

FERTILIZERS AND CHEMICALS TRAVANCORE LTD. & ORS. A

v.

ANUSREE K.B.

(Civil Appeal No. 6958 of 2022)

SEPTEMBER 30, 2022 B

[M. R. SHAH AND KRISHNA MURARI, JJ.]

Service Law – Compassionate Appointment – Application for, rejected – Writ petition – High Court directed appellants to re-consider appointment on compassionate grounds – Propriety – Held: Not proper – The whole object of granting compassionate employment is to enable the family of the deceased to tide over the sudden crisis – On facts, application for compassionate appointment was tendered 14 years after death of the employee concerned – Further, 24 years have lapsed since death of the employee – If such compassionate appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided. C D

Service Law – Compassionate appointment – Object and purpose of – Principles governing grant of appointments on compassionate ground – Discussed. E

Allowing the appeal, the Court

HELD:1.1. Compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased. [Para 9][274-F-H] F G

- A **1.2. Considering the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the**
- B **deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided. [Para 9.1][275-A-C]**
- C *Director of Treasuries in Karnataka and Anr. v. V. Somyashree (2021) SCC Online SC 704 and State of Himachal Pradesh and Anr. v. Shashi Kumar (2019) 3 SCC 653 : [2019] 2 SCR 432 – relied on.*
- D *N. C. Santhosh v. State of Karnataka (2020) 7 SCC 617 : [2020] 3 SCR 1177 and Govind Prakash Verma v. LIC (2005) 10 SCC 289 – referred to.*

Case Law Reference

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|---|-------------------|-------------|----------|
| E | [2020] 3 SCR 1177 | referred to | Para 3 |
| | [2019] 2 SCR 432 | relied on | Para 8.1 |
| | (2005) 10 SCC 289 | referred to | Para 8.1 |

- F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 6958 of 2022.

From the Judgment and Order dated 31.03.2022 of the High Court of Kerala at Ernakulam in W.A. No.543 of 2021.

- G Siddhartha Jha, Ms. Pracheta Kar, Aditya Sidhra, Nadeem Afroz, Advs. for the Appellants.

Sanjay Parikh, Sr. Adv., Ms. Srishti Agnihotri, Adv. for the Respondent.

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The Judgment of the Court was delivered by A

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 31.03.2022 passed by the High Court of Kerala at Ernakulam in Writ Appeal No. 543 of 2021 by which the Division Bench of the High Court has dismissed the said writ appeal preferred by the appellants and has confirmed the judgment and order passed by the learned Single Judge directing the appellants to consider the case of the respondent herein for appointment on compassionate ground, the original appellants – Fertilizers and Chemicals Travancore Ltd. and Ors. have preferred the present appeal. B C

2. The facts leading to the present appeal in nutshell are as under:-

2.1 That father of the respondent was employed as a loading helper with the appellant No. 1 and expired while on duty on 19.04.1995. At the time of death of the employee, the wife of the deceased employee was serving and therefore, was not eligible for appointment on compassionate ground considering the scheme for employment of dependents of the employees dying in harness. After a period of 14 years, after the death of the deceased employee, the respondent daughter of the deceased employee made a representation seeking appointment on compassionate basis. That her application for compassionate appointment was rejected on 12.02.2018 on the grounds that her name was not in the list of dependents submitted by the deceased employee and that the policy was to give employment to widow or son or unmarried daughter of the deceased employee. D E

2.2 The rejection of the application for compassionate appointment was the subject matter of writ petition before the learned Single Judge. F
Vide order dated 13.11.2019, the learned Single Judge disposed of the writ petition with the directions to the appellants to reconsider the application of the respondent in accordance with Clause 1 of the Scheme.

2.3 That on 12.12.2019, after reconsideration, the appellants again rejected the application of the respondent for appointment on compassionate ground on the grounds that it did not meet the primary test of scheme that the deceased employee should be the “sole bread winner of his family”, since his wife was gainfully employed with the Kerala State Health Services Department at the time of his death and G H

A also on the ground that 24 years have lapsed since the date of death of the deceased employee.

2.4 Feeling aggrieved and dissatisfied with the order dated 13.11.2019, rejecting the application of the respondent for appointment on compassionate ground, the respondent filed a writ petition before the High Court.

2.5 By the judgment and order dated 22.01.2021, the learned Single Judge allowed the said writ petition and directed the appellants to reconsider the respondent's claim strictly in terms of the observations and directions passed in the order of the learned Single Judge dated 13.11.2019 passed in Writ Petition No. 11234 of 2018 (earlier round of litigation).

