

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extra Ordinary Jurisdiction)

S.B. : HON'BLE MR. JUSTICE S. K. AGNIHOTRI, JUDGE

WP(C) No. 67 of 2015

- Petitioners** : 1. Smt. Sankari Chowdhary,
W/o Late Kedar Nath Choudhary,
Aged about : 52 years.
2. Ms. Bharti Chowdhary,
D/o Late Kedar Nath Choudhary,
Aged about: 27 years,
3. Master Chanchal Chowdhary,
S/o Late Kedar Nath Choudhary,
Aged about : 26 years.
4. Miss Neetu Chowdhary,
D/o Late Kedar Nath Choudhary,
Aged about: 24 years.

All permanent residents of:
22-A, Bidhan Pally,
Police Station : Bally,
Post Office: Belurmath,
Howrah,
State of West Bengal.

At present residing at:-
N.H.P.C. Quarters, Teesta
Stage-V,
Hydroelectric Project,
Post Office : Balutar,
Police Station : Singtam,
East Sikkim.
Pin No. 737 134.

Versus

- Respondents** : 1. National Hydro-Electric Power
Corporation,

(N.H.P.C.), Through :-
The General Manager,
Teesta (Stage-V), Hydro Electric
Power Project,
Post Office : Balutar, Police Station
: Singtam,
East Sikkim. Pin No. 737 134.

2. National Hydro-Electric Power Corporation,
(N.H.P.C.), Through :-
Chairman / Managing Director,
N.H.P.C. Office Complex,
Sector – 33, Faridabad,
State of Haryana, Pin No. 121 003.

Petition under Article 226 of the Constitution of India.

Appearance

Mr. Ajay Rathi, Advocate with Mr. Aditya Makkhim, Mr. Rahul Rathi, Ms. Phurba Doma Sherpa and Ms. Khushboo Rathi, Advocates for the Petitioners.

Mr. A. K. Upadhyaya, Senior Advocate with Ms. Aruna Chettri, Advocate for the Respondents.

WP(C) No. 71 of 2015

- Petitioners** :
 1. Smt. Kanchan Gaura,
W/o Late Sanatan Gaura,
Aged about : 51 years,
(was aged about 39 years on
2003)
 2. Master Surendra Kumar Gaura,
S/o Late Sanatan Gaura,
Aged about : 25 years,
(Was aged about 14 years on
2003)

3. Master Banti Gaura,
S/o Late Sanatan Gaura,
Aged about : 20 years,
(Was aged about: 08 years on
2003)
4. Master Suraj Gaura,
S/o Late Sanatan Gaura,
Aged about : 18 years.
(Was aged about 06 years on
2003)

All permanent residents of:
Village & Post Office:
Sarabari,
District: Ganjarer,
State of Orissa.

At present residing at: -
Upper Legship PW
N.H.P.C. Colony,
Legship GPU,
Post Office: Legship,
Police Station : Hingdam,
Legship,
South Sikkim.
Pin no. 737 111.

Versus

- Respondents** :
1. National Hydro-Electric Power Corporation, Ltd.
(N.H.P.C.), Through : -
The General Manager,
Teesta (Stage-V), Hydro Electric Power Project,
Post Office : Balutar, Police Station : Singtam,
East Sikkim. Pin No. 737 134.
 2. National Hydro-Electric Power Corporation, Ltd.
(N.H.P.C.), Through : -
Chairman / Managing Director,
N.H.P.C. Office Complex,
Sector – 33, Faridabad,
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Mr. A. K. Upadhayaya, Senior Advocate with Ms. Aruna Chettri, Advocate for the Respondents.

ORDER

(23rd June, 2016)

S. K. Agnihotri, J

1. Having regard to the commonality of the facts and question of law involved in both the Writ Petitions, being W.P.(C) No. 67 of 2015 and W.P.(C) No.71 of 2015, they are heard together and decided by this common order.

