

Before Hemant Gupta and Mohinder Pal, JJ.

UNION TERRITORY, CHANDIGARH
AND OTHERS,—*Petitioners*

versus

RACHO DEVI AND ANOTHER,—*Respondents*

C.W.P. No. 5994/CAT of 2007

14th March, 2008

Constitution of India, 1950—Arts. 14, 16 and 226—Government of India circulars dated 9th October, 1998, 3rd December, 1999 and 5th May, 2003—Husband of respondent 1 died in harness—Claim for appointment on compassionate ground—Under policy of Government of India only 5% posts of direct recruitment to be filled up from amongst dependents of deceased Government employees—Recommendation for appointment on compassionate ground in really deserving cases—Maximum time for keeping a person's name under consideration for offering compassionate appointment 3 years fixed by circular dated 5th May, 2003—After 3 years if compassionate appointment is not possible to be offered applicant's case will be finally closed and not be considered again—Compassionate appointment is to tide over immediate financial crisis—Compassionate appointment neither a source of appointment nor a right—Orders passed by Tribunal directing to reconsider claim of applicants for appointment on compassionate ground against available posts not justified in law and not sustainable—Petitions allowed, orders passed by Tribunal set aside.

Held, that the compassionate appointment is permissible only to the dependents widow, son and daughters of the deceased Government employee to meet out the financial distress son after the death of the employee. Otherwise, there is no right of appointment on the basis of descent and as such the appointment is violative of the Articles 14 and 16 of the Constitution of India. The right of consideration for appointment on compassionate ground is in accordance with the policy or the scheme framed from time to time and there is no right of appointment dehors of the scheme. Still

further, the appointment on compassionate ground cannot be sought after lapse of time. The public employment is considered to be wealth and appointment on compassionate ground can be given only for meeting out the immediate financial hardship on account of death of the breadwinner.

(Para 23)

Further held, that the maximum time a person's name can be kept under consideration for offering compassionate appointment, will be 3 years. It was subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant to the end of the first and second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again.

(Para 25)

Further held, that the reasoning given by the learned Tribunal is not justified in law. The compassionate appointment is to be given to the dependents of the deceased Government employee to tide over the immediate financial crisis. For a period of 6 years the appointment on compassionate ground could not be offered to the dependent Government employee for the reason that there was no post available. Therefore, the applicant before the learned Tribunal cannot insist for the appointment on compassionate ground after such a long period and to keep his case pending.

(Para 27)

Similarly, in CWP No. 6992-CAT of 2007, the reasoning given by the learned Tribunal is not tenable in law. No doubt, the Common Committee made the recommendations in the year 2004, but the said recommendations were made after 5 years of the death of the father of the applicant. The name of the applicant cannot be kept pending for indefinite period and to await the applicant to attain the age of majority. The entire object of providing compassionate appointment is to tide over certain financial crisis. It is neither a source of appointment nor a right. Therefore, the deletion of name of the applicant from the list in the year 2005 cannot be said to be unjustified as the same was deleted almost after 7 years of the death of the deceased Government employee.

(Para 28)

Further held, that in CWP No. 5999-CAT of 2007 the findings of the learned Tribunal that the junior to the applicants have been given appointment, is based upon the minutes of the Committee. Such finding has been returned without any pleading and without giving any opportunity to the petitioners to explain such noting in the minutes of the Committee. It is the case of the petitioners that against 49 Group-C posts, 4 posts had already been filled up through compassionate appointments and similarly out of 133 Group-D posts, 13 posts were filled up by way of compassionate appointment. The said fact was also asserted in the written statement before the learned Tribunal and not controverted by the applicants. Therefore, the learned Tribunal was not justified in returning a finding to the effect that juniors to the applicants have been granted appointment on compassionate grounds.

(Para 30)

HEMANT GUPTA, J.

