

STATE OF HIMACHAL PRADESH AND ANR.

A

v.

PARKASH CHAND

(Civil Appeal No. 977 of 2019)

JANUARY 17, 2019

B

[DR. D.Y. CHANDRACHUD AND HEMANT GUPTA, JJ.]

Service Law – Compassionate appointment – Benefit of – Death of respondent's father while in service – Respondent upon attaining majority applied for compassionate appointment – Rejection of, on the ground that the elder brother of the respondent is already employed with the State undertaking – Writ petition by the respondent seeking setting aside of the rejection letter and his appointment on compassionate grounds – Issuance of direction by the High Court to the State to consider cases for appointment on compassionate basis by sons or daughters of deceased government employees, even though, one member of the family is engaged in the service of the government or an autonomous board or corporation – On appeal, held: Policy as regards compassionate appointment contained a stipulation that where one or more persons of the family are already in the employment of the State Government or of autonomous bodies, Boards, Corporations, etc. of the State or the Central Government, employment assistance should not be provided to another member of the family – Limited exception is available only to a widow of a deceased employee who seeks compassionate appointment where the widow is not being supported financially by her employed children – Direction by the High Court virtually amounts to a mandamus to the State Government to disregard the terms stipulated in its policy – In the exercise of judicial review u/Art. 226, it was not open to the High Court to re-write the terms of the policy – Compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee – Issuance of direction to the State to consider applications which do not fulfill the terms of the policy, not permissible – Moreso, the writ petition was filed nearly two years and six months thereafter – Apart from stating that the

C

D

E

F

G

H

- A *elder brother of the respondent who was engaged in government service was living separately, there were no factual averments in support of the plea – Thus, the directions issued by the High Court set aside – Constitution of India – Art. 226 – Judicial review.*

- B *Govind Prakash Verma v. Life Insurance Corporation of India (2005) 10 SCC 289 – held inapplicable.*

Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138; General Manager (D&PB) v. Kunti Tiwary (2004) 7 SCC 271; Punjab National Bank v. Ashwani Kumar Teneja (2004) 7 SCC 265 : [2004] 3 Suppl. SCR 597; State Bank of India v. Somvir Singh (2007) 4 SCC 778 : [2007] 2 SCR 509; Mumtaz Yunus Mulani v. State of Maharashtra (2008) 11 SCC 384 : [2008] 5 SCR 241; Union of India v. Shashank Goswami (2012) 11 SCC 307 : [2012] 6 SCR 98; State Bank of India v.

- Surya Narain Tripathi (2014) 15 SCC 739; Canara Bank v. M. Mahesh Kumar (2015) 7 SCC 412 : [2015] 9 SCR 724 – referred to.*

Case Law Reference

	(2005) 10 SCC 289	held inapplicable	Para 9
E	(1994) 4 SCC 138	referred to	Para 11
	(2004) 7 SCC 271	referred to	Para 11
	[2004] 3 Suppl. SCR 597	referred to	Para 11
	[2007] 2 SCR 509	referred to	Para 11
F	[2008] 5 SCR 241	referred to	Para 11
	[2012] 6 SCR 98	referred to	Para 11
	(2014) 15 SCC 739	referred to	Para 11
G	[2015] 9 SCR 724	referred to	Para 11
	CIVIL APPELLATE JURISDICTION: Civil Appeal No. 977 of 2019.		

From the Judgment and Order dated 06.10.2015 of the High Court of Himachal Pradesh at Shimla in CWP No. 6547 of 2010.

