

(2024) 12 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : CWP No. 8168 Of 2023

Surinder Kumar

APPELLANT

Vs

State Of Himachal Pradesh & Ors

RESPONDENT

Date of Decision : 05-12-2024

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2024) 12 SHI CK 0002

Hon'ble Judges : Jyotsna Rewal Dua, J

Bench : Single Bench

Advocate : Dushyant Dadwal, L.N. Sharma

Final Decision : Allowed

Judgement

Jyotsna Rewal Dua, J

1. Petitioner has been given employment by the respondents on compassionate grounds but on daily wage basis. Petitioner's contention is that he ought to have been employed on regular basis on compassionate grounds.

2. Gist of the case

2(i) Sh. Kishori Lal, father of the petitioner, was appointed as Patwari in the respondent-department on regular basis in the year 1973. He died in harness on 26.06.2003. Petitioner applied for compassionate appointment in December 2003. Petitioner's file kept going back & forth for number of years. Respondents finally rejected his case on 03.05.2011 on the ground that they could consider only those cases where either the widow of the deceased employee was seeking employment assistance or the applicant was an orphan.

2(ii) Petitioner filed Civil Writ Petition No. 9094 of 2013 assailing the order passed by the respondents rejecting his case for appointment on compassionate grounds. The aforesaid petition was decided alongwith several other connected matters including Letters Patent Appeals & Writ Petitions. CWP No. 9094 of 2013

filed by the petitioner was allowed in this bunch of matters which was decided on 06.10.2015. Separate findings given in the decision pertaining to petitioner's writ petition are as under:-

"CWPs No.9094 of 2013, 9113, 10185 of 2011, 2035, 4697, 6286, 8599 of 2012, 1204, 1240 and 6505 of 2013:

119. These cases are clubbed together for the reason that the facts and circumstances of the cases are similar and the policy applicable is also the same.

120. CWP No.9094 of 2013 is taken as lead case in this group of cases and the facts of the said case are thus. Father of the petitioner, who was serving as Patwari right from the year 1973 with the respondent-Department, died in harness on 26th June, 2003. The petitioner applied for appointment on compassionate ground in the month of December, 2003 and documents were required by the respondents from the petitioner, which were submitted by him in September, 2004. In the years 2005 and 2008, the respondents again raised queries and demanded more documents from the petitioner, which, as per the petitioner, were supplied by him to the respondents. In May 2009, the petitioner again received a letter from the respondents wherein also the petitioner was required to complete certain formalities, which were completed by the petitioner.

121. In May 2011, the petitioner received a letter, dated 3rd May, 2011, (Annexure P-8), whereby it was conveyed that the respondents were considering the cases of only those employees in which either the widow of the deceased employee was seeking employment or the applicant was an orphan. Thus, the petitioner has filed the writ petition for quashing Annexure P-8.

122. Respondents have filed the reply, in which it has been pleaded that the Policy, dated 18th January, 1990, was amended by the Government, vide amendment dated 25th September, 2010, to the following effect:

".....Now, it has been decided by the Government that apart from the widow applicants the cases of applicants whose both parents are not alive shall be given priority for considering the matter of providing employment on compassionate grounds subject to fulfillment of other relevant criteria prescribed by the Govt. from time to time. You are requested to please bring these instructions to the notice of all concerned for strict adherence."

Thus, it was pleaded that the case of the petitioner, being the son of the deceased employee, did not fall within scope of the Policy and was rightly rejected by the respondents.

123. The writ petitions are allowed and the orders impugned are set aside in view of our findings recorded on points No.(ii) and (iii), supra. The respondents are directed to consider the cases of the petitioners afresh in view of our findings on points No.(i) to (ix) and also after adverting to the Policy."