(1) This order shall dispose of Civil Writ Petition No. 5994-CAT of 2007, filed against the order of the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the 'Tribunal') dated 31st August, 2006, whereby the petitioners were directed to reconsider the claim of the applicant-Racho Devi for her appointment on compassionate ground against any available post meant for the purpose; Civil Writ Petition No. 5999-CAT of 2007, filed against the order of the Tribunal dated 30th August, 2006, whereby the petitioners were directed to reconsider the claim of the applicant-Bhupinder Kaur for her appointment on compassionate ground against any available post meant for the purpose and Civil Writ Petition No. 6962-CAT of 2007, filed against the order of the Tribunal dated 14th November, 2006 whereby the petitioners were directed to consider the claim of the applicant No. 2-Balvir Singh for Class-IV post.

(2) Since the issues arising in all the three petitioners are the same, therefore, all the three cases are being disposed of by a common order. However, primarily, the facts are taken from Civil Writ Petition No. 5994-CAT of 2007.

(3) In the aforesaid case, Mohinder Pal, husband of respondent No. 1 was posted as Constable in the Chandigarh Police. He died on 9th April, 1998. The respondent No. 1 moved an application for appointment

on compassionate ground as she has three children of the age of 11 years, 9 years and 7 years and has no source of livelihood. The application of respondent No. 1 dated 30th June, 1998 to seek appointment on compassionate ground, was considered by a Common Committee of the Union Territory Administration, constituted for consideration of such requests. It is pointed out that though the name of the applicant-respondent No. 2 was recommended for appointment, but,—*vide* communication dated 18th March, 2005, Annexure A-16, the request was deleted being more than 3 years old. It is the said communication which was made subject matter of challenge before the learned Tribunal.

(4) It is contended by the petitioners that the scheme of compassionate appointment was circulated by the Government of India, Ministry of Personnel, Public Grievances and Pension, on 9th October, 1998. The respondent No. 2 being eligible for appointment under the aforesaid Scheme, is entitled to be considered for appointment on compassionate ground against 5% posts of the direct recruitment. It is also contended that the name of the respondent No. 2 has been deleted being more than 3 years old case. It is pointed out that against the 49 Group-C posts, 4 posts had already been filled up through compassionate appointments and similarly out of 133 Group-D posts, 13 posts were filled up by way of compassionate appointment and, thus, there is no post available which can be filled up out of the candidates seeking appointment on compassionate ground. Reliance was placed on a circular dated 5th May, 2003 wherein maximum time to keep the name of a person under consideration for offering compassionate appointment, was contemplated to be 3 years. Since there was no vacancy against which the applicant could be appointed, therefore, her name was rightly deleted.

(5) It may be mentioned here that in Civil Writ Petition No. 5999-CAT of 2007, a list of applicants waiting for compassionate appointment, has been appended as Annexure A-4. The first candidate in the said list is Bhagwanti whose husband died on 6th April, 1996. The name of Racho Devi appears at Serial No. 12, through the date of death of the deceased employee is 10th April, 1998. The name of the applicant in C.W.P. No. 5999-CAT of 2007 i.e., Bhupinder Kaur stands at Serial No. 15 of that list with the date of death of the deceased employee as 2nd May, 1998. A perusal of the list Annexure A-4 shows that the same has been maintained

according to the date of death of the deceased employee. Learned counsel for the respondents could not point out that any person lower in such list has been given appointment in preference to the applicant.

(6) Learned counsel for the petitioners has vehemently argued that the appointment on compassionate ground is a concession granted to the dependent members of the deceased employee to tide over immediate financial crises. It is not a source of employment and that fixation of 5% posts to be filled up from amongst the dependents of deceased Government employee cannot be said to be unjustified. The Administration has maintained a list of eligible dependent members of the deceased Government employees and employment can be given only in terms of the scheme. Still further, the appointment can be given upto the maximum 5% of the vacancies fallen vacant under the direct recruitment in Group-C and Group-D categories in terms of the scheme for appointment on compassionate ground circulated by the Central Government,—*vide* circular dated 9th October, 1998. Since 5% posts falling vacant in direct recruitment quota, already stand filled up from amongst the dependent members of the deceased employees, therefore, the applicant cannot seek any direction for appointment. The direction of the learned Tribunal for reconsideration of the case of the applicant for compassionate appointment is wholly unjustified when the circular dated 5th May, 2003 restricts the validity of the list for a maximum period of 3 years.

