

UNION OF INDIA AND ANR.

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v.

B. KISHORE

(Civil Appeal No. 1045 of 2006)

APRIL 6, 2011

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[AFTAB ALAM AND R.M. LODHA, JJ.]

Service Law – Appointment – Compassionate appointment – Entitlement to – Respondent's wife died while she was in service – Respondent obtained death-cum-terminal benefits of his wife from her department – Subsequently he made application for compassionate appointment – Department rejected the application of respondent on the ground that he was not considered to be in 'indigent circumstances' – Decision upheld by Tribunal – Respondent filed writ petition – High Court allowed the writ petition holding that the scheme of compassionate appointment does not lay emphasis on indigency as a criterion for withholding or offering compassionate appointment and directed the appellants to include the name of respondent in the list of candidates waiting for appointment on compassionate basis – Justification of – Held: Not justified – Contrary to the High Court's observation, indigence of the dependents of the deceased employee is the first precondition to bring the case under the scheme of "compassionate appointment" – If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution – Respondent went abroad in search of employment and stayed there for four years before filing application for compassionate appointment – Though he

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- A *might have been struggling for financial upliftment, he certainly cannot be described as an indigent or destitute – Case of respondent therefore did not come under the scheme of compassionate appointments as envisaged under Office Memorandum dated October 9, 1998 – Even otherwise and*
- B *without any reference to the said Office Memorandum, case of the respondent does not meet or satisfy the basic object and purpose of appointment on compassionate grounds – Further, respondent has already attained the age of superannuation and there is no question of his appointment on compassionate ground or on any other ground –*
- C *Constitution of India, 1950 – Articles 14 and 16.*

- The wife of the respondent died while giving birth to their second child. At that time she was working as a Senior Accountant in the Office of the Directorate of
- D **Postal Accounts. The respondent made an application for payment of her death-cum-terminal dues and subsequently also made request for compassionate appointment. After payment of monetary dues to the respondent, the claim of respondent for appointment on**
- E **compassionate basis was taken up. The respondent was informed that he was not found entitled to appointment on compassionate grounds because he was not considered to be “in indigent circumstances”. Challenging the said decision, the respondent filed O.A.**
- F **before the Tribunal. The Tribunal dismissed the O.A. Respondent filed writ petition.**

- The High Court, however, allowed the writ petition *inter alia* holding that the Scheme of compassionate appointment does not lay emphasis on indigency as a
- G **criterion for withholding or offering compassionate appointment and that compassionate appointment is to be made as a result of the death of the deceased official and when his/her family is in immediate need of assistance. The High Court held that in the instant case**
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there was a young son to be looked after and brought up and it cannot, therefore, be said that the family (of respondent) was not in need of income and thereafter directed the appellants to include the name of respondent in the list of candidates waiting for appointment on compassionate basis. Hence the present appeal.

Allowing the appeal, the Court

HELD:1.1. On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court's observation, indigence of the dependents of the deceased employee is the first pre-condition to bring the case under the scheme of "compassionate appointment". The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution. [Para 5] [725-E-H; 726-A]

1.2. The Central Government had issued revised and consolidated instructions in connection with the scheme of compassionate appointments *vide* Office Memorandum dated October 9, 1998, that had come into force when the case of respondent came up for consideration before the High Court. Clause 1 of the Office Memorandum describes the object of the Scheme as to grant appointment on compassionate grounds to a dependent family member of a Government servant

- A dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. Clause 5 of the said Office Memorandum lays down the eligibility criterion and requires that the family is indigent and deserves immediate assistance for relief from financial destitution. [Paras 7] [726-G-H; 727-A-B]

- C 1.3. In the writ petition filed by the respondent before the High Court it was stated that he was unemployed. It was further stated that in August, 1988, one of his friends took him to Singapore in search of employment. But there too the respondent was unable to find a "lucrative job". He came back to India after staying there for about four years in 1992. From the writ petition it appears that though the respondent might have been struggling for financial upliftment, he certainly cannot be described as an indigent or destitute. [Para 8] [727-G-H; 728-A]

- E 1.4. The case of the respondent clearly did not come under the Office Memorandum dated October 9, 1998. Even otherwise and without any reference to the Office Memorandum dated October 9, 1998, the case of the respondent does not meet or satisfy the basic object and purpose of appointment on compassionate grounds. [Para 9] [728-B-C]

State Bank of India v. Raj Kumar (2010) 11 SCC 661 – relied on.

- G 2. An important and relevant fact was completely missed out in considering the respondent's claim for appointment on compassionate basis. From the records it appears that in the verification appended to his OA before the Tribunal he gave his age as 58 years in June,

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1998. Unless his age is wrongly stated in the verification to the OA, he would be 54 years of age when he made the application for compassionate appointment and 61 years old when the High Court allowed his Writ Petition. In other words, he was already beyond the age of superannuation and there was no question of his appointment on compassionate ground or on any other grounds. [Para 11] [728-D-F]

Case Law Reference:

(2010) 11 SCC 661 relied on Para 6

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1045 of 2006.

From the Judgment & Order dated 1.8.2001 of the High Court of Madras in W.P. No. 1225 of 1998 and dated 24.11.2000 in W.P. No. 25135 in W.P. No. 12225 of 2003 in W.P. No. 12225 of 1998.

Shweta Verma, Mukesh Kumar (for V.K. Verma) for the Appellants.