2(ii)(a) Hon'ble Division Bench allowed petitioner's writ petition in view of the

findings recorded on Points No. (ii) and (iii). Respondents were directed to consider the case of the petitioner afresh in view of findings on Points No. (i) to (ix) and also after adverting to the Policy. Points No. (i) to (ix) as framed in para-44 of the decision are as under:-

“(i) Whether the amount of family pension and other retiral benefits, received by the family of the deceased-employee, can be included in the family income for denying the compassionate appointment?

(ii) Which date would be relevant viz. a viz. applicability of the Policy - whether the date of death of the employee or the date when the application was presented, for the first time, for seeking employment on compassionate ground or the date on which the application came up for consideration before the Authorities, and whether a claim for compassionate appointment can be decided on the basis of subsequent amendment, when the application was presented prior to such amendment?

(iii) If an applicant was in lis and his case was directed to be reconsidered, whether the claim of such applicant is to be determined as per the policy which was existing at the time of passing the order or as per the policy which was in place at the time of staking claim for the first time or as per the policy existing at the time of consideration?

(iv) Whether the applicant can claim appointment on compassionate ground against a higher cadre, once he had been appointed in the lower cadre?

(v) In case a person is appointed on contract basis, whether he is within his rights to seek appointment on regular basis?

(vi) In a given set of cases, in one case the appointment on compassionate ground has been offered against a Class-III post and in other case, the appointment has been offered to a Class-IV post, whether it amounts to discrimination?

(vii) Whether a person can claim compassionate appointment after a considerable delay?

(viii) Whether requisite qualification or age can be relaxed?

(ix) In case one or more dependents of a deceased-employee is/are in service, though living separately, whether that can be made a ground to deny compassionate appointment to the other dependent of the deceased-employee?”

2(ii)(b) Point No. (v) formulated in the above decision applicable to the entire bunch of matters is relevant to the present controversy. This point was as to whether a person appointed on contract basis would be within his rights to seek appointment on regular basis. It was answered as under:-

“77. The sum and substance of the above discussion is that the incumbents, who have been appointed on a particular post and have joined to the said post

without expressing any reluctance or protest, such incumbents are precluded from claiming that they should either be appointed to a higher post or should have been given appointment on regular basis, instead of employment on contract basis, or have been discriminated viz. a viz. similarly placed persons.

78. It was also brought to our notice that the Government of Himachal Pradesh had taken a decision in the year 2003 making provision for appointment on contract basis. This fact has been sought to be substantiated by a copy of letter, dated 12th December, 2003, issued by the Chief Secretary, to the Government of Himachal Pradesh, to all the Secretaries, the Heads of Department, all the Divisional Commissioners and all the Deputy Commissioners, which is reproduced below:

" No. PER(AP)C-B(19)2 98-Part-II

Government of Himachal Pradesh

Department of Personnel (AP-III)

Dated Shimla-171002 the 12th December, 2003

From

The Chief Secretary to the Government of

Himachal Pradesh

1. All the Secretaries to the Govt. of Himachal Pradesh.

2. All Heads of Department in Himachal Pradesh.

3. All Divisional Commissioners in Himachal Pradesh.

4. All Deputy Commissioners in Himachal Pradesh.

Subject:- Prescribing of Provision for appointment on contract basis.

Sir,

I am directed to say that it has been decided by the Government that the mode of recruitment by way of "contract recruitment" may also be prescribed in addition to other mode of recruitment in all the Recruitment and Promotion Rules.

It is, therefore, requested that all existing Recruitment & Promotion Rules where the mode of direct recruitment of the post has been prescribed the same may be amended. As such provision of Col.No.10 of the Recruitment and Promotion Rules be prescribed in the following manner:-

"Col.No.10: By direct recruitment or on Contract basis."

Since the matter has already been approved by the Council of Ministers it is therefore, requested to amend the Recruitment & Promotion Rules accordingly without referring the matter to the Cabinet.

Yours faithfully

Sd/-

Under Secretary (Pers.) to
the Govt. of Himachal Pradesh."