(7) On the other hand, learned counsel for respondents have argued that the action of the petitioners in not granting appointment to the applicants is wholly discriminatory. Reference is made to the averment made in para 10 of the application whereby 7 posts of Sweepers, 5 posts of Mallies and 2 posts of peons were said to have been fallen vacant between the years 2001–2004 and thus, it was sought to argue that number of posts were available and, therefore, the action of the petitioners in not considering the claim of the applicant is wholly unjustified. It is also argued that the wife of one V. K. Chopra has been appointed on compassionate ground, which shows the pick and choose policy adopted by the petitioners in offering appointment on compassionate ground.

(8) In Civil Writ Petition No. 6992-CAT of 2007, the argument raised by learned counsel for the respondent was that the applicant-respondent

No. 2 applied for appointment on attaining the age of 18 years and he has not been able to qualify the physical test. On the one hand, the applicant has been declined appointment on compassionate ground for not qualifying the physical test, but on the other hand, in the case of other candidates, relaxation has been given in respect of physical fitness for grant of a appointment on compassionate ground and, therefore, the action of the petitioners in not granting the appointment to the applicant on compassionate ground is unjustified. Learned counsel for the respondents has also relied upon a Single Bench judgment of this Court reported as “**Daya Kaur versus Haryana State Electricity Board, (1)**” wherein it was found that the dependent must be eligible for making an application within the period of limitation indicated in the rules. In the case of a minor who is not qualified to apply for the appointment on compassionate ground, the period of limitation cannot but start from the date of attaining his majority. Therefore, the applicant should have been granted appointment on compassionate ground.

(9) The principles underlying the policy of compassionate appointment have been outlined in the decisions of the Hon’ble Supreme Court. In case of **Auditor General of India and others versus G. Ananta Rajeshwara Rao, (2)** the Hon’ble Supreme Court has found the appointment on the ground of descent is in violation of Article 16(2) of the Constitution of India. But appointments confined to son, daughter of widow of a deceased government employee who died in harness and who needs immediate appointment on the ground of immediate need of assistance, alone would be acceptable. It was held to the following effect :—

“xx xx xx xx

Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need

(1) 1996 (2) S.C.T. 446

(2) (1994) 1 S.C.C. 192

of assistance in the event of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is unexceptionable.”

(10) In case “**Umesh Kumar Nagpal versus State of Haryana**, (3), their Lordships of the Supreme Court held as under :—

“The whole object of grant of compassionate-employment is, thus to enable the family to tide over the sudden crisis. The object is not to give member of such family a post much less a post for post held by the deceased. What is further, more death of an employee in harness does not entitle his family to such source of livelihood. The Government or 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 provisions of employment, the family will not be able to meet the crisis that job is to be offered to the eligible member of the family.

xx xx xx

The object being to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

(11) In case **Jagdish Prasad versus State of Bihar** (4), the Hon’ble Supreme Court rejected the claim of a minor dependent to be appointed on compassionate ground after attaining the age of majority by making the following observation :—

“The very object of appointment of a dependent of the deceased employee who died 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

(3) (1994) 4 S.C.C. 138

(4) (1996) 1 S.C.C. 38

contention is accepted, it amounts to another mode of recruitment to the dependent of a deceased government servant which cannot be encouraged, *de hors* the recruitment rules.”

(12) In case **Haryana State Electricity Board versus Naresh Tanwar**, (5), the Hon’ble Supreme Court reversed some of the orders of this Court directing appointment of dependents of the deceased employees who were minor at the time of the death of the concerned employee. While setting aside the orders of the High Court, the Hon’ble Supreme Court reiterated the law laid down in **Umesh Kumar Nagpal’s case** (*supra*) in the following words :—

“It has been indicated in the decision of **Umesh Kumar Nagpal’s case** (*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 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 dies 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.