2. W.P.(C) No. 67 of 2015; Late Kedar Nath Choudhary, husband of the first petitioner and father of the second, third and fourth petitioners, died-in-harness, on 11.01.2003, while working as Head Cook (Special grade) at the age of 52 years, leaving behind the petitioners herein. According to the first petitioner, the

first petitioner, being an illiterate women and not being aware of the formalities, verbally requested the first respondent for grant of compassionate appointment on 14.01.2003, thereafter, made a proper application on 19.08.2005. The petitioners were declined the compassionate appointment or the lump-sum payment as provided under the subsequent lump-sum payment scheme vide communication dated 12.06.2015 (Annexure P-14), sent in response to the subsequent legal notice of the petitioners. The application of the first petitioner was rejected on the ground of being time barred.

3. WP (C) No. 71 of 2015; Late Sanatan Gaura, husband of the first petitioner and father of second, third and fourth petitioners, died-in-harness, on 20.06.2003 while working as helper (special grade II). Likewise the first petitioner, being an illiterate women, made a verbal request to the respondents wherein she was assured of grant of some employment. Ultimately, an application in the proper format was made on 09.11.2006. The first petitioner was informed vide communication dated 29.04.2008 that her request for grant of either compassionate appointment or lump-sum payment, had

been rejected on the ground of the application being time barred.

4. The rejection of the aforestated request of the petitioners in both the petitions necessitated filing of the instant petitions seeking a relief of direction to the respondents to grant lump-sum payment in lieu of compassionate appointment under the new lump-sum payment scheme.

5. The respondent-Corporation vide Circular dated 10.06.1999 framed compassionate appointment scheme to grant appointment to the next of kin of deceased employee as under: -

- "i) No application will be considered for employment until the application for such employment is received in the project within 3 months from the death of the employee.
- ii) The employment will be given only to the widow of the deceased employee.
- iii) The cases where employee has less than 2 years of service left at the time of his death will not be recommended for compassionate appointment.
- iv) The cases where employee has more than 2 years and less than 5 years of service left on the date of his death will be considered on the merit of each case.
- v) In case any member of the family of the deceased employee is already employed in Government/Private including NHPC/ Self-employment/ business their cases for compassionate Appointment will not be recommended.

- vi) If the family is having other source of income including rent or interest on deposits etc. for more than Rs.3,500 per month, such case will not be considered for employment. The amount being given by NHPC by way of terminal benefits etc. will also be taken into account.
- vii) In case of death due to accident (not on duty) will also not be considered if covered under Group Accidental Insurance Policy taken by NHPC Corporate Office/Project. The Committee while recommending the cases will also look into various other aspects including Assets held by the family.
- viii) The Project Authorities before sending the case for the consideration of the Committee will ensure that the cases are falling within these norms and also adequately ensure the correctness of the facts/information etc. given/suppressed by the applicant to the extent possible."

6. The said scheme ceased to operate from the year 2001, as is evident from the communication dated 12.06.2015 (Annexure P-14 to the W.P. (C) No. 67 of 2015), by way of reply to legal notice to the Advocate of the petitioners from the Chief Engineer, In-charge. In the meantime, a new scheme namely; NHPC Employees Social Security Scheme, 2006 came into force w.e.f. 01.07.2006. Under the said scheme the employees, dyeing-in-harness were made entitled to monetary benefit under the lump-sum payment scheme. The said scheme was circulated vide letter dated 31.08.2006 (Annexure P-3). The scheme was one time exercise,

applicable to the next of kin of deceased employee as under: -

2.3 This will be a one time exercise to clear all the pending applications of Compassionate Appointment. The Scheme shall apply only

(i) to those cases which were recommended by the duly constituted Committee for Compassionate Appointment.

(ii) to all such cases of death where committee recommends the case of Compassionate Appointment till the time the Social Security Scheme is introduced in the Corporation.

2.4 The Scheme shall not be applicable

(i) where the Committee has rejected the cases.

(ii) Employees who are suffering from permanent total disablement resulting into separation from the services of the Corporation.

