

HARYANA STATE ELECTRICITY BOARD

v.

NARESH TANWAR AND ANR. ETC. ETC.

FEBRUARY 2, 1996

[G.N. RAY AND S.B. MAJMUDAR, JJ.]

Service Law :

Compassionate appointment—Intended to meet the immediate financial problem suffered by the members of the family due to the sudden demise of the earning member—Compassionate appointment—Not to be granted after a long lapse of reasonable period.

CIVIL APPELLATE JURISDICTION : Civil appeal Nos. 3216-17 of 1996.

From the Judgment and Order dated 14.9.94 of the Punjab & Haryana High Court in C.W.P. No. 4722 of 1993.

K.K. Jain, Ajay Jain, Shashi Bhushan and Pramod Dayal for the Appellant.

Rajesh Sharma for Goodwill Indeever for the Appellant in C.A. No. 3217/96.

T.N. Singh and B.M. Sharma Respondent.

Balwant Singh Malik and Kusum Singh for the Respondent in C.A. No. 3217/96.

The following Order of the Court was delivered :

Leave granted.

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

A 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
B 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-
C Naresh Tanwar. In this appeal, the said judgment is impugned.

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 ap-
pointment of the son of the widow of the employee by contending that by
D 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 Sonana 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
E the son of the said respondent Sonana Devi being the heir of the deceased-
employee, on compassionate ground.

Learned counsel appearing for the State Electricity Board in these
matters have drawn our attention to the decision of this Court in *Umesh*
F *Kumar Nagpal v. State of Haryana and Ors.*, [1994] 4 SCC 138. 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
G 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
H 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 dependants of an employee dying in harness and leaving his family in denury 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 dependants 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)

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 :

A "For these very reasons, the compassionate employment cannot
B 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)

C The learned counsel has also placed before us an unreported
 decision of this Court in Jagdish Prasad versus 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 year 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
D the appellant was minor when the father died in harness, the compas-
 sionate 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 uphold-
 ing the rejection of such claim for appointment, this Court has indicated
E to the following effect :

F "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."

G 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 members of the family, provision
H to give monetary assistance within a limit to be determined by the con-

cerned 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 annexures referred to the SLPs 7678/95 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.

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.

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.*

It appears to us that the principle of compassionate appointment as

A 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.

B 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 representations 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
C 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.

G.N.

Appeals allowed.