(13) Considering the aforesaid judgments, a Division Bench of this Court in **Charanpreet Singh versus Punjab State through Secretary to Government, Punjab Education Department**, (6), found that the circular of the State Government in entitling a minor dependent to apply for ex-gratia employment within six months of his/her attaining majority cannot be termed as extra liberal. It was found that there is no provision for relaxation of the limit of six months period within which the minor dependent has to submit application after attaining majority. It was held to the following effect :—

“Viewed in the light of the decisions of the Supreme Court and this Court, the circular dated 8th August, 1998 issued by the

(5) (1996) 8 S.C.C. 23

(6) 2000 (2) S.C.T. 444

Government of Punjab entitling a minor dependent to apply for ex-gratia employment within six months of his/her attaining majority cannot but be termed as extra liberal. By virtue of this circular the minor dependent becomes entitled to compassionate appointment irrespective of the time gap between the demise of the bread winner and the submission of the application by the minor after attaining majority. However, as there is no provision for relaxation of the limit or six months period within which the minor dependent has to submit application after attaining majority, we cannot issue a writ directing the respondents to entertain the prayer of the petitioner, who, as per his own showing, had applied for ex-gratia employment after more than nine years of the demise of his mother and almost one year after attaining the age of 18 years. In our considered opinion, the petitioner's failure to apply within six months of his attaining majority has been rightly made basis for declining his prayer for compassionate appointment. Therefore, there is no valid ground to nullify the order passed by respondent No. 2"

(14) Later on a Division of Bench of this Court in **Subhash versus State of Haryana and others (7)**, has held to the following effect :—

“We are of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidates are screened, interviewed and short-listed in a rational and reasonable manner. Legally there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly house in favour of one or other member of the family of the deceased because if it were to be so allowed, then such a consideration would go against the expectations of millions of other families which have been subjected to similar

unforeseen miseries on account of the death of their breadwinner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment but in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period *ad finitum*. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment had become non-existent—the deceased parent having died 4/6 years ago—an event which can hardly be said to be reasonable *vis-a-vis* persons waiting for regular appointment.

We are, therefore, of the view that there cannot be continuity of cause of action in matters of compassionate appointment.”

(15) In **State of Manipur versus M.D. Rajadin, (8)**, the Hon’ble Supreme Court was considering the office memorandum issued by the Government of Manipur dealing with the parents, son, daughter etc. of a Government employee, who die in harness leaving behind the family in indigent circumstances. The Court held to the following effect :—

“As the appointments of such nature envisaged under the said Scheme are made to tide over immediate difficulties, there is an inbuilt requirement of urgency in making the application. Though it was contended that the respondent was a minor at the time of his father’s death, it is to be noted that he was 10 years of age in 1980 when his father died. Even if a reasonable period after he attained majority is taken, certainly the application on 25th July, 1997 seeking appointment was highly belated.”

(16) While considering the aforesaid case, the Hon’ble Supreme Court in **Commissioner of Public Instructions and others versus K.R. Vishwanath, (9)** has held that the claim of appointment on compassionate

(8) (2003) 7 S.C.C. 511

(9) (2005) 7 S.C.C. 206

ground can be considered within reasonable time of a sudden crisis occurring in the family. It was held by the Hon'ble Supreme Court to the following effect :—

“.....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 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. But such appointment 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.”

(17) This Court in Civil Writ Petition No. 13472 of 2006, **Union of India versus Tilak Raj and another**, deceased on 5th December, 2007, has considered the question of right of appointment of a minor dependent who has applied for appointment after attaining the age of 18 years, wherein it was held to the following effect :—

“xx xx xx xx xx

It is apparent that the application for appointment was made 15 years after the death of the father of respondent No.1. Thus, appointment at such stage is not to mitigate the hardship due to the death of a bread earner in the family. Such appointment could be justified if it was to be granted soon after the death of the father of respondent No. 1. Mere fact that he was minor at the time of death of his father would not confer any right on respondent No. 1 to seek appointment within five years of his attaining the age of majority. The Instructions (Annexure P.4) have to be interpreted keeping in view the principles in making appointment on compassionate grounds as explained by the Courts. In any case, there was clear stipulation in Clause 3(ii) of the Instructions that though the General Manager has power to extend the time but the cases should not be more than 10 years old as reckoned from the date of death. Therefore, the

appointment cannot be sought by respondent No. 1 after 10 years of the death of the bread winner.

xx xx xx xx.”