79. Thus, it is clear from the perusal of the above letter that the Government has taken a policy decision to make appointments on contract basis to different cadres, including Class-III and Class-IV cadres against which the compassionate employment is provided. As discussed hereinabove, the compassionate employment is an exception and the person is given appointment without undergoing any selection process. The persons, who are directly appointed have to undergo the selection process as prescribed in the Recruitment Rules and only thereafter, are appointed, and that too, on contract basis. Thus, it would be inappropriate to entitle a person for appointment on regular basis who is given employment out of compassion and without undergoing the rigors of the selection process, and the another person, who has put himself to the test and got selected, is offered appointment on contract basis. If that is permitted, then the persons appointed on compassionate ground would steal a march over and above the persons who are appointed through a selection process, which would be against the concept of service jurisprudence and also not in consonance with the mandate of Articles 14 and 16 of the Constitution of India.

80. Thus also, the appointments on compassionate ground made on contract basis are legally correct and need no interference."

The appointments on compassionate grounds made on contract basis were held to be legally correct inter alia taking into consideration Government letter dated 12.12.2003 whereby a policy decision was taken to make appointments as per Recruitment & Promotion Rules but on contract basis to different cadres including Class-III & Class-IV cadres against which compassionate employments are provided and also keeping in view the equities when those after undergoing selection process as per Recruitment & Promotion Rules get appointed on contract basis.

2(iii). Respondents instituted Civil Appeals No. 978-984 of 2019 against the above decision rendered on 06.10.2015 in some of the connected matters. Decision rendered in CWP No. 9094 of 2013 (filed by the petitioner herein) was also assailed by the respondents before the Hon'ble Apex Court. Hon'ble Apex Court held as under in the Civil Appeals (vis-a-vis petitioner's case):-

"These appeals arise from a common judgment of the High Court of Himachal Pradesh in CWPs. No. 9094/2013, 9113/2011, 10185/2011, 2035/2012, 5753/2012, 6286/2012 and LPA No. 62/2014.

C.W.P. No. 9094 of 2013 was treated by the High Court to be the lead petition.

In these cases, the application for compassionate appointment was considered

by the State Government in view of an amendment dated 25 September 2010 to its original policy dated 18 January 1990. The amendment stipulated that the State Government had decided to deal with cases of widows and applicants who were orphans on a priority basis.

The High Court has directed consideration of all the applications in terms of its decision.

Since the applications filed by the petitioners before the High Court in the above petitions were not considered by the State Government, we now direct that the State shall do so and pass a reasoned order within a period of two months.

In considering the applications, the State Government shall be bound by the terms of its policy and the judgment delivered by this Court on 16 January 2019 in *State of Himachal Pradesh vs. Shashi Kumar* (2019) 3 SCC 653."

Hon'ble Supreme Court directed the respondents to decide the cases by passing reasoned order within two months with further rider that while considering the applications, the State Government would be bound by the terms of its Policy and the judgment passed by the Apex Court in *State of Himachal Pradesh vs. Shashi Kumar* (2019) 3 SCC 653. The aforesaid was a separate appeal instituted by the State against the same decision but confined to Points No. (i) & (vii) in the judgment dated 06.10.2015 {extracted in 2(ii) above}. The instant case does not pertain to Points No. (i) & (vii).

2(iv) Respondents eventually passed the consideration order in petitioner's case on 02.01.2023 giving him employment on compassionate grounds against Class-IV post but on daily wage basis.

It is in the above background the petitioner instituted this writ petition on 13.09.2023 with the grievance he was required to be appointed on regular basis and not on daily wage basis.

3. Heard learned counsel for the parties and considered the the case file.

4. Consideration

The respondents have given employment to the petitioner on compassionate grounds against vacant Class-IV post on daily wage basis vide order dated 02.01.2023. The petitioner claims that he was required to be given compassionate appointment on regular basis.

