

## **Haryana State Electricity Board vs Naresh Tanwar And Anr. on 2 February, 1996**

**Equivalent citations: 1996IIAD(SC)349, JT1996(2)SC542, (1996)ILLJ1066SC, 1996(2)SCALE374, (1996)8SCC23, [1996]2SCR69, (1996)2UPLBEC843, AIRONLINE 1996 SC 1100**

**Bench: G.N. Ray, S.B. Majmudar**

### **ORDER**

1. Leave granted.

2. Heard learned Counsel for the parties. In both these matters, the question of compassionate employment of the heir of the deceased employee of the Haryana State Electricity Board is required to be considered. In the first matter concerning SLP (C) No. 7878/95 the ex-employee of the Haryana State Electricity Board died on 18.11.80. The widow of the deceased-employee made an application inter alia indicating therein that she had not married and she had three minor children, the eldest of them having been born in 1972. As per the existing Circular for giving relief to the distressed member of the family of the deceased-employee, ex-gratia payment was given to the widow of the family. It is only in 1992, the representation was made by the respondent - the mother of the Naresh Tanwar, the son of the deceased-employee that since the son had attained majority by that time, he should be given appointment on compassionate ground. Such representation was, however, rejected and, therefore, a writ petition was moved before the Punjab and Haryana High Court and by the impugned judgment, the High Court has directed that such compassionate appointment should be given to the respondent-Naresh Tanwar. In this appeal, the said judgment is impugned.

3. In the appeal relating to SLP (C) No. 13708/95, an ex-employee of Haryana State Electricity Board died on 16.3.75 and a representation was made by the widow of the deceased-employee in October, 1988 for appointment of the son of the widow of the employee by contending that by that time, the minor son had attained majority and, therefore, eligible to be given appointment. Such representation was rejected by the State Electricity Board but the writ petition filed by the respondent Sohana Devi the widow of the said ex-employee has been allowed by the impugned judgment by directing the State Electricity Board to give appointment to the son of the said respondent Sohana Devi being the heir of the deceased-employee, on compassionate ground.

4. Learned counsel appearing for the State Electricity Board in these matters have drawn our attention to the decision of this Court in Umesh Kumar Nagpal v. State of Haryana and Ors. . In the said case, a scheme was made for appointment to a Class II post by the heirs of the ex-employee on the ground of compassionate appointment. This court has not only held in the said decision that no scheme for appointment to Class-II or Class I shall be made by way of appointment on the score of compassionate appointment, but it has been further indicated in the said decision that:

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 Government 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 dependents 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 dependents 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.

(Emphasis added) 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 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 destination and to held it get over the emergency.

(Emphasis added)

5. It has been submitted before us that this Court has very clearly indicated in the said judgment that the consideration for compassionate employment must be treated as an exception to the general rule for giving employment only by making open recruitment and consideration of out of turn employment on compassionate ground is intended to enable the family to tide over the sudden crisis caused on account of death of the earning member. Learned counsel has also drawn our attention to paragraph 6 of the decision where it has been indicated:

For these very reasons, the compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

(Emphasis added)

6. The learned Counsel has also placed before us employee on the ground of compassionate appointment. This court has not only held in the said decision that no scheme for appointment to Class-II or Class I shall be made by way of appointment on the score of compassionate appointment, but it has been further indicated in the said decision that:

As a rule, appointment 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 Government 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 dependents 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 dependents 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.

(Emphasis added) 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 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 destination and to help it get over the emergency.

(Emphasis added)

7. It has been submitted before us that this Court has very clearly indicated in the said judgment that the consideration for compassionate employment must be treated as an exception to the general rule for giving employment only by making open recruitment and consideration of out of turn employment on compassionate ground is intended to enable the family to tide over the sudden crisis caused on account of death of the earning member. Learned counsel has also drawn our attention to paragraph 6 of the decision where it has been indicated:

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the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

(Emphasis added)

8. The learned Counsel has also placed before us an unreported decision of this Court in Jagdish Prasad v. State of Bihar C.A. No. 10682 of 1995 decided on November 13, 1995. In the said case, the question of appointment on compassionate ground to an applicant who was four years old at the time when his father an ex-employee died in harness, came up for consideration. It was contended before this Court that since the appellant was minor when the father died in harness, the compassionate circumstances having continued till the date he made an application for appointment, he was entitled to be appointed on compassionate ground. Such contention was not accepted by the Court below and upholding the rejection of such claim for appointment, this Court has indicated to the following effect:

The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules.

9. It has been submitted before us by the learned Counsel appearing for the State Electricity Board that previously there was no scheme to give appointment to the members of the ex-employee dying in harness, but considering the indigent condition of the member of the family, provision to give monetary assistance within a limit to be determined by the concerned authority was made and such scheme has also been annexed to the SLP (C) No. 7878 of 1995. Later on, some of the circulars issued by the Government for giving compassionate appointment to the heirs of the ex-employee in government service dying in harness, were adopted. It appears from the annexure referred to the SLPs 7878/95 and SLP 13708/95 that previously there was no time limit within which an application was required to be made for getting appointment on compassionate ground. Subsequently it was confined that within a period of one year such application was required to be made. The said time frame was later on extended to a period of three years from the date of death of the ex-employee. The learned Counsel has submitted that although at the relevant time when the ex-employee died in both the civil writ petitions, no time limit for making application was indicated, but such application was required to be made within a reasonable time and in any event, the very purpose of compassionate appointment being to give immediate assistance to the members of the family of the ex-employee will be frustrated if such concession is allowed to be extended over the years so that by such long lapse of time the heir of the deceased-employee attains majority and then becomes eligible for being considered for appointment.

10. By the impugned judgments, the High court proceeded on the footing that compassionate appointment to achieve its purpose cannot be restricted within the time frame of three years and if assistance to the members of the deceased employee is required to be given, the family member must necessarily attain majority and then become eligible to apply for getting appointment.

11. It has been indicated in the decision of Umesh Kumar Nagpal (Supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad's case, it has been also indicated that the very object of appointment of dependent of deceased-employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

12. It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decisions of the High Court therefore can not be sustained.

13. In that view of the matter, we set aside the impugned judgments by allowing both the appeals. This order, however, will not preclude the concerned applicants to make representation to the State Electricity Board for consideration of the case of their appointment either as a temporary or permanent employee by giving full details of the family circumstances and the economic conditions. It is reasonably accepted that if such representation is made, the concerned authority, namely, the Haryana State Electricity Board will consider the same with such sympathy as the applicant may deserve in the facts of the case.