Vikas Mahajan, AAG, P.S. Patwalia, Sr. Adv., Aakash Verma, Anil Kumar, Abhinav Mukerji, Ms. Bihu Sharma, Ms. Purnima Krishna, Ms. Pratishtha Vij, Ajay Marwah, Atul Kumar, Ishan Dewan, Plak Bagchi, Abhimanyu Sharma, Ishan Dewan, S. K. Verma, Suryanarayana Singh, Ms. Pragati Neekhra, Ms. Kaveri Vats, Varinder Kumar Sharma, Ms. Radhika Gautam, Rajul Shrivastav, K. Krishna Kumar, Vikrant Narayan Vasudeva, Ashwani Kumar, Ms. Iti Sharma, Jay Kr. Bhardwaj, Ravinder Nain, Puneet Sharma, Jogy Scaria, Reegan S. Bali, Ms. Beena Victor, Ravi Homod, Veeranjaneyvilu K.L.N.V., Anil Nag, Ravi Bakshi, Aditya Dhawan, Ms. Kiran Dhawan, Shashank Kumar, Chander Shekhar Ashri, Jayant Mohan, Sunil Kumar Jain, Abhishek Jain, Ms. Anusha Agarwal, Punya Garg, Abhishek Jain, Srilok Nath Rath, Y.P. Singh, Sharan Thakur, Mahesh Thakur, Vijay Kumar Pardesi, Dr. Sushil Balwada, Karan Chauhan, Ms. Manjeet Chawla, Ms. Bharti Tyagi, Ms. Divya Jyoti Singh, Vinod Sharma, Pawan Reley, Gopal Prasad, Satish Kumar, Aravindh S., A. Lakshmi Narayan, Mrs. Nanita Sharma, Vivek Sharma, Bajrang Lal Jat, Baldev Singh, D.S. Patial, Binay Kumar Das, Yogesh Kumar Mathur, Ms. Amita Singh Kalkal, M. C. Dhingra, Piyush Kant Roy, Ms. Indira Kanora, Gaurav Dhingra, Ms. Shobha Gupta, Ashwani Kr. Gupta, Vikrant Yadav, P. N. Puri, Reeta Dewan Puri, Abhishek Puri, Dhiraj, Parmanand Gaur, Ekansh Bansal, Yash Pal Dhingra, Baldev Singh, D.S. Patial, Vinay Kumar Das, Advs. for the appearing parties.

The Judgment of the Court was delivered by

DR DHANANJAYA Y CHANDRACHUD, J. 1. Leave granted.

2. This appeal arises from a judgment of a Division Bench of the High Court dated 6 October 2015.

3. The father of the respondent who was working as a Peon in the Revenue Department of the State, died on 4 January 1997, while in service. On the date of the death of his father, the respondent was a minor. He attained the age of majority on 17 November 2002. The policy of compassionate appointment framed by the State of Himachal Pradesh, *inter alia*, contains a stipulation that where none of the children of a deceased government employee have attained the age of majority at the time of the death of the employee, an application can be submitted on the attainment of the age of twenty one years by the eldest child.

A

B

C

D

E

F

G

H

- A This provision is contained in paragraph 8 of the policy dated 18 January 1990. The application submitted by the respondent upon attaining the age of majority was processed, but was eventually rejected on 25 April 2008 on the ground that the brother of the respondent is already in the service of the Himachal Pradesh Electricity Board. The fact that the brother of the respondent is employed with a State undertaking is not in dispute.
- B

- 4. In the writ petition before the High Court, the respondent urged that his brother was living separately and relied on a ration card and a certificate issued by the Pradhan of the Gram Panchayat. The fact that the brother was residing separately for seventeen years was admitted in the Writ Petition in the following terms:
- C

- “...Because the elder brother of the petitioner was living separately and no family member of the petitioner is in Govt./Semi Govt. service, which fact is clear from the certificate issued by the competent authority, copy of which is annexed herewith as Annexure-P7. The ration card of the family of the petitioner clearly shows that the elder brother of the petitioner is not residing with the petitioner, copy of ration card is annexed herewith as Annexure-P8. The Pradhan concerned has also certified that the elder brother of the petitioner is residing separately for the last 17 years, which fact is clear from the certificate, copy of which is annexed herewith as Annexure-P9.”
- D
- E

- 5. The respondent, in the reliefs which were sought in the petition under Article 226 of the Constitution, sought a direction for setting aside the letter of rejection dated 25 April 2008 and for his appointment as a
- F Peon on compassionate grounds.

