

STATE OF JHARKHAND & ORS. A

v.

SHIV KARAMPAL SAHU

(Civil Appeal No. 2539 of 2009)

APRIL 15, 2009 B

[S.B. SINHA AND CYRIAC JOSEPH, JJ.]

*Administrative Law:*

*Policy decision for appointment on compassionate ground – Circular letter providing for appointment on compassionate ground in case of death of a government servant – Held: The benefit cannot be extended to the dependents of deceased who was not government servant – Circular dated 21.9.1987 and 9.8.2000 issued by Government of Bihar, Circular dated 7.5.2003 issued by Government of Jharkhand.* C D

*Subordinate legislation – Construction of – Held: Ordinarily should not be construed to be retrospective in operation – Rule of incorporation by reference should not be applied unless a clear case is made out.* E

*Service law:*

*Appointment – Compassionate appointment – Held: Must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India – Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor – Constitution of India, 1950 – Articles 14 and 16.* F G

**The State of Bihar issued a circular dated 9.8.2000 introducing a scheme for grant of compassionate** H

A appointment to the dependants of those killed in terrorist attacks. Father of the respondent was not a government servant. He was allegedly killed by extremists on 19.5.2000. Respondent filed a representation for his appointment on compassionate ground on 5.11.2000  
B which was rejected. However, on 7.5.2003, the Government of Jharkhand, which came into being in terms of the provisions of the Bihar Reorganisation Act, 2000 took a policy decision that the matter relating to the  
C appointment of the dependent of the deceased in the terrorist violence should be given effect to in respect of those persons killed in violence after the date of formation of the State of Jharkhand, i.e., dated 15.10.2000. The respondent filed representation which was rejected on the ground that murder took place on 19.5.2000, i.e.,  
D before 9.8.2000, therefore, case did not fall within ambit of the circular of Government of Bihar. Respondent filed writ petition. High Court held that although the respondent was paid a sum of Rs. 20,000/- as compensation, but having regard to the circulars issued by the State of Jharkhand in the matter of appointment  
E on compassionate ground in general cases within a period of five years from the date of death, the same would also cover the instant case. Hence the appeal.

Allowing the appeal, the Court

F HELD: 1. The scheme for grant of monetary compensation to the dependents of the deceased or injured who were affected in any kind of terrorist/virulent/  
G communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate ground, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are  
H

STATE OF JHARKHAND & ORS. v. SHIV KARAMPAL 65  
SAHU

entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction. [Para 9] [72-B-E]

*State of J & K and Ors. v. Sajad Ahmed Mir (2006) 5 SCC 766 and Mumtaz Yunus Mulani v. State of Maharashtra & ors. 2008 (4) SCALE 637, relied on*

2. A circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependents of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under the proviso appended to Article 309 of the Constitution of India. A circular letter issued by the State cannot be issued de hors the constitutional scheme of making offer of public appointment. Moreover, a benevolent circular cannot be extended to a case which was not contemplated by the circular itself. [Paras 11 and 12] [73-C-F]

*Official Liquidator v. Dayanand & Ors. (2008) 10 SCC 1; State of Bihar v. Upendra Narayan Singh & Ors. (2009) 4 SCALE 282; Man Singh v. Commissioner, Garhwal Mandal, Pauri & Ors. 2009 (4) SCC 645; Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries AIR 1985 SC 278; Deepal Girishbhai Soni & ors. v. United India Insurance Co. Ltd., Baroda (2004) 5 SCC 385, relied on.*

3.1. In the matter of construction or application of subordinate legislation, the rule of incorporation by reference should not be applied unless a clear case is made out therefor. The circular letter dated 21.9.1987 is

A an independent one. It operates in its own field. There is no scope of reading both the circulars together. Even if they could be read, the general circulars in regard to the appointment on compassionate ground which were again applicable to the cases of dependents of the deceased employees either for consideration of the period during which such appointments were to be made or otherwise, could not have been taken into consideration for grant of benefit to which he was not otherwise entitled to. [Para 13] [74-D-F]

C *Management of Indian Bank & Anr. v. Ramachandran & ors.* JT 2007 (13) SC 436, relied on

D 3.2. Ordinarily, a subordinate legislation should not be construed to be retrospective in operation. The circular letter dated 7.5.2003 was given a prospective effect. The father of the respondent died on 19.5.2000. There is nothing to show that even circular dated 9.8.2000 had been given retrospective effect. In any view of the matter, as the State of Jharkhand in the circular letter dated E 7.5.2003 adopted the earlier circular letters issued by the State of Bihar only in respect of cases where death had occurred after 15.10.2000, i.e., the date from which the State of Jharkhand came into being, the High Court committed a serious error in giving retrospective effect thereto indirectly which it could not do directly. [Para 14] F [75-A-C]

Case Law Reference:

	(2006) 5 SCC 766	relied on	Para 10
G	2008 (4) SCALE 637	relied on	Para 10
	(2008) 10 SCC 1	relied on	Para 11
	(2009) 4 SCALE 282	relied on	Para 11
H	2009 (4) SCC 645	relied on	Para 11



A which had taken place at Arbal Police Station in the District of  
 Gaya and further in view of the fact that similar incidents had  
 taken place within Madanpur Police Station Baghoura and  
 Dalelchuk villages of District Aurangabad in terms whereof in  
 case of death, a sum of Rs.20,000/- was to be paid to the  
 B dependents of each deceased and in case of permanent  
 disability a sum of Rs.5,000/-, and in case of serious injury  
 Rs.500/- to Rs.1000/- was to be paid.

