

**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**

**CWP (T) No. 2688 of 2008.**

**Decided on: 30.4.2009.**

**Shri Bhag Singh** ... **Petitioner.**

## Versus

**The Chairman, H.R.T.C.** **... Respondent.**

**Coram:**

**Hon'ble Mr. Justice Rajiv Sharma, Judge.**

**Whether approved for reporting?<sup>1</sup> No.**

**For the petitioner : Mr. Suneel Awasthi, Advocate.**  
**vice Mr. R.L. Kaith, Advocate.**

**For the Respondent : Mr. Adarsh Sharma, Advocate.**

**Rajiv Sharma, Judge.**

The petitioner's father was retired on medical grounds. The petitioner applied under the "kith and kin" policy for appointment. He was appointed as Conductor vide office order dated 24.6.1994. He was served with a memorandum dated 14.10.1994 alleging therein that he had suppressed the facts that two of his brothers were already in service. He was asked to represent within fifteen days. He filed reply on 7.11.1994. His services were terminated after taking into consideration the reply on 20.2.1995. He approached the learned Himachal Administrative Tribunal by way of O.A. No. 691 of 1995. The same was directed to be treated as representation to the Managing Director of the respondent-Corporation. He decided the same on 4.8.1995.

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment? No.

Mr. Suneel Awasthi, Advocate has strenuously argued that the services of his client could not be dispensed with without holding regular inquiry. He then contended that two brothers of the petitioner were living separately at the time of issuance of appointment letter dated 24.6.1994. He has relied upon Annexures-PH to PJ to substantiate that his two brothers were living separately.

Mr. Adarsh Sharma, Advocate has vehemently argued that the purpose of offering appointment on compassionate grounds is to mitigate the hardships of the family after the death of the bread earner. He then contended that in case one or more members of the family are already in Government service or in employment of autonomous body etc., the appointment could not be made on compassionate grounds.

I have heard the parties and have perused the record carefully.

It is true that the petitioner's father was retired on medical grounds. The kith and kins of the person who retires on medical grounds are also entitled to compassionate appointment. The petitioner was offered appointment on compassionate basis on 24.6.1994. One of his brothers was enrolled in the Army and the second one was employed in the P&T Department. It will be apt at this stage to take note of sub para (c) of paragraph 5 of Office Memorandum dated 18.1.1990. It reads thus:

**“In all cases where one or more members of the family are already in Government service or in employment of Autonomous Bodies/ Boards/ Corporations etc., of the State/Central Government, employment assistance should not under any**

**circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased Government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow. Even for allowing compassionate appointment to the widow in such cases the opinion of the Department of Personnel and Finance Department should specifically be sought and the matter finally decided by the Council of Ministers.”**

A bare perusal of sub clause (c) demonstrates that in case where one or more members of the family are already in Government service, compassionate appointment cannot be made. In the present case, since two brothers of the petitioner were already in Government service, the compassionate appointment could not be made. The petitioner has been heard by the competent authority before terminating the services on 20.2.1995. The very purpose of offering compassionate appointment to the kith and kin of the deceased who has been retired would be defeated if the persons like petitioner are offered appointment. The purpose of providing compassionate appointment is to mitigate the hardships of the family. In the present case, there were no indigent circumstances necessitating the appointment of the petitioner on compassionate grounds. Annexures PH to PJ will not advance the cause of the petitioner. A bare perusal of these documents show that these were issued immediately before the appointment letter was issued to him on 24.6.1994. The employer has to take overall scenario into consideration while offering appointment on compassionate grounds. In case the persons like the petitioner are

offered appointment in violation of the “kith and kin” policy, the needy and deserving persons would be deprived of the benefit. The petitioner’s family was well off since two members of the petitioner’s family were already in Government service.

The petitioner was appointed on temporary basis. He has been heard in accordance with law. No regular inquiry was required to be held in the present case. It has not been denied by the petitioner that his two brothers were already in Government service at the time when he was offered appointment on compassionate grounds.

In these circumstances, there is no merit in this petition. Accordingly, the same is dismissed. No costs.

(Rajiv Sharma), J.

April 30, 2009.  
(cr)