2.5 The conditions for considering & forwarding the request received next of kin of deceased employees for lumpsum assistance in compassionate appointment are as under: -

(i) No application will be considered until the application is/has been received in the Project/Unit within one year from the date of the death of the employee.

(ii) The cases where deceased employee has less than two years of service left on the date of his death will not be considered.

(iii) The cases where deceased employee has more than two years and less than 5 years of service left on the date of his death will be considered on the merit of each case.

(iv) in case any member of the family of the deceased employee is already employed in Government/ Private including NHPC/self employment / business, their cases for lump sum assistance will not be considered.

- (v) If the family is having other source of income including rent of interest on deposits etc. for more than Rs.1 lakh (one lakh) per annum, such cases will not be considered. The amount being given by NHPC by way of terminal benefits etc. will also be taken into account. Family for this purpose shall mean spouse and dependant children of deceased employee."

7. Under the NHPC Employees Social Security Scheme 2006, the workmen are entitled to Rs.7.50 lakhs. Under the said scheme, any member of the dependants of the deceased employee is required to make application within one year from the date of the death of the employee. In the case on hand, the request of the petitioners in both the petitions were declined on the ground of being time barred.

8. Mr. Ajay Rathi, Learned Counsel, appearing for the petitioners, would contend that the first petitioner in both the petitions, being illiterate women, could not make proper applications and also on account of the fact that the compassionate scheme ceased to operate as such making of an application would have been a mere formality. The compassionate appointment scheme was not effective till the new lump-sum payment scheme came into force. In the case of WP(C) No. 67 of 2015 the first petitioner namely; Smt. Sankari Chowdhary made an

application in writing on 19.08.2005 and in case of WP (C) No.71 of 2015, the first petitioner, namely; Smt. Kanchan Gaura made an application in writing on 09.11.2006, though the verbal request was made by them immediately, after death of the deceased employee. Even otherwise, the application were made in time. Thus, the rejection of their applications for grant of lump-sum payment to tide over distress faced by the dependants of the deceased employees was opposed to the Welfare Policy of the respondent-Corporation. The scheme is a Welfare scheme to provide succour to the bereaved members of the deceased employees, which should not have been denied on the ground of hyper-technicality of being barred by time. The first petitioner in both the petitions have made verbal request and were also given assurance, by the authorities, of consideration and grant of appointment which never came through.

9. The Learned Counsel would further contend that in such circumstances, a direction may be issued to the authorities to consider the applications of the petitioners on merit and extend social security benefit to the dependants of the deceased employees.

10. Resisting the submissions of the petitioners, Mr. A. K. Upadhayaya, Learned Senior Counsel, appearing for the respondents, would content that the petitioners are not entitled to claim either compassionate appointment or lump-sum grant as the scheme clearly provides for making an application within one year from the date of the death of the employee. Even otherwise, they do not have any vested right to appointment or any payment.

11. It is further contended that indisputably no application was made within the prescribed time and as such petitioner's claims were rightly rejected.

12. I have heard Learned Counsels appearing for the parties, perused pleadings and documents, appended thereto.

13. The compassionate appointment scheme, 1999, provides for making of the application within three months from the date of the death of the employee. It is also prescribed that the employment will be given to the widow of the deceased employee only.

14. In subsequent lump-sum payment scheme, which is applicable to all those cases which were recommended by the Committee for compassionate

appointment and also to those cases where no decisions were taken, the time prescribed for making the application is one year from the date of the death of the employee.

15. Indisputably, the deceased employees have more than five years of services and as such the lump-sum scheme is applicable in the given cases. Contention of the Learned Counsel for the petitioners that the first petitioner in both the cases have visited the respondent authorities for compassionate appointment and they were assured verbally, though, there is no document in writing, deserve acceptance for want of specific denial on the part of the respondent. It cannot be gainsaid that the first petitioner in both the petitions have not approached the authorities for grant of relief of compassionate appointment immediately on the death of the employees.