4. No ex-gratia payment was to be made in favour of the  
 C persons who were terrorist/virulent or listed criminal. Monetary  
 compensation was also proposed in the case of destruction or  
 damage to the properties subject to the conditions mentioned  
 in the said circulars. Various other types of grants like the one  
 for the help of the students of the families and free medical  
 D treatment to the injured persons were also stipulated  
 thereunder. Other measures by way of contingent expenses  
 were also contemplated thereby.

5. Indisputably, father of the respondent was not a  
 government servant. He was allegedly killed by extremists on  
 E 19.5.2000.

The State of Bihar adopted another scheme for grant of  
 appointment on compassionate ground to the dependents of  
 those who have been killed in the terrorist attacks, as would  
 F appear from a circular dated 9.8.2000, stating:

"I am directed to say that the incidents of terrorist/ virulent/  
 communal confrontations/violence relating to the Election/  
 joint murders have been occurred in the State and usually  
 the affected of such attacks are found innocent persons  
 and their dependents. Sometimes the whole family is  
 G become like dead. In such circumstances, being the  
 Government of the welfare State, providing of *ex-gratia*  
 and other facilities to the persons and their dependants  
 who have affected in the terrorist/virulent/communal  
 H confrontation/violence relating to the Election/joint murders

becomes the duty of the State Government. The State Government has always been putting efforts in this direction. Here, recently only, the Hon'ble High Court has also given an order for determining a transparent policy in this regard in a case relating to *Dharamshila Kunwar v. Government of the State and others* (CWJC No. 5808/97)

1. Till date the sufferers of the violence incident happened due to terrorists/virulent/communal confrontation in the State and their dependents have been sanctioned ex-gratia according to the provisions made in the Circular from the Department of Home (Special) Affairs bearing No.A/ N.Pol. 1701 dated 21.09.1987 (Annexure-1). According to the said Circular the dependents of the persons died in the above said kinds of incidents Rs.20,000/- (Rupees Twenty thousand only), suffered permanent disability Rs.5,000/- (Rupees Five thousand only) and to the seriously injured persons Rs.500/- to Rs.1,000/- (From Rs. Five hundred to Rs. One thousand) has been sanctioned as ex-gratia, but this ex-gratia is not admissible to any of such person who is a virulent/terrorist or is any kind of listed criminals. In the said circular, there exists no provision for providing appointment to the dependants of the deceased persons in the government service on the compassionate grounds."

Paragraph 7 of the said policy decision reads as under:

"The amount as required for the payment in the aforesaid heads would be made available by the State Government from time to time. The allocation of the funds would be done under the Budget Head 2235 as previously. For making available the relief with regard to the terrorist/virulent/communal confrontation/violence relating to the elections/massacre and violence incident of any other kind Nodal Department of Home (Special) would be available, from where all the guiding principles on the policy matter would be issued and the proceedings for providing relief work and government service would be monitored."

A 6. Respondent herein being son of late Duli Sahu filed a representation for his appointment on compassionate ground on or about 5.11.2000. The same was rejected by the Deputy Commissioner, Gumla by an order dated 25.1.2003 opining that there was no provision for employment on compassionate ground for a son of the deceased in the light of prevailing directives of the Government at that time.

B  
C However, on or about 7.5.2003, the Government of Jharkhand, which came into being in terms of the provisions of the Bihar Reorganisation Act, 2000 took a policy decision that the matter relating to the appointment of the dependent of the deceased in the terrorist violence should be given effect to in respect of those persons who had been killed in violence after the date of formation of the State of Jharkhand, i.e., dated 15.10.2000.

D In the light of the aforementioned resolution, the representation of the respondent was rejected in the meeting of the District Compassion Committee held on 5.4.2005, stating:

E "The murder of father of the applicant late Duli Sahu had taken place on dated 19.5.2000 i.e. before dated 09.08.2000. It has been mentioned in Para 7 of the Circular No. 1972 dated 09.08.2000 from the then Chief Secretary, Government of Bihar, Home (Special) Department, dated 09.08.2000 that 'this order would be effective from immediate effect'

F  
G Thus, this case does not fall within the ambit of the circular of the Government of Bihar and Resolution of the Govt. of Jharkhand.

Therefore, Committee took the decision to reject the said case."