2.6 The judgment and order passed by the learned Single Judge was the subject matter of appeal before the Division Bench of the High Court by way of present writ appeal. By the impugned judgment and order, the Division Bench of the High Court has dismissed the said writ appeal, which has given rise to the present appeal before this Court.

3. Shri Siddharth Jha, learned counsel appearing on behalf of the appellants has vehemently submitted that in the facts and circumstances of the case and, more particularly, when the application for appointment on compassionate ground was made by the respondent – daughter of the deceased employee after a period of 14 years from the death of the deceased employee, the Hon'ble High Court ought not to have directed the appellants to reconsider the case of the respondent for appointment on compassionate ground. It is submitted that to reconsider the case of the respondent now for appointment on compassionate ground after a period of 24 years would be against the object and purpose of appointment on compassionate ground namely to meet out the difficulties created on account of sudden death of the sole bread earner. Reliance is placed on the decision of this Court in the case of **Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704** and another decision of this Court in the case of **N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617**.

3.1 Making above submissions and relying upon the above decisions, it is prayed to allow the present appeal.

4. Present appeal is vehemently opposed by Shri Sanjay Parikh, learned Senior Advocate appearing on behalf of the respondent.

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4.1 It is submitted that at the relevant time when the deceased employee died in the year 1995, the respondent was minor. It is submitted that on attaining the age of majority, the respondent daughter made an application for appointment on compassionate ground. It is submitted that initially when the application of the respondent for appointment on compassionate ground was rejected, the same was not on the ground subsequently mentioned while passing the order dated 13.11.2019 namely delay. It is submitted that in the year 2018, even the respondent was called for the interview, however, at that time, the appointment was denied on the ground that in the dependent's list, the name of the respondent is not mentioned, which was found to be factually incorrect. It is submitted that therefore, the respondent cannot be denied the appointment on compassionate ground on the ground of delay. Therefore, it is prayed not to interfere with the impugned judgment and order passed by the High Court.

5. Heard the learned counsel for the respective parties at length.

6. The respondent's father was serving as a loading helper. He died in the year 1995. At the relevant time, the widow of the deceased employee – mother of the respondent was serving in the Kerala State Health Services Department and, therefore, as such was not eligible and/or entitled for appointment on compassionate ground. After a period of approximately 14 years, the respondent being a daughter of the deceased employee submitted an application for appointment on compassionate ground, which has been rejected by the appellants. At this stage, it is required to be noted that in the meantime, the respondent got married in the year 2013. It is also required to be noted that by the time, the learned Single Judge passed the order, which has been confirmed by the Division Bench, more than 24 years have passed after the death of the deceased employee. In light of the aforesaid facts and circumstances, it is required to be considered whether still the respondent shall be entitled to appointment on compassionate ground on the death of her father, who died in the year 1995?

7. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of **Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704**, had occasion to consider the principle governing the grant of appointment

A on compassionate ground. After referring to the decision of this Court in **N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617**, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

- B (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;
- C (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
- D (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

E 8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

F 8.1 In the case of **State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653**, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of **Govind Prakash Verma Vs. LIC**, reported in **(2005) 10 SCC 289**, in paras 21 and 26, it is observed and held as under:-

G “21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of

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Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2)

“2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making

A an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

26. The judgment of a Bench of two Judges in *Mumtaz Yunus Mulani v. State of Maharashtra* [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in *Govind Prakash Verma* [*Govind Prakash Verma v. LIC*, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case.”

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give such family a post much less a post held by the deceased.

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9.1 Applying the law laid down by this Court in the aforesaid A
decisions to the facts of the case on hand and considering the
observations made hereinabove and the object and purpose for which
the appointment on compassionate ground is provided, the respondent
shall not be entitled to the appointment on compassionate ground on the
death of her father, who died in the year 1995. After a period of 24 years B
from the death of the deceased employee, the respondent shall not be
entitled to the appointment on compassionate ground. If such an
appointment is made now and/or after a period of 14/24 years, the same
shall be against the object and purpose for which the appointment on
compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as C
well as the Division Bench of the High Court have committed a serious
error in directing the appellants to reconsider the case of the respondent
for appointment on compassionate ground. The impugned judgment and
order passed by the High Court is unsustainable.

10. In view of the above and for the reasons stated above, the D
present appeal succeeds. The judgment and order passed by the learned
Single Judge as well as the Division Bench of the High Court are hereby
quashed and set aside.

Present appeal is accordingly allowed. No costs.

Bibhuti Bhushan Bose
(Assisted by : Preetam Bharti, LCRA)

Appeal allowed.