16. Technically speaking no application was made within the prescribed time as provided under the scheme, but in the cases on hand the authorities are required to consider their request/application when the facts of making oral request immediately is fully established.

17. The entitlement of the dependant members of the deceased employee for compassionate appointment or other benefits in lieu thereof, is well recognized by the Supreme Court. I shall refer to some landmark judicial pronouncements to understand the objective of grant of the aforesaid benefit, albeit, it is held as not in accordance with the constitutional provisions.

18. In ***Smt. Sushma Gosain and Others vs. Union of India and Others***¹, wherein a notification under the Army Act 1950, was under consideration, the Supreme Court held as under: -

"9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

19. In ***Umesh Kumar Nagpal vs. State of Haryana and Others***², the Supreme Court held as under: -

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must

1. (1989) 4 SCC 468

2. (1994) 4 SCC 138

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 as 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."

20. In ***Balbir Kaur and Another vs. Steel Authority of India Ltd. and Others***³, in the case, where the employer was an authority, within the meaning of the Article 12 of the Constitution, as is the present case, the Supreme Court held as under: -

"13.The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family – this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation."

21. In ***I. G. (Karmik) and Others, vs. Prahalad Manti Tripathi***⁴, the Supreme Court held as under: -

"7. Public employment is considered to be

3. (2000) 6 SCC 493

4. (2007) 6 SCC 162

a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of bread earner. When an important is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion."

22. In *State of Gujarat and Others vs. Arvindkumar T. Tiwari and Another*⁵, the Supreme Court held as under: -

"8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 14 and 16, which provide that there can be no discrimination in public employment. The object of compassionate employment is to enable the family of the deceased to overcome the sudden financial crisis it finds itself facing, and not to confer any status upon it. (Vide *Union of India v. Shashank Goswami*)."

23. In *Canara Bank and Another vs. M. Mahesh Kumar*⁶, the Supreme Court held as under: -

"9. The settled law which has been reiterated in various cases has been succinctly elucidated in *MGB Gramin Bank v. Chakrawarti Singh*, wherein it was observed that compassionate appointment cannot be granted

5. (2012) 9 SCC 545

6. (2015) 7 SCC 412

as of right and the application to be decided as expeditiously as possible and held as under: (SCC p.585, para 6)

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. *The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.*" (emphasis supplied)

The above consistent view has been reiterated in various judgments by this Court in *Umesh Kumar Nagpal v. State of Haryana*, *State of Manipur v. Mohd. Rajaodin*, *SAIL v. Madhusudan Das and Sanjay Kumar v. State of Bihar*.

24. A common thread running through the Judicial pronouncements (supra) on the issue of grant of compassionate appointment is that the purpose of providing appointment is to mitigate the hardship

befallen the dependant members of the deceased employee.

25. Having regard to the purpose of extension of succour to the bereaved family, it is held that such relief cannot be granted after a lapse of reasonable period. In the cases on hand, the dependant members namely; Smt Sankari Chowdhary and Smt. Kanchan Gaura, widows of the deceased employees visited the authorities immediately for grant of compassionate relief. Even the application in writing was made within a period of one year from the date new lump-sum payment scheme came into force in WP (C) No. 71 of 2015 and in case of WP (C) No. 67 of 2015, prior to coming of the said scheme into being, particularly when the compassionate appointment scheme ceased to operate during the interregnum period.

26. In the conspectus of the aforestated factual matrix, the petitioners are entitled to consideration for grant of lump-sum payment under the scheme. Rejection of their applications on the ground of being time barred is unjust, improper and illegal. Accordingly, the rejection is set aside.

27. As a sequel, the respondent/authorities are directed to consider the applications of the petitioners in

the light of new lump-sum payment scheme and grant appropriate payment as per the scheme.

28. It is ordered, accordingly. The petitions are allowed. Costs made easy.

(S.K. Agnihotri)
Judge
23-06-2016

Approved for reporting : Yes

Internet : Yes

to