(18) Further, it has been repeatedly held by the Hon’ble Supreme Court as well as by this Court that the Courts would not be justified in directing the appointment on compassionate ground as a matter of course. It has been held that the 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. It was held to the following effect by the Division Bench of this Court in “**Gurdevi versus State of Haryana and others (10)**” :-

‘xx xx xx xx

4. The aforesaid observations make it abundantly clear that High Court would not be justified in directing the appointment on compassionate ground as a matter of course. The Supreme Court has clearly laid down in Umesh Nagpal’s case that 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. It has also been held that the provision for employment even on the lowest post can only be justified in the form of relief against destitution. It must also be framed (noticed ?) that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The consideration for such employment is not a vested right. The object of offering employment on compassionate ground is only to enable the family to get over the financial crises which it faces at the time of the death of the sole breadwinner. In view of the clear enunciation of the law by the Supreme Court, it would not be possible to hold that the petitioner has been denied the appointment arbitrarily or unreasonably.

xx xx xx xx.”

(19) In “**Vijay Kumar versus State of Haryana and others**, (11), the Division Bench of this Court considered the Rules and the Instructions issued by the State of Haryana from time to time and held that :—

“13. The aforesaid observations make it abundantly clear that High Court would not be justified in directing the appointment on compassionate ground as a matter of course. The Supreme Court has clearly laid down in Umesh Kumar Nagpal’s case (*supra*) that 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 crises, that a job is to be offered to the eligible member of the family. It has also been held that the provision for employment even on the lower post can only be justified in the form of relief against destitution. It must also be noticed that as against the destitute family of the deceased, there are millions of other families which are equally, if not more destitute. Consideration for such employment is not a vested right.

xx xx xx xx.”

(20) The Hon’ble Supreme Court in **I.G. (Karmik) and others versus Prahalad Mani Tripathi**, (12), has held that the public employment is considered to be a wealth and cannot be given on descent. It was held to the following effect :—

‘xx xx xx xx

5. An employce of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This

(11) 2005 (3) S.C.T. 750

(12) 2007 (6) S.C.C. 162

Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children of other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department.

6. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on desent. 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 the bread earner. When an appointment 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.

xx xx xx xx”

(21) In “**State Bank of India and another versus Somvir Singh, (13)**, the Hon’ble Supreme Court observed that indiscriminate grant of employment on compassionate ground would shut the door for employment to the ever-growing population of employed youths. It proceeded to hold that :—

“xx xx xx xx

10. There is no dispute whatsoever that the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme. In our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

xx xx xx xx.”

(22) In “**State Bank of India versus Jaspal Kaur, (14),**” the Hon’ble Supreme Court held that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments, nor can compassionate appointment be directed de hors the policy. In **State of Haryana and another versus Ankur Gupta, (15),**” the appointment on compassionate ground was cancelled as it was found that such appointment is not permissible under the modified policy. It was held that it was necessary for the Authority to frame Rules, Regulations or to issue administrative orders which can stand the test of Articles 14 and 16 of the Constitution of India. The appointment on compassionate ground cannot be claimed as a matter of right. It was found that as per the Government Instructions, only those dependents of the deceased Government employee whose family income is upto Rs. 25,000 per month, can be appointed in Government service. It was found that the relaxation in the stipulations was granted, though there is no provision whereby relaxation was permissible. In view of the said finding, the order of cancellation of appointment was maintained.

(23) On the basis of the aforesaid judgment, it is apparent that the compassionate appointment is permissible only to the dependents widow, son and daughters of the deceased Government employee to meet out the financial distress soon after the death of the employee. Otherwise, there is no right of appointment on the basis of descent and as such the appointment is violative of the Articles 14 and 16 of the Constitution of India. The right of consideration for appointment on compassionate ground is in accordance with the policy or the scheme framed from time to time and there is no right of appointment de hors of the scheme. Still further, the appointment on compassionate ground cannot be sought after lapse of time. The public employment is considered to be wealth and appointment on compassionate ground can be given only for meeting out the immediate financial hardship on account of death of the breadwinner. Keeping in view the above principles, the facts of each of the cases are required to be examined.

