

## Union Of India & Anr vs B. Kishore on 6 April, 2011

**Equivalent citations:** 2011 AIR SCW 2293, 2011 (13) SCC 131, 2011 LAB IC 2137, 2011 (3) AIR JHAR R 542, (2011) 2 JCR 225 (SC), (2011) 129 FACLR 944, (2011) 2 ESC 305, (2011) 4 MAD LW 850, (2011) 3 SCT 18, (2011) 2 SERVL R 790, (2011) 4 SCALE 298, (2011) 3 CGLJ 9, (2011) 2 SERVLJ 264, (2011) 4 ALL WC 3757, (2011) 2 CURLR 4, 2011 (2) KLT SN 65 (SC), 2011 (3) KCCR SN 272 (SC), 2011 (8) ADJ 67 NOC

**Author:** Aftab Alam

**Bench:** R.M. Lodha, Aftab Alam

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1045 OF 2006

UNION OF INDIA & ANR.

... APPELLANTS

VERSUS

B. KISHORE

... RESPONDENT

J U D G M E N T

Aftab Alam, J.

1. This appeal by special leave is directed against the judgment of the Division Bench of the Madras High Court. By the judgment and order coming under appeal, the High Court directed the appellants to include the name of the respondent in the list of candidates waiting for appointment under the scheme of "compassionate appointments".

2. The wife of the respondent K. Janaki died on September 1, 1993, while giving birth to their second child. At that time she was working as a Senior Accountant in the Office of the Directorate of Postal Accounts, Madras. On September 21, 1993, the respondent made an application for payment of her death-cum-terminal dues. A rival claim was raised by the mother of the deceased but the respondent was able to obtain the succession certificate and on that basis he got payment of a sum of Rs.71,000/- as death-cum-retirement gratuity of his deceased wife, in addition to a sum of Rs.2,998/- per month as family pension.

3. On January 11, 1994, the respondent made the request for compassionate appointment but he was informed by the concerned departmental authorities that his claim for compassionate appointment would be considered only after the settlement of the rival claims for payment of the death-cum-terminal dues of K. Janaki. After payment of the monetary dues to the respondent, his claim for appointment on compassionate basis was taken up and he was asked to submit proof of passing the S.S.L.C. examination. On July 9, 1996, the respondent made another representation for appointment on compassionate grounds. His case was finally considered by the Circle Selection Committee and he was informed by letter dated February 26, 1998, that he was not found entitled to appointment on compassionate grounds because he was not considered to be "in indigent circumstances".

4. The respondent challenged the decision of the Circle Selection Committee before the Central Administrative Tribunal, Madras Bench in O.A. No.610/1998. The Tribunal dismissed the O.A. by order dated July 16, 1998. Against the order passed by the Tribunal, the respondent went to the Madras High Court in Writ Petition No.12225/1998. A Division Bench of the High Court allowed the Writ Petition with the direction to the appellants to include his name in the list of candidates waiting for appointment on compassionate basis. The High Court in the judgment coming under appeal observed as follows:-

"In deserving cases even when there is an earning member in the family, compassionate appointment may be offered, if the family is found to be in distress, with the prior approval of the Secretary of the Department concerned."

It went on to say:

"The Scheme, therefore, does not lay emphasise on the indigency as a criterion for withholding or offering compassionate appointment. Compassionate appointment is

to be made as a result of the death of the deceased official and when his/her family is in immediate need of assistance."

(emphasis added) It further said:

"Admittedly, there is a young son has to be looked after and brought up. It cannot, therefore, be said that the family is not in need of income. The fact that the family receives pension also no ground to decline appointment nowhere provides that in case where the family is paid pension."

5. On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court's observation, indigence of the dependents of the deceased employee is the first pre-condition to bring the case under the scheme of "compassionate appointment". The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

6. In *State Bank of India v. Raj Kumar*, (2010) 11 SCC 661, elucidating the nature of the scheme of compassionate appointments this Court observed:

"It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."

7. The Central Government issued revised and consolidated instructions in connection with the scheme of compassionate appointments under the Central Government vide Office Memorandum dated October 9, 1998. Clause 1 of the Office Memorandum describes the object of the Scheme as under:-

"The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency."

(emphasis added) Clause 5 lays down the eligibility criterion and provides as follows:-

"(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and

(b) Applicant for compassionate appointment shall be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules."

(emphasis added) Clause 7 deals with availability of vacancies and sub-clause (b) provides as follows:-

"(b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds."

8. In the writ petition filed by the respondent before the High Court it was stated that he was unemployed. It was further stated that in August, 1988, one of his friends took him to Singapore in search of employment. But there too the respondent was unable to find a "lucrative job". He came back to India after staying there for about four years in 1992. From the writ petition it appears that though the respondent might have been struggling for financial upliftment, he certainly cannot be described as an indigent or destitute.

9. The case of the respondent clearly did not come under the revised and consolidated scheme formulated by Office Memorandum dated October 9, 1998, that had come into force when his case came up for consideration before the High Court. Even otherwise and without any reference to the Office Memorandum dated October 9, 1998, the case of the respondent does not meet or satisfy the basic object and purpose of appointment on compassionate grounds.

10. The High Court was, therefore, in error in passing the impugned order.

11. It further appears that an important and relevant fact was completely missed out in considering the respondent's claim for appointment on compassionate basis. From the records it appears that in the verification appended to his OA before the Tribunal he gave his age as 58 years in June, 1998. Unless his age is wrongly stated in the verification to the OA, he would be 54 years of age when he made the application for compassionate appointment and 61 years old when the High Court allowed his Writ Petition. In other words, he was already beyond the age of superannuation and there was

no question of his appointment on compassionate ground or on any other grounds.

12. In light of the discussions made above, the order coming under appeal is wholly unsustainable.

It is set aside. The appeal is allowed but with no order as to costs.

.....J. (Aftab Alam) .....J. (R.M. Lodha)  
New Delhi;

April 6, 2011.