

(2015) 10 SHI CK 0052
In the High Court Of Himachal Pradesh
Case No : CWP No. 4254 of 2015

Sunil Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Citation : (2016) 1 LLJ 176

Hon'ble Judges : Mansoor Ahmad Mir, C.J. and Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Bimal Gupta, Sr. Advocate and Vineet Vashisht, Advocate, for the Appellant; Shrawan Dogra, Advocate General, V.S. Chauhan, Additional Advocate General, J.K. Verma, Deputy Advocate General and Ramesh Thakur, Assistant Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Mansoor Ahmad Mir, C.J.

1. Issue notice. Mr. Ramesh Thakur, learned Assistant Advocate General, waives notice for the respondents.
2. The grievance projected in this writ petition by the petitioner is that the father of the petitioner, who was working with the respondents as Beldar on daily waged basis, died on 9.1.2010, while in service, constraining the petitioner to file an application for appointment on compassionate ground, which was rejected on the ground that the family income of the petitioner exceeds the ceiling fixed by the Government.
3. This Court in the latest decision, dated 6th October, 2015, passed in CWP No. 9094 of 2013, titled Surinder Kumar v. State of H.P. and others, and other connected matters, while dealing with the issue of compassionate appointment, after referring to various decisions of the Apex Court, has held that grant of terminal benefits and income from family pension cannot be equated with the employment assistance on compassionate ground. It has further been held that

once there is no maximum income slab provided in the Scheme, the claim of the applicant cannot be rejected on that score. It is apt to reproduce paragraphs 46 to 55 of the said decision hereunder:

"46. Clause 10(c) of the Policy mandates that while making appointment on compassionate ground, the competent Authority has to keep in mind the benefits received by the family on account of ad hoc ex-gratia grant, improved family pension and death gratuity. Therefore, we may place on record at the outset that no maximum income ceiling has been prescribed in the Policy. Only what has been prescribed is that the competent Authority has to keep in mind the benefits received by the family after the death of the employee, as detailed above.

47. The aim and object of granting compassionate appointment is to enable the family of the deceased employee to tide over the sudden financial crisis which the family has met on the death of its breadwinner. Though, appointment on compassionate ground is inimical to the right of equality guaranteed under the Constitution, however, at the same time, we cannot be oblivious to the fact that the concept of granting appointment on compassionate ground is an exception to the general rule, which concept has been evolved in the interest of justice, by way of Policy framed in this regard by the employer. The object sought to be achieved by making such an exception is to provide immediate assistance to the destitute family, which comes to the level of zero after the death of its bread-earner. Thus, we are of the considered view that the amount of family pension and other retiral benefits cannot be equated with the employment assistance on compassionate ground.

48. While reaching at this conclusion, we are supported by the decision of the Apex Court in *Govind Prakash Verma v. Life Insurance Corporation of India and others*, (2005) 10 Supreme Court Cases 289, wherein it was held that scheme for providing employment assistance on compassionate ground was over and above the service benefits received by the family of an employee after his death. It is apt to reproduce the relevant portion of paragraph 6 of the said decision hereunder:

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.....".

49. The Apex Court in *A.P.S.R.T.C., Musheerabad and Others Vs. Sarvarunnisa Begum*, , while discussing the aim and object of granting compassionate

appointment, has held that the widow, who was paid additional monetary benefits for not claiming appointment, was not entitled to compassionate appointment. It is apt to reproduce paragraphs 3 and 4 of the said decision hereunder:

"3. This Court time and again has held that the compassionate appointment would be given to the dependent of the deceased who died in harness to get over the difficulties on the death of the bread- earner. In Umesh Kumar Nagpal Vs. State of Haryana and Others, , this Court has held as under:

"The whole object of granting compassionate employment is 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 post 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.

Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointments in posts above Classes III and IV, is legally impermissible."

4. In the present case, the additional monetary benefit has been given to the widow apart from the benefits available to the widow after the death of her husband to get over the financial constraints on account of sudden death of her husband and, thus, as a matter of right, she was not entitled to claim the compassionate appointment and that too when it had not been brought to the notice of the Court that any vacancy was available where the respondent could have been accommodated by giving her a compassionate appointment. That apart, the Division Bench of the High Court has committed an error in modifying the direction of the Single Judge by directing the Corporation to appoint the respondent when no appeal was preferred by the respondent challenging order of the Single Judge."

50. Coming to the Policy in hand, there is nothing on the record to show that the writ respondents have ever made a provision for additional monetary benefit, as a substitute to the employment assistance on compassionate ground, except the terminal benefits to which the family of the deceased-employee is otherwise entitled to.

51. The Apex Court in its latest decision in Canara Bank and Others Vs. M. Mahesh Kumar and Others , while relying upon its earlier decision in Balbir Kaur and another v. Steel Authority of India Ltd. and others, (supra), has restated the

similar position, and held that grant of family pension or payment of terminal benefits, cannot be treated as substitute for providing employment assistance on compassionate ground. It is apt to reproduce paragraphs 15 and 16 of the said decision hereunder:

"15. Insofar as the contention of the appellant-bank that since the respondent's family is getting family pension and also obtained the terminal benefits, in our view, is of no consequence in considering the application for compassionate appointment. Clause 3.2 of 1993 Scheme says that in case the dependant of deceased employee to be offered appointment is a minor, the bank may keep the offer of appointment open till the minor attains the age of majority. This would indicate that granting of terminal benefits is of no consequence because even if terminal benefit is given, if the applicant is a minor, the bank would keep the appointment open till the minor attains the majority.

16. In *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, , while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), this Court held as under:--

"13. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread-earner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread-earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread-earner, but that would undoubtedly bring some solace to the situation."

Referring to *Steel Authority of India Ltd.*'s case, High Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground."

Emphasis applied.

52. The Clauses contained in the Policy in hand are similar to the Scheme, which was the subject matter before the Apex Court in *Canara Bank*'s case (*supra*). Therefore, the mandate of the said judgment of the Apex Court is squarely applicable to the cases in hand.

53. From the facts of the cases in hand, another moot question, which arises for consideration, is - Whether instructions contained in letters/communications, made by one Department of the Government to another, can be said to be amendment in the Policy? The answer is in the negative for the following reasons.

54. In order to show that the maximum income ceiling was prescribed by the competent Authority, the respondents have relied upon the letter, dated 1st November, 2008, written by the Secretary (PW) to the Government of H.P., to the Engineer-in-Chief, HP PWD, referred to above, wherein it was mentioned that the income ceiling fixed by the Finance Department, for a family of four members, was Rs. 1.00 lac. A perusal of this letter shows that it has been mentioned therein that "the Income Criteria fixed by the Finance Department takes into consideration maximum family income ceiling fixed by the finance Deptt. for a family of 4 members as Rs. 1.00 lac." It is nowhere mentioned in the said letter that the income ceiling was fixed by the competent Authority by making amendment in the Policy. Moreover, the said amendment, if any, has not been placed on record and has not seen the light of the day. Therefore, the letters/communications issued by a Department to another Department cannot be said to be amendment in the Policy unless the said amendment has got the approval of the competent Authority i.e. the Cabinet.

55. Having regard to the above discussion, we are of the considered view that the action of the respondents of denying employment assistance to the dependant of a deceased employee by taking into account the family pension and other terminal benefits is not tenable in the eyes of law....."

4. Having said so, the writ petition is allowed, impugned order Annexure P5 is quashed and set aside, and the respondents are directed to examine the case of the petitioner in light of the judgment referred to above and pass appropriate order within a period of six weeks from today.

5. The writ petition stands disposed of accordingly, so also the pending CMPs, if any.