A UNION OF INDIA & ANR.

v.

SHASHANK GOSWAMI & ANR.

(Civil Appeal No. 6224 of 2008)

MAY 23, 2012

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[DR. B.S. CHAUHAN AND DIPAK MISRA, JJ.]

Service Law - Appointment - Compassionate appointment - Held: Cannot be claimed as a matter of right - Appointment on compassionate ground is not another source of recruitment but merely an exception to the requirement of taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood - Applicant cannot claim appointment in a particular class/group of post - Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased - On facts, the Compassionate Scheme provided that in case the family gets more than Rs. 3 lakhs, the dependent of the deceased would not be eligible for employment on compassionate ground - Retiral/terminal benefits have been received by the family exceeding Rs.3 lakhs, thus, respondent not eligible to be considered for the Group 'C' post.

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Govind Prakash Verma v. Life Insurance Corporation of India & Ors. **(2005) 10 SCC 289;** *Punjab National Bank & Ors. v. Ashwini Kumar Taneja* **(2004) 7 SCC 265: 2004 (3) Suppl. SCR 597;** *General Manager (D&PB) & Ors. v. Kunti Tiwari & Anr.* **(2004) 7 SCC 271;** *Mumtaz Yunus Mulani (Smt.) v. State of Maharashtra & Ors.* **(2008) 11 SCC 384: 2008 (5) SCR 241- referred to.**

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Case Law Reference:

(2005) 10 SCC 289	**Referred to.**	**Para 10**
2004 (3) Suppl. SCR 597	**Referred to.**	**Para 11**
(2004) 7 SCC 271	**Referred to.**	**Para 11**
2008 (5) SCR 241	**Referred to.**	**Para 12**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6224 of 2008.

From the Judgment and Order dated 23.5.2006 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 28535 of 2006.

S.P. Singh, Sushma Suri, B. Sunita Rao, D.S. Mahara for the Appellants.

The Order of the Court was delivered

ORDER

1. This appeal has been preferred against the impugned judgment and order dated 23.5.2006 passed by the High Court of Judicature at Allahabad in C.M.W.P. No.28535 of 2006 directing the appellants herein to reconsider application of respondent no.1 on compassionate grounds.

2. Facts and circumstances giving rise to this appeal are that one Anand Kishore Gautam working as Senior Accountant in the office of the Accountant General, Allahabad died on 19.3.2001 in harness, leaving behind two sons aged about 20 and 19 years and a daughter, aged about 17 years and Smt. Rashmi Gautam, ?his widow.

3. Respondent No. 1 filed an application for appointment on compassionate grounds, which came to be rejected by the appellants on 28.1.2004 in view of the prevailing scheme for appointments on compassionate grounds. Under the scheme,

A vacancies could be filled up on compassionate grounds only upto 5% of the cadre strength falling under direct recruitment quota during a year in Group 'C ' and 'D ' posts.

The scheme further lays down that the total income of the family from all sources including terminal benefits after death, excluding G.P.F., should be taken into consideration. So far as the post of Group 'C' is concerned, the scheme provides that in case the family gets more than Rs.3 lakhs, the dependent of the deceased would not be eligible for employment on compassionate ground.

4. Respondent No.1 could not be offered appointment on the ground that excluding G.P.F. amount, his family had received a sum of Rs.4,40,908/- in addition to family pension of Rs.3,100/- per month granted to Mrs. Rashmi Gautam. She was entitled to get the said family pension at least for seven years and thereafter, the family pension would be Rs.1,860/- per month plus ?other reliefs admissible on pension

5. Aggrieved, respondent No.1 challenged the order dated 28.1.2004 rejecting his claim, before Central Administrative Tribunal, Allahabad vide Original Application No. 728 of 2004, wherein the Tribunal by judgment and order dated 7.12.2005 quashed the order dated 28.1.2004 and directed the appellants herein to reconsider the case of respondent No.1.

6. Aggrieved by the order of the Tribunal, the appellants preferred CMWP No.28535 of 2006 before the High Court which has been dismissed vide impugned judgment. Hence this appeal.

