

Tinku
v.
State of Haryana & Ors.

(Civil Appeal No. 8540 of 2024)

13 November 2024

**[Abhay S. Oka, Ahsanuddin Amanullah and
Augustine George Masih,* JJ.]**

Issue for Consideration

Whether the appellant was entitled to appointment on compassionate grounds.

Headnotes[†]

Service Law – Appointment on compassionate grounds – When not entitled to – Appellant’s father, a constable died on duty in 1997 when he was seven years old – Appellant claimed appointment on compassionate grounds in 2008 after attaining majority – Claim rejected being time barred in view of the 1999 policy which introduced three years limit for attainment of the age of majority from the date of death of the deceased employee:

Held: Compassionate appointment is an exception to the general rule of appointment and cannot be claimed as a vested right for appointment – Said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection – It is an appointment given on proper and strict scrutiny of the various parameters with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and may be penniless – The purpose of such policies is to give immediate succour to the family – When seen in this conspectus, three years as has been laid down from the date of death of the employee for putting forth a claim by a dependant, which, includes attainment of majority as per the 1999 policy instructions issued by the Government are not unjustified or illogical, especially when compassionate appointment is not a vested right – Appellant’s claim was rightly rejected by the respondent-State as he attained majority 11 years after the unfortunate death of his father – Impugned

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judgment of the High Court rejecting the appellant's claim cannot be faulted with – However, appellant's mother granted an opportunity to make a representation for exercising her option for the grant of lump sum ex-gratia compensation – Haryana compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006 – Haryana Compassionate Assistance to the Dependents of he Deceased Government Employee Rules, 2005. [Paras 9, 12, 15, 16, 23]

Service Law – Appointment on compassionate grounds – Constitution of India – Article 14 – Cannot be invoked to perpetuate illegality – Appellant's claim for appointment on compassionate grounds under the ex-gratia policy was rejected being time barred – Plea of the appellant that the benefit of appointment on compassionate grounds had been granted to other similarly placed persons:

Held: Equality enshrined in Article 14 is a positive concept based on law – It can be invoked to enforce a claim having sanctity of law – Court cannot issue direction mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable – Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea – The court will not compel the authority to repeat that illegality over again – Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification. [Para 11]

Case Law Cited

Umesh Kumar Nagpal v. State of Haryana [\[1994\] 3 SCR 893](#) : [\(1994\) 4 SCC 138](#); *Shanti Sports Club v. Union of India* [\[2009\] 13 SCR 710](#) : [\(2009\) 15 SCC 705](#); *Chandigarh Administration v. Jagjit Singh* [\[1995\] 1 SCR 126](#) : [\(1995\) 1 SCC 745](#); *R Muthukumar v. TANGEDCO* [\[2022\] 1 SCR 577](#) : [\(2022\) SCC Online SC 151](#); *Basawaraj & Anr v. Special Land Acquisition Officer* [\[2013\] 8 SCR 227](#) : [\(2013\) 14 SCC 81](#) – referred to.

List of Acts

Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006; Haryana Compassionate

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Assistance to the Dependents of the Deceased Government Employee Rules, 2005.

List of Keywords

Compassionate appointment; Appointment on compassionate grounds; Compassionate appointment not a vested right; Article 14 of the Constitution of India; Claim time barred; Ex-gratia policy; Similarly placed persons; Equality; Compassionate appointment exception to the general rule of appointment; Lump sum ex-gratia compensation; Constable; Died on duty; Attainment of the age of majority; Outer limit; Three years for attainment of the age of majority from the date of death of the deceased employee; Died in harness; Dependent/dependant; Scrutiny; Sole bread earner expired; Immediate succour; Illegality or irregularity; Illegal order wrongfully conferring right or claim; Equity.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8540 of 2024

From the Judgment and Order dated 22.03.2022 of the High Court of Punjab & Haryana at Chandigarh in LPA No. 160 of 2021

Appearances for Parties

Ms. Priyanjali Singh, Adv. for the Appellant.

Shekhar Raj Sharma, D.A.G., Akshay Amritanshu, Samyak Jain, Ms. Nidhi Narwal, Ms. Drishti Saraf, Ms. Pragya Upadhyay, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Augustine George Masih, J.

1. This Appeal has been preferred by the son of Shri Jai Prakash, a deceased constable in Haryana Police, seeking appointment on compassionate grounds, as his father and another constable died while on duty on 22.11.1997. The Appellant then was seven years of age, and the policy which was in force was dated 08.05.1995 which provided for *ex-gratia* appointment confined to Class III and IV posts.

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The widow of Balwan Singh, the other police constable, who died along with the father of the Appellant, was granted compassionate appointment as a constable upon her application.

