

CASE NO.:
Appeal (civil) 5185 of 2002

PETITIONER:
N.H.P.C & Anr.

RESPONDENT:
Nanak Chand & Anr.

DATE OF JUDGMENT: 15/10/2004

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:
J U D G M E N T

ARIJIT PASAYAT, J.

Challenge in this appeal is to the legality of judgment rendered by a Division Bench of the Himachal Pradesh High Court directing that Nanak Chand (respondent herein) be given compassionate appointment by the Union of India through the Secretary, Power, Government of India, either by directing National Hydroelectric Power Corporation (hereinafter referred to as the 'Corporation' appellant no.1 herein) or in any of its projects/establishments, Corporations appropriately. It was further directed that in case the present appellant shows reluctance in spite of being asked by the Union of India to give appointment, then the Union of India would be duty bound to engage him and if that contingency arises the respondent herein would be entitled to back wages from February 1, 1993 i.e. the date of filing of the writ petition provided he was not gainfully employed.

Factual background which is almost undisputed is as follows:

Father of respondent one Shri Shakti Prasad was working under Baira Siul Hydroelectric Project of the Government of India. While so working he died on 10.12.1976. The said Shakti Prasad was survived by his widow and three children. In full and final settlement of her claim the widow received Rs.19,200/- as per the existing rules. On 20.1.1978 the said Baira Siul Hydroelectric Project was handed over to the appellant-Corporation by Government of India by virtue of a deed of transfer. After attaining majority in 1986 the respondent filed an application for appointment on compassionate ground. The application was rejected on the ground that application has been made after 10 years of the death of his father and also that the Corporation had already surplus staff. On 9.5.1989 the Chairman-cum-Managing Director of the Corporation laid down guidelines to the effect that request for compassionate appointment has to be made within six months of the occurrence of death. Respondent was informed by the authorities of the Corporation about the rejection of his application. On 30.6.1992 the respondent approached the Deputy Commissioner, Chamba for compassionate appointment in the aforesaid Baira Siul Project. By letter dated 30.6.1992 the Deputy Commissioner informed the respondent that since his claim for appointment had already been rejected, there was no scope for any further consideration. Sometimes in the year 1993 i.e. after about 7 years of initial rejection of the request, respondent filed a writ petition CWP No. 161 of 1993 before the Himachal Pradesh High Court. The writ petition was contested on several grounds by the present appellants. It was the primary stand that it was a highly belated approach for compassionate appointment and in any event the Corporation was not required to deal with the matter.

The respondent's father was not an employee of the Corporation and when he died he was employed by the Central Government. The High Court referred to instructions issued by Government of India as contained in Swamy's Complete Manual and Establishment and Administration, 5th Edition, Chapter XXIX and held that respondent was entitled to the directions.

Learned counsel for the Corporation submitted that the directions given for appointment on compassionate grounds were clearly erroneous. The instructions of the Government as contained in Swamy's Manuals are not applicable to the Corporation which had its own administrative instructions. The highly belated application should have been thrown out at the threshold by the High Court. The purpose of compassionate appointment is to meet unforeseen financial constraints and therefore no direction should have been given for appointment as done by the High Court.

In response, learned counsel for the respondent no. 1 submitted that keeping in view the ground realities the High Court has given the direction and this is not a fit case where any interference should be done by this Court.

It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises.

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 Ramchandra 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 Smt. Sushma Gosain and Ors. v. Union of India and Ors. (1989 (4) SCC 468) it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should,

therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated in Phoolwati (Smt.) v. Union of India and Ors. (1991 Supp. (2) SCC 689) and Union of India and Ors. v. Bhagwan Singh (1995 (6) SCC 476). 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.

In State of U.P. and Ors. v. Paras Nath (1998(2) SCC 412) it was held that the purpose of providing employment to the dependant of a government servant dying-in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

These aspects were highlighted in State of Manipur v. Md. Rajaodin (2003 (7) SCC 511), State of Haryana & Anr. v. Ankur Gupta (2003 (7) SCC 704), Haryana State Electricity Board v. Naresh Tanwar (1996 (8) SCC 23) and Haryana State Electricity Board v. Hakim Singh (1997 (8) SCC 85) and Punjab National Bank and Ors. v. Ashwini Kumar Taneja (Civil Appeal No. 5256 of 2004 decided on 16.8.2004)

Above being the position, we find the judgment of the High Court to be unsustainable. The same is, therefore, set aside.

Our judgment, however, will not stand in the way of the respondent's case being considered sympathetically under any scheme or by any administrative decision in accordance with law.

The appeal is allowed with no orders as to costs.