H 7. Questioning the validity of the said order, the respondent filed a writ petition before the High Court. The said writ petition

was taken up with two similar matters pending before the High Court. The Division Bench of the High Court by reason of the impugned judgment opined that although the respondents have been paid a sum of Rs. 20,000/- as compensation, but having regard to the circulars issued by the State of Jharkhand in the matter of appointment on compassionate ground in general cases within a period of five years from the date of death, the same would also cover the instant case, stating:

"Such limitation of five years prescribed from the date of death and thereby Circular No. 6817 dated 25th May, 1989 also covered the dependents of those employees, who died prior to 25th May, 1989 but within the limitation of five years, enabling the dependent to apply. For example, if a Government employee died in harness in the year, 1986, the dependent of such deceased employee having applied within five years of the death, was also covered by Circular dated 25th May, 1989. The said Circular has been further clarified by the Personnel and Administrative Reforms Department's Memo No.3/C-2-2067/90 Ka. 13293 dated 5th October, 1991.

In the matter of compassionate appointment, on the death of a person, killed by terrorist/extremist or during communal violence or during election violence etc., the definition of "dependent" and other things of general compassionate appointment are to be followed; the period of limitation will be the same i.e. five years from the date of death and their cases are also to be considered through the Compassionate Appointment Committeee."

8. Mr. B.B. Singh, learned counsel appearing on behalf of the appellants would submit:

- i. The High Court committed a serious error of law insofar as it failed to take into consideration that the circular letters issued by State of Jharkhand could not have been given a retrospective application in

A the matter of grant of appointment on compassionate ground.

- ii. The scheme for appointment on compassionate ground having been made only for the government servants, the same could not have been applied in cases of dependents of the deceased who were not government servants.

B

9. The scheme for grant of monetary compensation to the dependents of the deceased or injured who are affected in any kind of terrorist/virulent/communal attack must be considered in terms of the stipulations made in the circular letters containing policy decisions. Appointment on compassionate ground, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction.

E

10. In *State of J & K and Ors. v. Sajad Ahmed Mir* [(2006) 5 SCC 766], the law was laid down in the following terms:

"11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion", the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling

F

G

H

STATE OF JHARKHAND & ORS. v. SHIV KARAMPAL 73  
SAHU [S.B. SINHA, J.]

circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

[See also *Mumtaz Yunus Mulani v. State of Maharashtra & ors.* [2008 (4) SCALE 637]

11. A circular letter providing for appointment on compassionate ground in case of death of a government servant cannot be extended in case of the dependents of the deceased who was not a government servant. A public employment must be offered to a person who is entitled therefor. All recruitments subject to just exceptions must be made in terms of the rules framed under the proviso appended to Article 309 of the Constitution of India. A circular letter issued by the State cannot be issued de hors the constitutional scheme of making offer of public appointment. [See *Official Liquidator v. Dayanand & ors.* [(2008) 10 SCC 1 para 52]; *State of Bihar v. Upendra Narayan Singh & Ors.* [(2009) 4 SCALE 282 para 19]; and *Man Singh v. Commissioner, Garhwal Mandal, Pauri & Ors.* [2009 (4) SCC 645].

12. Moreover, a benevolent circular, it is well known, cannot be extended to a case which was not contemplated by the circular itself.

In *Regional Director, Employees' State Insurance Corporation, Trichur v. Ramanuja Match Industries* [AIR 1985 SC 278], this Court held:

"...We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has

A a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

B In *Deepal Girishbhai Soni & ors. v. United India Insurance Co. Ltd., Baroda* [(2004) 5 SCC 385], it was opined:

C "53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby."

D 13. Furthermore, in the matter of construction or application of subordinate legislation the rule of incorporation by reference should not be applied unless a clear case is made out therefor. The circular letter dated 21.9.1987 is an independent one. It operates in its own field. There is no scope of reading both the circulars together. Even if they could be read, the general circulars in regard to the appointment on compassionate ground which were again applicable to the cases of dependents of the deceased employees either for the purpose of consideration of the period during which such appointments were to be made or otherwise could not have been taken into consideration for the purpose of grant of benefit to which he was not otherwise entitled to.

G In *Management of Indian Bank & Anr. v. Ramachandran & ors.* [JT 2007 (13) SC 436], it has been held:

H "It is now a trite law that for the purpose of construing a statute, reference to another statute is not permissible and, thus, Regulation 21 of the Civil Services Pension Rules contemplates a different situation, the same will have no

STATE OF JHARKHAND & ORS. v. SHIV KARAMPAL 75  
SAHU [S.B. SINHA, J.]

application in the instant case. The High Court, therefore, committed an error in relying on the said provision." A

14. Ordinarily, a subordinate legislation should not be construed to be retrospective in operation. The circular letter dated 7.5.2003 was given a prospective effect. The father of the respondent died on 19.5.2000. There is nothing to show that even circular dated 9.8.2000 had been given retrospective effect. In any view of the matter, as the State of Jharkhand in the circular letter dated 7.5.2003 adopted the earlier circular letters issued by the State of Bihar only in respect of cases where death had occurred after 15.10.2000, i.e., the date from which the State of Jharkhand came into being, the High Court, in our opinion, committed a serious error in giving retrospective effect thereto indirectly which it could not do directly. B C

Reasons assigned by the High Court, for the reasons aforementioned, are unacceptable. D

15. For the aforementioned reasons, the impugned judgment cannot be sustained, which is set aside accordingly. The appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs. E

D.G.

Appeal allowed.