2. The mother of the Appellant, being illiterate, could not seek an appointment for herself and therefore applied for compassionate appointment for her son, the Appellant herein. A letter from the Director General of Police, Haryana (hereinafter referred to as "DGP") dated 15.04.1998 was received by the Superintendent of Police on 20.04.1998 directing the name of the Appellant, Tinku, son of deceased Constable Jaiprakash, to be entered in the Minor's Register No. 47. This indicated the intention of the authorities of reserving one post for grant of employment to the Appellant at a later stage being minor child of deceased employee as per the applicable policy.
3. Since the Appellant was a minor, his claim was kept pending. A further communication from the office of the Superintendent of Police, Rohtak, dated 30.12.2003, was received by the mother of the Appellant that on attainment of the age of majority, the Appellant should approach the Office of the Welfare Inspector to get the case prepared. It is on this basis that the Appellant approached the DGP by way of representation dated 30.10.2008 putting forth his claim for appointment under the *ex-gratia* scheme, specifying therein that he had attained the age of majority on 10.10.2008. His mother also submitted a representation to the DGP, making reference to the earlier communications as mentioned above for the grant of appointment on compassionate grounds as per the policy.
4. The claim of the Appellant was considered, and communication was received from the DGP dated 28.04.2009 addressed to the Superintendent of Police, Rohtak, with a copy thereof to the mother of the Appellant intimating rejection of the claim for appointment on compassionate grounds. The reason assigned was that from the date of death of the Appellant's father till he having become major 11 years had passed rendering the claim time barred when taken from the date of death of the father of the Appellant. For this reliance was placed on the Government instructions dated 22.03.1999 where a minor dependent of a deceased government employee gets the benefit provided he/she attains age of majority within a period of three years from the date of death of the government employee. It was further intimated that, as per the "Haryana Compassionate Assistance to the Dependents of Deceased Government Employees" Rules, 2006 (hereinafter referred to as the "2006 Rules"), which were

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then in force, whereunder the claim was considered, did not contain provision for providing a job under the *ex-gratia* scheme.

5. Faced with this situation, the Appellant had preferred a writ petition before the High Court in the year 2009, with the plea of promissory estoppel in the light of communications received referred to above. The writ was dismissed on 12.01.2021 holding therein that the principle of estoppel would not be applicable to the case in hand as it was only a communication which was sent to the petitioner with regard to the name having been entered in the minor's register, while the subsequent communication from the Superintendent of Police was for approaching the authority on the attainment of the age of majority by the ward. An aspect with regard to the delay from the date of death of the father of the Appellant till the date of he having attained majority which is around 11 years also weighed on the mind of the Court in the light of the law as has been laid down by this Court in *Umesh Kumar Nagpal v. State of Haryana*.¹
6. An intra court appeal preferred by the Appellant resulted in the dismissal of the same on 22.03.2022, leading to the filing of the present Appeal.
7. Learned Counsel for the Appellant, by making reference to additional documents submitted that there has been violation of the right of equality relating to consideration for appointment under the *ex-gratia* policy, as it is asserted that in similar factual matters the benefit of appointment on compassionate grounds had been granted. It has been asserted that since the Appellant is similarly placed, he should be granted the same benefit. A reference in this regard has been made to Annexures A-1 appended along with the Appeal.
8. A perusal of the above would indicate that the said benefit of appointment on attaining the age of majority, irrespective of the period having lapsed from the date of death of the parent, had been granted prior to 22.03.1999 when an outer limit of three years for attainment of the age of majority from the date of death of the deceased government employee was introduced by the instructions. Further, in those matters, the age of attainment of majority was also prior to the coming into force of instructions dated 22.03.1999.
9. That apart, the claim as has been stated above, cannot be accepted being not supported with any statutory backing. This is required for

1 [1994] 3 SCR 893 : (1994) 4 SCC 138

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making any claim including a claim for compassionate appointment, which is an exception to the general rule of appointment requiring a proper advertisement and selection process to be followed as per rules which is an accepted norm. If some wrong benefit has been conferred or some benefit which is contrary to the scheme has been granted, it would not bestow a right upon the others to claim it as a right of equality by reference to Article 14 of the Constitution of India.

10. There are catena of judgments of this Court that clearly lay down the principles which govern such claims. Some of which are *Shanti Sports Club v. Union of India*,² *Chandigarh Administration v. Jagjit Singh*,³ *R Muthukumar v. TANGEDCO*,⁴ *Basawaraj & Anr v. Special Land Acquisition Officer*.⁵
11. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. The court will not compel the authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction. Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.
12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that the said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment

2 [2009] 13 SCR 710 : (2009) 15 SCC 705

3 [1995] 1 SCR 126 : (1995) 1 SCC 745

4 [2022] 1 SCR 577 : (2022) SCC Online SC 151

5 [2013] 8 SCR 227 : (2013) 14 SCC 81

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which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has expired, leaving them helpless and maybe penniless. Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.

