

**(2021) 10 SHI CK 0034**

**In the High Court Of Himachal Pradesh**

**Case No : Letters Patent Appeal No. 123 Of 2013**

State Of H.P And Others

APPELLANT

Vs

Uday Singh And Others

RESPONDENT

**Date of Decision : 21-10-2021**

**Acts Referred:**

**Citation : (2021) 10 SHI CK 0034**

**Hon'ble Judges : Mohammad Rafiq, CJ;Sabina, J**

**Bench : Division Bench**

**Advocate : Ashok Sharma, Vikas Rathore, Ritta Goswami, Seema Sharma, Parveen Chauhan**

**Final Decision : Dismissed**

## **Judgement**

Mohammad Rafiq, CJ

1. Service on respondent No.2 is dispensed with considering that he is only a proforma-respondent and also was a co-respondent with the appellant-State in the writ petition.

2. The learned Single Judge in the impugned order has relied a judgment rendered by a co-ordinate Bench of this Court in CWP(T) No.4504 of 2009, titled as Ramesh Chand versus State of H.P. and others, and held that in the present case the father of respondent No.1-writ petitioner expired on 16th July, 2001. The writ petitioner undisputedly stood employed on contract basis on 10th October, 2007. His request for compassionate appointment was kept pending in different offices of the respondent/State and as such, the same ought to have been considered in terms of the old policy as it existed on 16th July, 2001 because the delay in the decision is not attributable to the writ petitioner. On that note, the learned Single Judge held that directions issued in relied judgment, Ramesh Chand (supra), shall mutatis mutandis apply to the present case and the State Government was directed to consider the case of the petitioner for regularization, particularly when the respondents themselves have regularized

the services of private respondent on the same analogy.

3. Ms. Ritta Goswami, learned Additional Advocate General, has cited before us a copy of the order dated 06.09.2021, passed by the Hon'ble Supreme Court in Petition(s) for Special Leave to Appeal (C) No(s). 19252/2018, titled as Seema Kausar Versus The State of Maharashtra & Ors., wherein the Hon'ble Supreme Court has held that the policy, which was prevailing at the time when the deceased employee died and the application for compassionate appointment was made, is only required to be considered. The Hon'ble Supreme Court dismissed the SLP up-holding such view taken by the High Court.

4. In the present case, even if the ratio of the aforesaid order of the Hon'ble Supreme Court is applied, the writ petition has rightly been disposed of in view of the peculiar facts contained therein because after the death of father of respondent No.1/writ petitioner on 16th July, 2001, he was engaged on contract basis on 10 th October, 2007, whereas the writ petitioner has filed application for compassionate appointment on 27th October, 2001. It is for this reason that the learned Single Judge has recorded a finding that delay in taking decision to appoint the writ petitioner on compassionate ground is not attributable to the writ petitioner.

Obviously, the respondent/State was under obligation to take a decision on the application of respondent No.1-writ petitioner expeditiously.

5. It is not in dispute that the judgment of Ramesh Chand (supra), relied upon by the learned Single Judge, was assailed before the Division Bench by the respondent/State in LPA No.435 of 2012. The stand of the State Government in that appeal was that similar treatment has been meted out to respondent-Ramesh Chand as he has been engaged on daily wage basis as Beldar. In the present case, the argument was made that since Tota Ram, father of petitioner, Ramesh Chand, was working on work-charge establishment of the respondent-department as Beldar at the time of his death. Therefore, merely because the petitioner acquired matriculation as qualification subsequently, that would not entitle him to be appointed as Clerk when his case is liable to be considered in terms of the prevailing policy at the time of death of his father. The order of the learned Single Judge, therefore, was modified to the extent that instead of appointing the petitioner Ramesh Chand on the post of Clerk, a direction was issued to appoint him as Class-IV employee. In the present case also, compassionate appointment has been ordered to be regularized on Class-IV post.

6. In view of the above and that the judgment of Ramesh Chand (supra), having attained finality, we do not find any infirmity in the order dated 18.04.2012, passed by the learned Single Judge. The appeal, being devoid of merit, is dismissed.