4(i) The order passed by the respondents on 02.01.2023 employing petitioner on compassionate grounds does not give any reason as to why he was employed on daily wage basis and not on regular or contract basis. The only part of the order relevant for adjudicating the point involved in the lis is that respondents in terms of order dated 02.01.2023 have held that the petitioner's case was required to be and had been considered in terms of the Compassionate Employment Policy dated 18.01.1990 (in short 'the 1990 Policy').

4(ii) As case of the petitioner was admittedly considered for employment on compassionate grounds under the 1990 Policy, it would be appropriate to refer to relevant part of this Policy placed on record by the respondents with their reply. Clause 2 of the 1990 Policy provides for giving compassionate employment on daily wage basis to the kith & kin of an employee who dies while in daily wage service of the respondents-State, on fulfillment of certain terms & conditions. The Clause reads as under:-

“(2) To whom the policy is applicable:- The employment assistance on compassionate grounds will be allowed in order of priority only to widow or a son or an unmarried daughter (in case of unmarried Govt. servant to father, mother, brother and unmarried sister) of:-

(a) a Govt. servant who dies while in service (including by suicide) leaving his family in immediate need of assistance.

(b) a Daily wage employee who dies while in service after having rendered at least 5 years service with not less than 240 days on daily wage basis in a year to be computed as an average of the number of days served in the preceding years) leaving his family in immediate need of assistance. In such cases compassionate employment would be on daily wages only.

(c) a Govt. Servant who has been missing for more than two year and the family needs the immediate assistance.

(d) a Govt. servant (Class-III and IV only) who retires on medical grounds under rule 38 of the C.C.S. (Pension) rules, 1972.

Provided the employee so retiring has not crossed the age of 53 years and 55 years in case of Class-III and IV respectively.

(e) a Govt. servant who dies during the period of extension in service but not re-employment, leaving his family in immediate need of assistance.”

It is an admitted position that petitioner’s father was a regular employee of the respondents. The 1990 Policy does not stipulate that in case of death of a regular government employee his eligible kith & kin/dependent was to be provided employment on daily wage basis. Such provision for employment on daily wage basis was specifically incorporated in the 1990 Policy for considering the cases of dependents of those employees of the respondents-State who died while serving on daily wage basis. Thus the 1990 Policy under which the respondents-State considered the case of petitioner for employment on compassionate grounds, did not provide for employing dependents of a deceased regular government servant, on daily wage basis.

The 1990 Policy does not envisage that upon death in harness of a government servant who was employed on regular basis, the employment assistance to his eligible kith & kin is to be offered on daily wage basis. In fact, the 1990 Policy contains special provision for providing employment on daily wage basis to the

kith & kin of deceased daily wage employee. Thus, it is to the kith & kin of deceased daily waged employee that employment assistant is to be offered on daily wage basis. This provision however cannot be interpreted to mean that employment on compassionate grounds in all cases is to be offered on daily wage basis. This is erroneous interpretation on part of the respondents. The legal heir, of the government servant who died in harness as regular employee, has to be offered employment as per the 1990 Policy on regular/contract basis. Respondents have failed to justify offering compassionate employment on daily wage basis to the petitioner whose father died in harness as a regular employee.

4(iii) It will also be appropriate to refer to a decision rendered by the Hon'ble Apex Court in Himachal Road Transport Corporation vs. Lekh Ram etc. Civil appeal Nos. 1557-1564 of 2019 decided on 08.02.2019. In the said case, HRTC had provided compassionate employment on contract basis. The aforesaid litigation concerned the date from which services of those employed in HRTC on compassionate grounds, were to be treated as regular.