13. It must be clearly stated here that in a case where there is no policy, instruction, or rule providing for an appointment on compassionate grounds, such an appointment cannot be granted.
14. The very basis and the rationale, wherever such policies are framed for compassionate appointment is with an object to grant relief to a family in distress and facing destitution, and thus an exception is culled out to the general rule in favour of the family of the deceased employee. This is resorted to by taking into consideration the services rendered by such employee and the consequent legitimate legal expectations apart from the sudden change in status and affairs of the family because of the unexpected turn of events, i.e. the loss of the sole bread earner.
15. The purpose, therefore, of such policies is to give immediate succour to the family. When seen in this conspectus, three years as has been laid down from the date of death of the employee for putting forth a claim by a dependant, which, includes attainment of majority as per the 1999 policy instructions issued by the Government of Haryana cannot be said to be in any case unjustified or illogical, especially when compassionate appointment is not a vested right.
16. In the present case, as is apparent from the record, the Appellant attained majority 11 years after the unfortunate death of his father. The claim, thus, has rightly been rejected by the respondent State. The decisions of the High Court vide the impugned judgments rejecting the claim of the Appellant thus, cannot be faulted with.
17. The claim of the Appellant for appointment on compassionate grounds having been found to be not sustainable, an aspect that has come to light which requires consideration as has been put forth by the learned Counsel for the Appellant, is with regard to the grant of *ex-gratia* financial assistance. This is asserted in the light of the

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fact that the claim of the Appellant was pending consideration for compassionate appointment for long with the respondents, and the same had finally been decided on 28.04.2009 by rejecting the same and that too primarily on the ground that the said claim is time barred. It is further stated that in the impugned Order dated 28.04.2009 that there is no provision for providing job under the *ex-gratia* scheme in the 2006 Rules.

18. Going by the stand of the respondents, it is apparent that the claim of the Appellant was considered under 2006 Rules which were enforced with effect from 01.08.2006. These Rules apart from other aspects provide for the manner of dealing with the pending cases. Rule 8, which relates to repeal and savings, mentions the earlier prevalent rules, namely the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee Rules, 2005. The first proviso thereto states that the families would have the option to opt for the lump sum *ex-gratia* grant provided in the Rules of 2003 or 2005, as the case may be, in lieu of the monthly financial assistance provided under the 2006 Rules.
19. Therefore, as per these 2006 Rules, the claim of dependents of the deceased employee would enure for consideration to *ex-gratia* compensation. The said claim, therefore, as far as the widow of the deceased is concerned, would survive and operate, especially in light of the fact that her son, for whom she had sought an appointment on compassionate grounds has been found to be ineligible because of he being a minor. A further perusal of the 2003 and 2005 Rules would show that the pending cases were to be dealt with under those rules.
20. The admitted factual position is that all through the claim of employment of the Appellant was pending with the respondents and consequently the right of consideration of claim for *ex-gratia* compensation would also subsist. Given an option, the mother of the Appellant could have sought the benefit of such compensation had she been informed in time about the non-acceptance of her request for employment of her minor son. She was kept waiting for a final decision on the claim till its rejection in 2009.
21. The Government of Haryana had taken a conscious decision on 16.03.2011 granting a mercy chance as one-time measure to exercise option for *ex-gratia* compensation. A perusal of the said decision would show that it was a one-time relaxation for applying for *ex-*

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gratia compensation in old cases pertaining to the claims before 01.08.2006. This was done having regard to the fact that in old cases where the family of the deceased employee could not exercise the option within time, due to lack of requisite knowledge or other reasons because of which their dependents could not avail the benefit under the *ex-gratia* scheme being time-barred. Such dependents were, accordingly, given one more chance to give an option.

22. Admittedly, this decision of the government was never brought to the notice of the mother of the Appellant. It could not be disputed that no intimation whatsoever had been sent to the widow of the deceased government employee regarding the exercise of such an option. Had she been informed, she could have applied for the grant of *ex-gratia* compensation. The inaction on the part of the State in intimating her of her entitlement to put forth the claim is the reason for she having not opted for it.
23. It would thus be just and reasonable that one opportunity is granted to the widow of the deceased government employee, Jai Prakash and the mother of the Appellant, to make a representation for exercising her option for the grant of lump sum *ex-gratia* compensation. We permit her to do so. On submission of the representation, the same shall be considered by the competent authority and a decision taken thereon within a period of six weeks from the date of receipt thereof. The lumpsum compensation, if granted and released within the time stipulated above, shall not carry any interest. However, if a decision is not made and if found entitled, the amount not disbursed within the stipulated time, interest at the rate of 6 per cent per annum shall be payable from the date of representation till the date of actual payment.
24. The present Appeal is disposed of in the above terms.
25. There shall be no order as to costs.
26. Pending applications, if any, also stand disposed of.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Divya Pandey