- 6. The Policy framed by the State Government contains the following conditions of eligibility in paragraph 5(c):

- “In all cases where one or more members of the family are already in government service or in employment of autonomous bodies/ bodies/ boards/corporations etc. of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased government servant represents or claims that her employed sons/daughters are not
- G

- H

supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the department of personnel, and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers.”

A

7. In the batch of cases which has been disposed of by the High Court, one of the issues which were framed for decision was as follows:

“(ix) In case one or more dependants of a deceased-employee is/ are in service, though living separately, whether that can be made a ground to deny compassionate appointment to the other dependant of the deceased-employee?”

C

8. The policy contains a stipulation that where one or more persons of the family are already in the employment of the State Government or of autonomous bodies, Boards, Corporations, etc. of the State or the Central Government, employment assistance should not be provided to another member of the family. However, an exception is carved out in the case of the widow of the deceased government employee, if she claims that her employed children are not supporting her. Before allowing compassionate appointment, the opinion of the Department of Personnel and Finance Department is required to be sought and the matter is left to the ultimate decision of the Council of Ministers.

D

9. The High Court while deciding issue (ix) has relied upon the decision of this Court in Govind Prakash Verma Vs. Life Insurance Corporation of India¹ more specifically on the observation that the mere fact that the elder brother of the applicant was engaged in agricultural work and was also doing the work of a casual painter, would not be construed as gainful employment. This finding in Govind Prakash Verma is purely on the facts of that case and cannot be construed to be of any relevance to the present case.

E

10. The High Court has observed that the State should consider cases for appointment on compassionate basis by dealing with the applications submitted by sons, or as the case may be, daughters of deceased government employees, even though, one member of the family is engaged in the service of the government or an autonomous board or corporation. This direction of the judgment of the High Court virtually

F

¹(2005) 10 SCC 289

G

H

- A amounts to a *mandamus* to the State Government to disregard the terms which have been stipulated in paragraph 5(c) of its policy dated 18 January 1990. The policy contains a limited exception which is available only to a widow of a deceased employee who seeks compassionate appointment even though one of the children of the deceased employee is gainfully employed with the State. The basis for this exception is to deal with cases where the widow is not being supported financially by her children.

- 11. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal Vs. State of Haryana², General Manager (D&PB) Vs. Kunti Tiwary³, Punjab National Bank Vs. Ashwani Kumar Teneja⁴, State Bank of India Vs. Somvir Singh⁵, Mumtaz Yunus Mulani Vs. State of Maharashtra⁶, Union of India Vs. Shashank Goswami⁷, State Bank of India Vs. Surya Narain Tripathi⁸ and Canara Bank Vs. M. Mahesh Kumar⁹]

- 12. For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually re-written the terms of the policy and has issued a direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible.

- 13. That apart, we find from the record that the father of the respondent died on 4 January 1997. Though the respondent applied on attaining majority, as permissible under the policy, the application was rejected on 25 April 2008. The Writ Petition was filed nearly two years and six months thereafter. Apart from stating that the elder brother of the respondent who was engaged in government service was living separately, there were no factual averments in support of the plea. In

G ²(1994) 4 SCC 138

³(2004) 7 SCC 271

⁴(2004) 7 SCC 265

⁵(2007) 4 SCC 778

⁶(2008) 11 SCC 384

⁷(2012) 11 SCC 307

⁸(2014) 15 SCC 739

H ⁹(2015) 7 SCC 412

any event, as we have already held, the High Court was not justified in A
issuing a direction which would breach the policy framed by the State.

14. For these reasons, we allow the appeal and set aside the
directions issued by the High Court in its impugned judgment and order,
as noted earlier. In consequence, the Writ Petition filed by the respondent
shall stand rejected. No costs. B

Nidhi Jain

Appeal allowed.