The employees therein were though initially appointed on compassionate grounds on contract basis, however Hon'ble Apex Court held that the Policy under which the cases of employment on compassionate grounds was considered by HRTC on 20.10.2000 did not stipulate making such appointment on contract basis. It was held that the employees therein were entitled to regular employment from the date they were appointed on compassionate grounds on contract basis. Relevant portion of the decision reads as under:-

"On 20 December 2012, Lekh Ram was given contractual appointment by the appellant as a clerk, subject to the final outcome of the proceedings before this Court in another case filed before this Court by the appellant. Eventually, as the chart extracted earlier indicates, Lekh Ram was regularized on 5 July 2017. The other seven employees were similarly appointed on contract under the policy of compassionate appointment. They have also been regularized on 5 July 2017.

The issue which now remains to be considered is as to whether these employees who have been regularized would be entitled to the benefit of the period since the date on which they were appointed on contractual terms until the date of regularization.

The order of the High Court dated 12 January 2012 was confirmed by this Court on 8 March 2013. The High Court specifically directed that the case of Lekh Ram had to be considered in accordance with the policy in existence on 20 October 2000 when his father retired from service. Before us, it has not been disputed that the policy which was in existence then did not stipulate the making of such an appointment on contract. Lekh Ram, as an eligible employee whose claim for compassionate appointment had been accepted by the appellant, was entitled to be appointed as a regular employee. The case of the other seven employees stands on the same footing. The appellant was manifestly in error in appointing them on contractual terms. This was not in accordance with the policy which was

to be applied in terms of the judgment of the High Court, as affirmed by this Court. All the employees continued to work from the initial date of their appointment in 2012-13 on a contractual basis and even thereafter when they were regularized. Under the judgment of the High Court, as affirmed by this Court and the governing policy, they were entitled to regular appointment.

In this view of the matter, it would be appropriate to order and direct that each of the eight employees to whom these appeals relate would be entitled to the benefit of all the regular terms and conditions of service with effect from the initial dates of their appointment on contractual terms, as indicated in the chart extracted above. The above period of service shall also be reckoned for seniority and for terminal benefits as and when they fall due. Arrears of salary payable to the respondents on this basis shall be computed and paid over within two months from the date of this order.”

In Lekh Ram’s case³ the Hon’ble Apex Court was considering a compassionate appointment policy followed by HRTC as on 20.10.2000. It was held that the Policy under which the cases of employment on compassionate grounds were considered by HRTC, did not stipulate making such appointment on contract basis and, therefore, the employees therein were held entitled to regular employment from the date they were appointed on contract basis.

4(iv) It is admitted case of the respondents that case of the petitioner was covered under the 1990 Policy. Respondents have themselves considered the case of the petitioner for employment on compassionate grounds under the 1990 Policy. Petitioner’s father died on 26.06.2003. Petitioner had admittedly applied for appointment on compassionate grounds in December, 2003. At the time of death of petitioner’s father and at the time he had applied for appointment on compassionate grounds there was no provision in the 1990 Policy for providing such employment on daily wage basis to the kith & kin of deceased government employee who died in harness while serving on regular basis. That said, it is also to be noticed that while deciding petitioner’s writ petition bearing CWP No. 9094 of 2013, Hon’ble Division Bench while taking note of government letter dated 12.12.2003 has held that the government henceforth took a policy decision to make appointments on contractual basis after following the selection process as per Recruitment & Promotion Rules. That when those who after following proper recruitment & selection process are appointed on contract basis, it would then be inappropriate to entitle a person to be appointed on regular basis on compassionate ground and consequently to let him steal march over those persons who get appointed under proper recruitment process. These findings returned by the Division Bench have not been assailed by the petitioner. Hence petitioner though cannot be held entitled to regular appointment as a compassionate appointee, but he is certainly entitled to contractual appointment.

No other point was urged.

5. In view of above discussion, this writ petition is allowed to the extent that the

petitioner shall be deemed to have been appointed on compassionate grounds on contract basis from the date of his initial appointment on daily wage basis. He shall also be entitled to all consequential benefits. This be complied with, within four weeks from today.

Petition stands disposed of in the aforesaid terms, so also the pending miscellaneous application(s), if any.