

UMESH KUMAR NAGPAL ETC.

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v.

STATE OF HARYANA AND ORS.

MAY 4, 1994

[P.B. SWANT AND N.P. SINGH, JJ.]

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Service Law : Appointment to Public Service—On compassionate grounds—Considerations to be taken into account—Categories of posts to which such appointments could be made—Guidelines issued.

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In these two appeals preferred against the decision of the High Court, the question that arose was as regards the considerations which should guide while giving appointment in public service on compassionate grounds.

Dismissing the appeals and laying down guidelines for appointment on compassionate grounds, this court

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HELD : 1.1. Out of pure humanitarian consideration taking into account 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 to enable the family to tide over sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. [895-H-896-A]

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1.2. Mere death of an employee in harness does not entitle his family to such source of 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. [896-B]

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1.3. The posts in Class-III and Class 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 destitution and to help it get over the emergency. The provision

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A of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts had a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. As against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employments which are suddenly up-
 B turned. [896-C-D-E]
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2. Some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible. [896-F-G]
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Sushma Gosain & Ors. v. Union of India & Ors., (1989) 4 SLR 327, explained.

3. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. The Respondent State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, is illegal since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant. [897-B-C]
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4. If the dependent of the deceased-employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity. [897-H-898-A]
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5. Compassionate employment cannot be granted after a lapse of a 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
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time in future. [898-B]

6. The provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an *ad hoc* Basis. [898-C]

CIVIL APPELLATE JURISDICTION : Special Leave Petition (C)
No. 10504 of 1993 etc.

From the Judgment and Order dated 18.12.92 of the Punjab & Haryana High Court in L.P. A. No. 734 of 1992.

Amarendran Sharan for the Petitioner.

Ms. Indu Malhotra for the Respondents.

The Judgment of the Court was delivered by

SAWANT, J. These two petitions are directed against the decision dated 18th December, 1992 of the Division Bench of the Punjab & Haryana High Court in Letters Patent Appeal No. 734 of 1992 and C.W.P. No. 6357 of 1992. Since they raise a point of considerable importance, it has become necessary to deliver a short judgment while dismissing them at the admission stage.

The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been deal of obfuscation on the the issue. 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 Governments nor the public authorities are at liberty to follow any other procedure of 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 causes, 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

A 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 crises. 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 of livelihood. The Government of 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 Class-III and

C IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate ground, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory.

D The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

F Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

G It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or imposts above Classes III and IV. We are also dismayed to find that the

H decision of the Court in *Sushma Gosain & Ors. v. Union of India & Ors.*,

(1989) 4 SLR 327 has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech etc. Such exception, as pointed out above, is illegal since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment :

"..... We are of the view that the extra-ordinary situations require extraordinary remedies and it is open to the government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, be to ignore the reality of life these days. It would be ridiculous to except that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the government should frame a policy even for such appointments."

It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased-employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased-employee finds

A it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

B For these very reasons, the compassionate employment cannot be granted after a lapse of a 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 whether the lapse of time and after the crisis is over.

C It is needless to emphasise that the provisions for compassionate employment necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an *ad hoc* basis.

D For the reasons given above, we dismiss the special leave petitions.

G.N.

Petitions dismissed.