

CASE NO.:
Appeal (civil) 6950 of 2003

PETITIONER:
State of Haryana and Anr.

RESPONDENT:
Ankur Gupta

DATE OF JUDGMENT: 03/09/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT.

JUDGMENT:
J U D G M E N T

(Arising out of SLP(C) No. 12196/2002)

ARIJIT PASAYAT, J

Leave granted.

The compassion shown by functionaries of the appellant-State by giving appointment to respondent on compassionate ground (under die-in-harness scheme) was nullified by a subsequent order. The respondent questioned legality thereof before the Punjab and Haryana High Court at Chandigarh. By the impugned judgment, the High Court held that though the appointment may not have been in accordance with the policy of compassionate appointment, yet the fact that the respondent (writ petitioner) had worked for about 4 years and was not guilty of any fraud or misrepresentation in seeking appointment under the scheme, the impugned order dated 24.9.2001 was not justified.

Factual position is almost undisputed and brief reference thereto would suffice.

Father of respondent while in service died on 21.12.1996. Prior to that i.e. on 22.8.1996 the policy relating to compassionate appointment as was inoperative earlier was modified. The modification was done in view of a decision of the Punjab and Haryana High Court. Prior to the modification there was no embargo on a person getting appointment under the compassionate appointment scheme, even though one of his parents was in service at the time when the other expired. The High Court held that the very purpose of compassionate appointment was lost by this method of appointment. It was, therefore, held that dependant of a deceased government employee shall not be entitled to employment on compassionate grounds in case one of his parents is alive and is in government employment. In view of the change, no person was entitled to be considered for compassionate appointment where one of his parents is alive and is in government employment. As the respondent's mother was in government employment, the authorities felt that his appointment was not permissible, in view of clear stipulation in the policy decision dated 22.8.1996. The appointment was sought to be nullified by order dated 18.5.2001. The respondent was appointed as a clerk on 12.9.1997 on compassionate grounds under the die-in-harness scheme. Show notice was issued on 18.5.2001. The respondent

submitted his reply, and by order dated 26.9.2001 the appointment letter issued on 12.9.1997 was cancelled. As noted above, the High Court nullified the action.

Learned counsel for the appellant-State submitted that the approach of the High Court is erroneous. When the appointment was made in violation of the policy, and by mistake respondent had been appointed, that does not confer any legal right upon him. In response, learned counsel for the respondent submitted that as rightly observed by the High Court, there was no misrepresentation or fraud practised by the respondent in gaining employment. The respondent has worked for more than 4 years and in view of what has been stated by this Court in *Union of India and Ors. v. K.P. Tiwari* (2002 (1) LLJ 672), jurisdiction under Article 136 of the Constitution of India, 1950 (in short the 'Constitution') should not be exercised.

We find that the appointment admittedly was not permissible in view of the policy which came into force from 22.8.1996. The earlier policy was changed in view of a decision of the High Court. The correctness of the policy decision was not under challenge.

As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (JT 1996 (6) SCC 646), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such 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. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In *Rani Devi's case* (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In *Life Insurance Corporation of India v. Asha Ramchandrar Ambekar (Mrs.) and Anr.* (1994 (2) SCC 718) it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994 (4) SCC 138) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground 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 Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. (1998 (5) SCC 192) it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

These aspects have been highlighted by this Court in a recent decision in State of Manipur v. Md. Rajaodin.

Above being the legal position, the logic of the policy cannot be undermined. Coming to the question whether there was any fraud or misrepresentation we find that right from the beginning, the concerned officers were acting in a manner contrary to the policy. When the Director of Industrial Training and Vocational Education, Haryana wrote to the Commissioner and Secretary, Haryana Government, Industrial Training and Vocational Education Department on 22.5.1997, it was clearly indicated that mother of respondent was already in government service. It was also noted that according to the Government instructions only those dependants of the deceased employee/officer whose family income is up to Rs.2500/-p.m. can be appointed. In the letter itself it is mentioned that the monthly salary of respondent's mother was Rs.5,880/- and, therefore, there was no scope for appointing the respondent. Having said so it was indicated that relaxation may be given in his case. The High Court proceeded on the basis as if there was relaxation of the stipulations. No provision could be shown to us whereby relaxation is permissible, particularly when the policy in this respect was modified on the basis of and in implementation of the decision of the High Court. Though learned counsel for the respondent referred to the 1970 guidelines where there was scope for relaxation, the same does not assist the respondent because that was operative at a point of time when the policy dated 22.8.1996 notified to be in line with the High Court's judgment was not in operative.

Looked at from any angle the view of the High Court is indefensible. The judgment of the High Court is, therefore, set aside. But while allowing the State's appeal it cannot be lost sight of that the respondent was in government service for more than about 4 years. It is stated by learned counsel for the respondent that he has already become over-aged for government employment. In the peculiar circumstances, in case the respondent applies for a job in the government within a period of two years and is selected de hors the compassionate appointment scheme, the question

of his having crossed the age bar, would not stand on his way and the service rendered by him shall be duly considered. The appeal is allowed subject to the aforesaid observations. Costs made easy.

JUDIS