with the unfortunate situation which they were faced with. Thus, looked under any Schemes, the respondents cannot claim benefit, through, as clarified aforesaid, it is only the relevant Scheme prevalent on the date of demise of the employee, which could have been considered to be applicable, in view of the judgment of this Court in *Canara Bank*. It is not for the Courts to substitute a Scheme or add or subtract from the terms thereof in judicial review, as has been recently emphasised by this Court in *State of H.P. Vs. Parkash Chand*."

In a recent judgment rendered by Hon'ble Apex Court on 18.11.2021 in Civil Appeal No.6903/2021, titled as *The State of Madhya Pradesh & Ors Vs. Ashish Awasthi* wherein it was reiterated that the Policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy. Relevant para from the judgment is extracted as under:-

"4.1it 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."

In light of the above legal position, the rejection of the case of the petitioner for appointment as Beldar on compassionate ground on the basis of new Policy cannot be sustained. The father of the petitioner had died on 13.09.2013. The petitioner applied for compassionate appointment on 16.04.2014. The State has already granted its approval for appointing the petitioner on compassionate grounds on 5.11.2018. The Policy of appointment on compassionate ground, which was prevalent on 13.09.2013 was to be considered for examining the case of the petitioner and not the 2019 Policy. Accordingly, this writ petition is allowed. Impugned communications dated 01.12.2020 (Annexure P-7), 21.12.2020 (Annexure P-8) and 04.01.2021 (Annexure P-9) are quashed and set aside. Respondent No.2/competent authority is directed to examine the case of the petitioner for appointment on compassionate ground to the post of Beldar strictly in accordance with the above observations and to pass appropriate order, in accordance with law, within a period of three weeks from today.

With these observations, the instant petition is disposed of so also the pending miscellaneous application(s), if any, shall also stand disposed of.