

State Of H.P. And Anr. vs Jafli Devi (Smt.) on 14 March, 1997

Equivalent citations: JT1997(10)SC677, (1997)5SCC301, AIRONLINE 1997 SC 176, 1997 (5) SCC 301, (1998) 2 LAB LN 57, (1998) 1 CUR LR 277, (1997) 10 JT 677, (1997) 10 JT 677 (SC), 1997 ALL CJ 2 1160

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Bench: S.C. Agrawal, S. Saghir Ahmad

ORDER

S.C. Agrawal, J.

1. Special leave granted .

2. This appeal arises out of a writ petition (CWP No. 446 of 1995) filed by the respondent in the High Court of Himachal Pradesh. In the said writ petition the case of the respondent was that her husband Budhi Singh was employed in the Office of Director, Fisheries Department, Government of Himachal Pradesh, and that he had died in harness on 12-1-1993. The respondent had applied for appointment of her son Harbans Lal on compassionate grounds. The said application of the respondent was rejected by order dated 31-3-1994 passed by the Director of Fisheries on the ground that one of the sons of the deceased employee was already in government service and another son could not be given appointment on compassionate grounds. The respondent has however, told that if she was herself interested in government service the department could consider her request. By the impugned judgment dated 16-5-1996 the High Court has allowed the said writ petition of the respondent and has set aside the order dated 31-3-1994 passed by the Director of Fisheries and has directed the appellants to reconsider the case of Harbans Lal, the son of the respondent, for appointment on compassionate grounds.

3. The learned Counsel for the appellants has invited our attention to the Office Memorandum dated 18-1-1990 issued by the Government of Himachal Pradesh, Department of Personnel [AP-II] on the subject of appointment of sons/ daughters/near relations of a government servant who dies in harness, leaving his family in immediate need of assistance. In para 5(c) of the said Office Memorandum relating to eligibility for such appointment, it has been stated:

5. (c) Eligibility. - In all cases where one or more members of the family are already in government service or in employment of Autonomous 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 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.

4. The submission of the learned Counsel is that in view of the said condition laid down in the policy framed by the State Government regarding giving appointment on compassionate grounds, Harbans Lal, the second son of the respondent, could not be given appointment in view of the fact that another son 'of the respondent was already in government service. It is urged that the High Court was in error in quashing the order dated 31-3-1994 passed by the Director of Fisheries, which was in consonance with the aforesaid policy contained in the Office Memorandum and in directing that the case of Harbans Lal for appointment on compassionate grounds be reconsidered. We find considerable force in this submissions. In LIC v. Asha Ramchandra Ambekar JT Court has laid down that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration and the Court should ensure to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. In that case it was held that direction for appointment on compassionate grounds could not be given dehors the provisions or statutory regulations or instructions governing such appointments.

5. In the present case the High Court appears to have been influenced by sympathetic considerations and hardship of the respondent to make a departure from the policy laid down by the Government in the Office Memorandum dated 18-1-1990. Under the said policy Harbans Lal, the second son of the respondent could not be given appointment on compassionate grounds since another son of the deceased employee was already in government service. Having regard to the said policy the application of the respondent seeking appointment for Harbans Lal had been rightly rejected by the Director of Fisheries by his order dated 31 -3-1994. The High Court was in error in setting aside the said order passed by the Director of Fisheries and directing the appellants to reconsider the case of Harbans Lal for appointment on compassionate grounds.

6. The appeal is, therefore, allowed, the impugned judgment of the High Court is set aside and the writ petition filed by the respondent is dismissed. No order as to costs.