(24) Before examining the facts of each of the cases, it may be noticed that the Government of India has circulated a policy dated 9th October, 1998 for appointment on compassionate ground. In the said policy, 5% posts falling vacant under direct recruitment quota, were

(14) (2007) 9 S.C.C. 571

(15) (2003) 7 S.C.C. 704

contemplated to be filled up from amongst the dependents of the deceased Government employee. Vide circular dated 3rd December, 1999, it has been decided that the Committee, prescribed in paragraph 12 of the 9th October, 1998 policy, should be recommended for appointment on compassionate ground in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too, within the ceiling of 5% quota. The said circular dated 3rd December, 1999 reads as under :—

“The undersigned is directed to refer to the Department of Personnel and Training Office Memorandum No. 14014/6/94-Estt. (D), dated October 9, 1998 on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has received due consideration taking into account the ceiling of 5% of vacancies falling under direct recruitment quota in any Group ‘C’ or ‘D’ post prescribed in this regard in paragraph 7(b) *ibid* and the ruling of the Supreme Court that appointment on compassionate grounds can be made only if vacancies are available for the purpose [mentioned in paragraph 17(d) *ibid*]. Accordingly, it has been decided that the Committee prescribed in paragraph 12 *ibid* for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year. In respect of other really deserving cases the Committee should only recommend taking up the matter with other Ministries/ Departments/Offices of the Government of India to consider those cases for appointment there is provided in paragraph 7(f) *ibid*.

2. The instructions contained in the Office Memorandum dated October 9, 1998 stand modified to the extent mentioned above.

3. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.”

(25) Subsequently, another circular dated 5th May, 2003 was issued,—*vide* which it was circulated that, if the compassionate appointment to genuine and deserving case, as per the guidelines contained in the circulars, dated 9th October 1998 and 3rd December, 1999, is not possible in the first year due to non-availability of regular vacancy, the prescribed committee may review such cases so as to warrant extension by one more year subject of availability of vacancy and within prescribed quota. The maximum time a person’s name can be kept under consideration for offering compassionate appointment, will be 3 years. It was subject to the condition that the prescribed Committee has reviewed and certified the penurious condition of the applicant to the end of the first and the second year. After three years, if compassionate appointment is not possible to be offered to the applicant, his case will be finally closed and will not be considered again. The relevant extract of the Circular dated 5th May, 2003 reads as under :—

- “2. It has therefore been decided that if compassionate appointment to genuine and deserving cases, as per the guidelines contained in the above OMs is not possible in the first year, due to non-availability of regular vacancy, the prescribed committee may, review such cases to evaluate the financial conditions of the family to arrive at a decision as to whether a particular cases warrants extension by one more year, for consideration for compassionate appointment by the Committee, subject to availability of a clear vacancy within the prescribed 5% quota, if on scrutiny, by the committee, as case is considered to be deserving, the name of such a person can be continued for consideration for one more year.
3. The maximum time a person’s name can be kept under consideration for offering compassionate appointment will be three years, subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and the second year. After three years, if compassionate appointment is not possible to be

offered to the applicant, his case will be finally closed and will not be considered again.”

(26) In view of the above fact, we are of the opinion that the order passed by the learned Tribunal in Civil Writ Petition No. 5994-CAT of 2007 is not sustainable. The learned Tribunal has alleged the application holding that name of the applicant was kept pending for about 6 years after recommendation by the Common Committee and, therefore, the petitioners have not acted in a fair and impartial manner. It was further held that the Instructions dated 5th May, 2003 cannot be made available retrospectively.

(27) The reasoning given by the learned Tribunal is not justified in law. The compassionate appointment is to be given to the dependents of the deceased Government employee to tide over the immediate financial crisis. For a period of 6 years, the appointment on compassionate ground could not be offered to the dependents of the deceased Government employee for the reason that there was no post available. Therefore, the applicant before the learned Tribunal cannot insist for the appointment on compassionate ground after such a long period and to keep his case pending. In fact, no time limit was fixed in the Circular contemplating compassionate appointment, issued in the year 1998. In the Circular dated 3rd December, 1999, it was contemplated that the Committee to make recommendations only if the vacancy is likely to be available within a year. The said period of one year was extended to 3 years on 5th May, 2003. In fact, the Common Committee has made the recommendations for appointment without examining the availability of the vacancies. Sufficient number of vacancies were not available even within 3 years of making of such recommendations. Therefore, the learned Tribunal is not justified in law in holding that the instructions dated 5th May, 2003 are not retrospective in nature as by such instructions only time limit was extended from one to three years. In fact, in terms of circular dated 3rd December, 1999, the time limit to keep the name pending was only one year. Therefore, the order dated 31st August, 2006, subject matter of challenge in Civil Writ Petition No. 5994-CAT of 2007, is not sustainable.