7. We have heard Mr. S.P. Singh, learned senior counsel appearing for the appellants.

In spite of notice, the respondents did not enter appearance.

The appeal is pending for the last four years before this Court. A

8. Learned senior counsel appearing for the appellants has submitted that the appellants had to consider the applications for employment on compassionate grounds only within the parameters and terms and conditions incorporated in the scheme laid down for that purpose. The scheme makes a person ineligible for the post in Group 'C', in case, on the ?death of the incumbent on the post, the family gets retiral benefits/terminal benefits exceeding Rs. 3 lakhs. B C

9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. D E F G

10. This Court in *Govind Prakash Verma v. Life Insurance Corporation of India & Ors.,* (2005) 10 SCC 289 while dealing H

A with a similar issue i.e. whether payment of terminal/retiral benefits to the family can be taken into consideration, held as under:

> "In our view, it was wholly irrelevant for the departmental authorities ..... to take into consideration the amount which was being paid as family pension to the widow of the deceased ..... and other amounts paid on account of terminal benefits under the Rules. . ..... Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amount admissible under the Rules."

11. This Court in *Punjab National Bank & Ors. V. Ashwini Kumar Taneja*, (2004) 7 SCC 265, placing reliance upon the earlier judgment in *General Manager (D&PB) & Ors. V. Kunti Tiwari & Anr.*, (2004) 7 SCC 271, held that compassionate appointment has to be made in accordance with the Rules, Regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. Whereas the scheme provides that in case the family of the deceased gets the retrial/ terminal benefits exceeding a particular ceiling, the dependant of such deceased employee, would not be eligible for compassionate appointment.

12. In *Mumtaz YunusMulani (Smt.) v. State of Maharashtra & Ors.*, (2008) 11 SCC 384, this Court examined the scope of employment on compassionate ground in a similar scheme making the dependant of an employee ineligible for the post in case the family receives terminal/ retiral benefits above the sealing limit and held that the judgment in *Govind Prakash* (supra) had been decided without considering earlier judgments which were binding on the Bench. The Court further held that that the appointment has to be made considering the terms of the scheme and in case the scheme lays down a criterion that if the family of the deceased employee gets a particular amount as retiral/terminal benefits, dependent of the

deceased employee would not be eligible for employment on compassionate grounds.

13. In the instant case, office of the Comptroller and Auditor General of India, New Delhi issued a Circular dated 19.2.2003 explaining the scope of such appointments. Relevant part of the same reads as under:

> "With a view to bring uniformity in our offices regarding parameters for compassionate appointment of a family member in the case of death of a government servant in harness, it has been decided that the total income of the family from all sources including terminal benefits after death, excluding G.P.F., should be taken into account. If the resultant computation works out to a figure less than the parameters given below such cases can be considered for compassionate appointment subject to fulfilment of all other conditions. The limits are given below:
>
> Group 'B' Rs. Five lakhs
>
> Group 'C' Rs. Three lakhs
>
> Group 'D' Rs. Two lakhs."
>
> .....

14. The case of the respondent was rejected by the appellants in view of the fact that the family of the deceased Anand Kishore Gautam had been given the following terminal benefit excluding the G.P.F.

1. DCRG	Rs.2,48,248.00
2. Leave Encashment	Rs.88,660.00
3. CGEIS	Rs.44,000.00
4. DLIS	Rs.60,000.00
Total:	Rs.4,40,908.00

A In addition to above, family pension @ 3100/- per month has been authorised to Smt. Rashmi Gautam for a period of 7 years and thereafter @ 1860/- per month plus admissible relief on pension.

B 15. In view of the fact that, in the instant case the retiral/ terminal benefits have been received by the family exceeding Rs.3 lakhs, respondent No.1 is not eligible to be considered for the Group 'C' post.

16. In view of the above, the appeal succeeds and is C allowed. The impugned judgments/orders stand set aside.

N.J. Appeal allowed.