

PETITIONER:
STATE OF HARYANA & ORS

Vs.

RESPONDENT:
RANI DEVI & ANR.

DATE OF JUDGMENT: 15/07/1996

BENCH:
SINGH N.P. (J)
BENCH:
SINGH N.P. (J)
AHMAD SAGHIR S. (J)

CITATION:
JT 1996 (6) 646 1996 SCALE (5)338

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

N.P. SINGH. J.

Leave granted.

These appeals have been filed on behalf of the State of Haryana for setting aside the orders passed on two writ petitions filed by respondents Rani Devi and Anguri Devi, directing the appellant-State to appoint the said respondents against class-IV posts on compassionate grounds in view of the fact that their respective husband died while working as Apprentice Canal Patwaris. The husband of respondent Rani Devi worked as Apprentice Canal Patwari from 25.8.1987 to 25.2.1989, whereas the husband of respondent Anguri Devi worked as Apprentice Canal Patwari from 15.7.1992 to 2.6.1993.

There is no dispute that the husbands of the two respondents had been appointed on ad-hoc basis as Apprentice Canal Patwaris. According to the court punishment, in this back ground there is no question of issuing any direction in respect of appointments of the respondents who are the widows on compassionate grounds. In this connection, our attention was drawn to the Punjab Civil Services Rules which we are informed are in force even in the State of Haryana. Paragraph 2.6 of chapter II defines 'Apprentice' to mean a person deputed for training in a trade or business with a view to employment in Government service, who draws pay at monthly rates from the Government during such training, but is not employed in or against a substantive vacancy in the cadre of the department. Reference was also made to the decision of the State Government which was notified on 9.5.1972 saying that the scheme of benefit of ex-gratia payment to the dependant of the employees of the Haryana Government who died while in service was not applicable to ad-hoc employees. The stand of the State is that any scheme in respect of payment to one of the dependents of the deceased Government employee is not applicable to casual, ad-hoc employees or employees who are just apprentices.

It appears that on 31.10.1985, a communication was issued by the State Government to all concerned saying that Government had introduced payment of ex-gratia grant for the welfare of the 'deceased Government employees' in order to assist the members of the bereaved family for settling themselves. The scheme also conceived giving employment to one of the dependants of the deceased employee. According to state, the expression 'employee' used in the aforesaid communication shall not include casual, ad-hoc employee or a person who has been appointed as an Apprentice.

The question of appointment of one of the dependants of an employee of the State or Central Government who dies while in service has of late assumed importance and subject matter of controversy before different courts. This Court in the case of Smt. Sushma Gosain & Ors. vs. Union of India & Ors., AIR 1989 SC 1976 = (1989) 4 SCC 468 after referring to the Government Memorandum under which the appointment on compassionate ground was being claimed observed that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family. It cannot be on disputed that appointment on compassionate ground is an exception to the equality clause under Article 14 and can be upheld if such appointees can be held to form a class by themselves, otherwise any such appointment merely on the ground that the person concerned happens to be a dependant of an ex-employee of the State Government or the Central Government shall be violative of Articles 14 and 16 of the Constitution. But this Court has held that if an employee dies while in service then according to rule framed by the Central Government or the State Government to appoint one of the dependants shall not be violative of Articles 14 and 16 of the Constitution because it is to mitigate the hardship due to the death of the bread earner of the family and sudden misery faced by the members of the family of such employee who had served the Central Government or the State Government. It appears that this benefit has also been extended to the employees of the authorities which can be held to be a State within the meaning of Article 12 of the Constitution. But while framing any rule in respect of appointment on compassionate ground the authorities have to be conscious of the fact that this right which is being extended to a dependant of the deceased employee is an exception to the right granted to the citizen under Articles 14 and 16 of the Constitution. As such there should be a proper check and balance. Of late, it appears the right to be appointed on compassionate ground is being claimed as a right of inheritance irrespective of the nature of service rendered by the deceased employee. In many cases, applications for appointments on compassionate grounds are being made even after 10-15 years because on the date of the death of the employee the applicant was a minor and could not have been appointed. In the case of Life Insurance Corporation of India vs. Asha Ramchandrar Ambekar & Anr., (1994) 2 SCC 718 this Court pointed out that the High Courts and the Administrative Tribunals cannot issue directions on sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. Any such right for appointment on compassionate ground flows on basis of rules, regulations or some administrative order issued in the form of resolution or office memorandum. In the case of Umesh Kumar Nagpal vs. State of Haryana & Ors., (1994) 4 SCC 138, it was impressed that as a rule, appointments in public services should be made strictly on

basis of open invitation of applications and merit. The appointment on compassionate ground was an exception to the aforesaid rule taking into consideration the fact of the death of the employee while in service and leaving his family without any means of livelihood. In such cases, the object is to enable the family to tide over sudden crisis. However, such appointments on compassionate grounds have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. In the case of State of Haryana vs. Naresh Kumar Bali, (1994) 4 SCC 448 on an appeal filed by State of Haryana, a 3-Judges Bench of this Court deprecated the direction given by the High Court to appoint the respondent of the said case against a post of an Inspector and it was observed that the High Court should have merely directed consideration of the claim of the said respondent in accordance with rules.

It need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the ground that he was a dependant on the deceased employee. Strictly this claim cannot be upheld on the touch stone of Articles 14 or 16 of the Constitution. But this Court has upheld this claim as reasonable and permissible on employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16.

So far the facts of the present case are concerned, we fail to appreciate as to how the High Court directed that the respondents aforesaid be appointed on compassionate ground when admittedly the respective husbands of the respondents were working as Apprentice Canal Patwaris for the periods mentioned above. If the scheme regarding appointment on compassionate ground is extended to all sorts of casual, ad-hoc employees including those who are working as Apprentices, then such scheme cannot be justified on constitutional grounds. It need not be pointed out that appointments on compassionate grounds, are made as a matter, of course, without even requiring the person concerned to face any Selection Committee. In the case of Umesh Kumar Nagpal vs. State of Haryana & Ors. (supra) it was said:

"It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Class III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity."

It was also impressed that appointments on compassionate ground cannot be made after lapse of reasonable period which must be specified in the rules because the right to such employment is not a vested right which can be exercised at any time in future.

According to us, when the aforesaid Government Order dated 31.10.1985 extends the benefit of appointment to one

of the dependants of the 'deceased employee' the expression 'employee' does not conceive casual or purely ad-hoc employee or those who are working as apprentices. Accordingly, the appeals are allowed and the impugned orders on the two writ petitions, filed on behalf of the respondents are set aside. In the facts and circumstances of the case, there shall be no order as to costs.

JUDIS