

A

MUNISH KUMAR

v.

STATE OF HIMACHAL PRADESH AND ANOTHER

(Civil Appeal No. 2426 of 2020)

B

MAY 19, 2020

**[DR. DHANANJAYA Y CHANDRACHUD,
HEMANT GUPTA AND AJAY RASTOGI, JJ.]**

- Service Law: Appointment – Compassionate appointment –*
- C *Appellant's father was employee of the first respondent – He died on 16.06.2004 while in service – Though he had applied for retirement on medical grounds prior to the date of death, the application was approved only on 17.06.2004, i.e. after the employee had died (the application was approved w.e.f. 8.04.2003 – Appellant's application for compassionate appointment was rejected by relying on State's policy dated 18.01.1990 – Challenge against – Held: State's policy would not have application in the instant case – On the date of death, the application for retirement on medical grounds was not approved – The approval which was issued after the death of the employee would therefore not be valid*
 - D *as there could not be any retrospective cessation of service by the acceptance of the application for retirement on medical grounds after the death of the employee – The case would be covered by clause 2(a) of the policy which deals with a government servant who dies while in service leaving the family in immediate need of assistance – Application of appellant for compassionate appointment ought not to have been rejected – Authorities directed to consider the application of appellant for compassionate appointment.*
 - E *From the Judgment and Order dated 06.10.2015 of the High Court of Himachal Pradesh at Shimla in CWP No. 142/2013.*
 - F *Atul Kumar, S. K. Verma, Advs. for the Appellant.*

G

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2426
of 2020.

H

Abhinav Mukerji, Addl. AG, Mohan Lal Sharma, Adv. for the Respondents. A

The following Order of the Court was passed:

ORDER

1. Leave granted.
 2. The present appeal relates to a claim for compassionate appointment.
 3. The father of the appellant was an employee of the first respondent. He died while in service on 16 June 2004. Though he had applied for retirement on medical grounds prior to the date of death, it is not in dispute that the application was approved only on 17 June 2004, after the employee had died (the application was approved with effect from 8 April 2003). The application for compassionate appointment has been rejected on the ground that under the policy on compassionate appointment dated 18 January 1990, in the case of a government servant (falling in Class III and IV), who retires on medical grounds under Rule 38 of the CCS (Pension) Rules 1972, there is an age limit of 53 years and 55 years respectively which the employee had crossed.
 4. We find merit in the contention of the appellant that the above clause of the policy would have no application in the present case. On the date of death, the application for retirement on medical grounds had not been approved. The approval, which was issued after the death of the employee, would therefore not have any valid basis. There could not have been any retrospective cessation of service by the acceptance of the application of retirement on medical grounds after the date of death of the employee. The case would be covered by clause 2(a) of the policy which deals with a government servant, who dies while in service leaving the family in immediate need of assistance. We are, therefore, of the view that the application of the appellant ought not to have been rejected on the ground which has weighed with the authorities.
 5. The application of the appellant shall be reconsidered in the light of the above observations and a final decision shall be communicated to the appellant within a period of three months from today. In the event that no decision is arrived at, we grant liberty to the learned counsel for the appellant to apply for appropriate directions in the present appeal. In the event that compassionate appointment is granted to the appellant, no

A arrears of salary would be payable and he would be entitled to salary with effect from the date of joining service.

6. A copy of the decision shall be forwarded by the State Government of Himachal Pradesh to the Standing Counsel, who shall cause a copy thereof to be placed on the record of these proceedings.

B 7. The appeal is allowed in the above terms.

8. Pending application(s), if any, stand disposed of.

Devika Gujral

Appeal allowed.