The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. This appeal by special leave is directed against the judgment of the Division Bench of the Madras High Court. By the judgment and order coming under appeal, the High Court directed the appellants to include the name of the respondent in the list of candidates waiting for appointment under the scheme of "compassionate appointments".

2. The wife of the respondent K. Janaki died on September 1, 1993, while giving birth to their second child. At that time she was working as a Senior Accountant in the Office of the Directorate of Postal Accounts, Madras. On September

- A 21, 1993, the respondent made an application for payment of her death-cum-terminal dues. A rival claim was raised by the mother of the deceased but the respondent was able to obtain the succession certificate and on that basis he got payment of a sum of Rs.71,000/- as death-cum-retirement gratuity of his deceased wife, in addition to a sum of Rs.2,998/- per month as family pension.

3. On January 11, 1994, the respondent made the request for compassionate appointment but he was informed by the concerned departmental authorities that his claim for compassionate appointment would be considered only after the settlement of the rival claims for payment of the death-cum-terminal dues of K. Janaki. After payment of the monetary dues to the respondent, his claim for appointment on compassionate basis was taken up and he was asked to submit proof of passing the S.S.L.C. examination. On July 9, 1996, the respondent made another representation for appointment on compassionate grounds. His case was finally considered by the Circle Selection Committee and he was informed by letter dated February 26, 1998, that he was not found entitled to appointment on compassionate grounds because he was not considered to be "in indigent circumstances".

4. The respondent challenged the decision of the Circle Selection Committee before the Central Administrative Tribunal, Madras Bench in O.A. No.610/1998. The Tribunal dismissed the O.A. by order dated July 16, 1998. Against the order passed by the Tribunal, the respondent went to the Madras High Court in Writ Petition No.12225/1998. A Division Bench of the High Court allowed the Writ Petition with the direction to the appellants to include his name in the list of candidates waiting for appointment on compassionate basis. The High Court in the judgment coming under appeal observed as follows:-

"In deserving cases even when there is an earning member in the family, compassionate appointment may be

offered, if the family is found to be in distress, with the prior approval of the Secretary of the Department concerned."

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It went on to say:

"The Scheme, therefore, *does not lay emphasise on the indigency as a criterion* for withholding or offering compassionate appointment. Compassionate appointment is to be made as a result of the death of the deceased official and when his/her family is in immediate need of assistance."

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(emphasis added)

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It further said:

"Admittedly, there is a young son has to be looked after and brought up. It cannot, therefore, be said that the family is not in need of income. The fact that the family receives pension also no ground to decline appointment nowhere provides that in case where the family is paid pension."

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5. On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court's observation, indigence of the dependents of the deceased employee is the first pre-condition to bring the case under the scheme of "compassionate appointment". The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependents of an employee who died while in service which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the

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A Constitution.

6. In *State Bank of India v. Raj Kumar*, (2010) 11 SCC 661, elucidating the nature of the scheme of compassionate appointments this Court observed:

- B "It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process.
- C The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant."
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7. The Central Government issued revised and consolidated instructions in connection with the scheme of compassionate appointments under the Central Government *vide* Office Memorandum dated October 9, 1998. Clause 1 of the Office Memorandum describes the object of the Scheme as under:-
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- H "The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of

a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency." A

(emphasis added) B

Clause 5 lays down the eligibility criterion and provides as follows:-

"(a) The family is indigent and deserves immediate assistance for relief from financial destitution; and C

(b) Applicant for compassionate appointment shall be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules." D

(emphasis added)

Clause 7 deals with availability of vacancies and sub-clause (b) provides as follows:-

"(b) Compassionate appointments can be made upto a maximum of 5% of vacancies falling under direct recruitment quota in any Group 'C' or 'D' post. The appointing authority may hold back 5% of vacancies in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or otherwise so as to fill such vacancies by appointment on compassionate grounds." E F

8. In the writ petition filed by the respondent before the High Court it was stated that he was unemployed. It was further stated that in August, 1988, one of his friends took him to Singapore in search of employment. But there too the respondent was unable to find a "lucrative job". He came back to India after staying there for about four years in 1992. From the writ petition it appears that though the respondent might have been struggling for financial upliftment, he certainly cannot be H

A described as an indigent or destitute.

B 9. The case of the respondent clearly did not come under the revised and consolidated scheme formulated by Office Memorandum dated October 9, 1998, that had come into force when his case came up for consideration before the High Court. Even otherwise and without any reference to the Office Memorandum dated October 9, 1998, the case of the respondent does not meet or satisfy the basic object and purpose of appointment on compassionate grounds.

C 10. The High Court was, therefore, in error in passing the impugned order.

D 11. It further appears that an important and relevant fact was completely missed out in considering the respondent's claim for appointment on compassionate basis. From the records it appears that in the verification appended to his OA before the Tribunal he gave his age as 58 years in June, 1998. Unless his age is wrongly stated in the verification to the OA, he would be 54 years of age when he made the application for compassionate appointment and 61 years old when the High Court allowed his Writ Petition. In other words, he was already beyond the age of superannuation and there was no question of his appointment on compassionate ground or on any other grounds.

F 12. In light of the discussions made above, the order coming under appeal is wholly unsustainable. It is set aside. The appeal is allowed but with no order as to costs.

B.B.B.

Appeal allowed.