(28) In Civil Writ Petition No. 6962-CAT of 2007, the father of the applicant before the learned Tribunal, died on 12th March, 1999. The Common Committee recommended the name of the applicant-son of the

deceased, in April, 2004. Such name was ordered to be deleted from the list in the year 2006 as earlier, the applicant did not pass the physical efficiency test as he was 2 inches short in measurement of the chest and he also did not qualify the race. The learned Tribunal found that the name of the candidate was to remain on the list for a period of 3 years from the date the Committee recommended his name in April, 2004 and, therefore, the order of deletion of name of the applicant from the list in the year 2005 is unjustified. For the reasons recorded above, we are of the opinion that the reasoning given by the learned Tribunal is not tenable in law. No doubt, the Common Committee made the recommendations in the year 2004, but the said recommendations were made after 5 years of the death of the father of the applicant. As mentioned above, the name of the applicant cannot be kept pending for indefinite period and to await the applicant to attain the age of majority. The entire object of providing compassionate appointment is to tide over certain financial crises. It is neither a source of appointment nor a right. Therefore, the deletion of name of the applicant from the list in the year 2005 cannot be said to be unjustified as the same was deleted almost after 7 years of the death of the deceased Government employee.

(29) In Civil Writ Petition No. 5999-CAT of 2007, the learned Tribunal has given a finding that junior to the two applicants namely Sushil Kumar and Charanjit Kaur have been appointed as Constable. Such finding was returned on the basis of the minutes of the Common Committee examined by the learned Tribunal. The learned Tribunal further found that the present petitioners have failed to show to the Tribunal the assessment of the merit and indigence of the candidates and that vacancy position as this document shown to the Court is not very clear. The learned Tribunal found that 3 years period is to be calculated from the date when the applicant's case was recommended by the Committee first time and not from the date of death of the concerned employee. In view of the said fact, the learned Tribunal directed the present petitioners to reconsider the case of the applicant for appointment on compassionate ground against any available post.

(30) The husband of the applicant Bhupinder Kaur died on 2nd May, 1998. Her case was recommended for appointment on compassionate ground in April, 1999, but the same was closed after a lapse of 6 years.

For the same reasons, as stated above, the order passed by the learned Tribunal is not sustainable. The findings of the learned Tribunal that the junior to the applicants Sushil Kumar and Charanjit Kaur have been given appointment, is based upon the minutes of the Committee. Such finding has been returned without any pleading and without giving any opportunity to the petitioners to explain such noting in the minutes of the Committee. It is the case of the petitioners that against 49 Group-C Posts, 4 posts had already been filled up through compassionate appointments and similarly out of 133 Group-D posts, 13 posts were filled up by way of compassionate appointment. Therefore, the said fact was also asserted in the written statement before the learned Tribunal and not controverted by the applicants. Therefore, the learned Tribunal was not justified in returning a finding to the effect that juniors to the applicants have been granted appointment on compassionate grounds.

(31) In view of the above, the orders passed by the learned Tribunal in all the three cases are unjustified and not sustainable. Consequently, we allow all the three writ petitions and set aside the orders passed by the learned Tribunal. The Original Applications filed by the applicant-respondents are dismissed with no order as to costs.

R.N.R.

Before M.M. Kumar & T.P.S. Mann, JJ,

JIWAN KUMAR,—Petitioner

versus

STATE OF PUNJAB AND OTHERS,—Respondents

C.W.P. No. 772 of 2007

18th March, 2008

Indian Penal Code, 1860—Ss. 188—Code of Criminal Procedure, 1973—Ss. 144 and 195(1)(a)—Constitution of India, 1950—Art. 226—Drugs and Cosmetics Rules, 1945—District Magistrate issuing promulgation order w/s 144 Cr. P.C. with regard to sale and distribution of Medicines—Allegation against petitioner