

prior approval or *post facto* approval would in the facts and circumstances, not result in any injustice to the petitioners. There is a substantial compliance of Section 11 of the Act.

(7) If it is assumed that no valid award was given because of the requirement of prior approval of the State, it would not be in the interest of justice to interfere in exercise of writ jurisdiction, when the petitioners are owners only of a fraction of the total acquired land, their having received 80 per cent compensation in 1993 without raising a little finger, delivered possession, award pronounced, balance of the compensations received by almost all the owners or the persons interest claimed enhancement of the compensation under section 18 of the Act, land in dispute vested in the State free from all encumbrances, and further allotted to the persons, and the provisions providing limitation for announcing the award would not be applicable.

(7) There is no dispute with proposition of law laid down by Hon'ble the Supreme Court in *State of U.P. & others v. Rajiv Gupta and another* (supra). The observations made/law laid down therein were in view of the peculiar facts and circumstances of the said case. i.e. where the provisions of Section 11 and 11-A were applied, the urgency provisions were not invoked. In the said case no compensation was paid before the award is made, possession taken and title *qua* the land in dispute not vested in the state till the possession taken inspite of the award having been pronounced.

In view of the observations made above, the writ petition is dismissed with no order as to costs.

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*J.S.T.*

*Before Hon'ble G. S. Singhvi & T.H.B. Chalapathi, JJ.*

**SURINDER SINGH,—Petitioner.**

*versus*

**STATE OF HARYANA & OTHERS,—Respondents.**

C.W.P. No. 12478 of 1995.

29th November, 1995.

*Constitution of India, 1950—Arts. 226/227—Haryana Government instructions dated 8th May, 1995—Clause 2(iv)—Compassion*

*appointment—Government circular making only unmarried children eligible for appointment under the Ex-Gratia Scheme—Married and unmarried dependants of the deceased employee is unreasonable classification—Such classification has no nexus with economic condition of family of deceased—Clause 2(iv) of circular dated 8th May, 1995 struck down as arbitrary, irrational and violative of Article 14 of the Constitution of India—Government circular dated 8th May, 1995 cannot operate retrospectively so as to prejudicially affect the right of the dependants to be considered for appointment on compassionate grounds.*

*Held that, the instructions issued on 8th May, 1995 cannot be applied retrospectively so as to prejudicially affect the right of the petitioner to be considered for appointment on compassionate grounds. It is, therefore, reasonable to hold that due to their failure to act upon the application filed by the petitioner, the respondents have deprived the petitioner of his right to be considered for appointment as a dependent of deceased.*

(Para 6)

*Further held, that clause 2(iv) does not apply to the widow of the deceased who is ordinarily a dependent of the deceased employee.*

(Para 8)

*Further held, that the financial condition of the family has no direct nexus with the marriage of the dependent of the deceased. A married child may be dependent on the deceased and unmarried child may not be dependent on the deceased. Therefore, merely on the basis of marriage of the child, a classification cannot be made between the dependants of the deceased employee. Such classification has nothing to do with the criteria of economic condition of the family of the deceased. In fact clause 2(i) of Annexure P-4 reflects the Government's intention to restrict employment only to those cases where monthly income of the family is less than Rs. 2,500 per month. Clause 2(i) sufficiently meets the guidelines laid down by the Supreme Court and classification made between married and unmarried dependants of the deceased Government employee is wholly arbitrary and irrational. This classification has no nexus, whatsoever, with the object sought to be achieved and it is, therefore, contrary to Article 14 of the Constitution.*

(Para 9)

*Further held, that clause 2(iv) of Memo dated 8th May, 1995 is declared to be unconstitutional and is struck down.*

(Para 10)

R. K. Gupta, Advocate, for the Petitioner.

R. N. Raina, Deputy Advocate General, Haryana, for the Respondents.

JUDGMENT

G. S. Singhvi, J.

(1) This petition involves a challenge to clause 2(iv) of Annexure P-4 issued by the Government of Haryana on the subject to employment to the dependents of the deceased Government employees under Ex-Gratia Scheme.

(2) Father of the petitioner Shri Ranjit Singh was employed as Class IV servant (Mali-cum-Chowkidar) in Zila Sainik Board, Narnaul. He died on 19th April, 1994 while on duty. The petitioner's mother submitted an application dated 9th May, 1994 before the Secretary, Zila Sainik Board, Narnaul for appointment of the petitioner on compassionate grounds as per the *Ex-Gratia* Scheme formulated by the State Government. Her application was forwarded by the Secretary, Zila Sainik Board to the Secretary, Haryana Rajya Sainik Board. The Secretary, Haryana, Rajaya Sainik Board informed the Secretary, Zila Sainik Board that the name of the petitioner has been entered at Serial No. 463 of the priority list prepared by the Government for giving employment to him. On a further representation made by the petitioner, the Secretary, Zila Sainik Board once again wrote on 12th June, 1995 to the Secretary, Haryana Rajya Sainik Board, respondent No. 2, that employment may be provided to the petitioner because the widow of late Shri Ranjit Singh was hard pressed. On 11th July, 1995 the Secretary, Zila Sainik Board wrote a letter (Annexure P-3) to respondent No. 2 intimating that a post of Chowkidar-cum-mali was lying vacant in the Zila Sainik Board at Narnaul. An affidavit of the petitioner was also sent alongwith letter (Annexure P-3). Notwithstanding these recommendations, the representations made by the petitioner and her mother have not been decided, as a consequence of which, the petitioner has not been given employment on compassionate grounds in accordance with the *Ex-Gratia* Scheme.

(3) The petitioner states that during the pendency of his application, the Government issued Memo No. 16th May, 1995-6 GS-II, dated 8th May, 1995 and has issued further instructions for giving employment to the dependents of the deceased employees under the *Ex-Gratia* Scheme and on the basis of clause (iv) of these instructions, the respondents have now taken a decision not to give appointment to the petitioner because he had been married before the death of his father. The petitioner has pleaded that this decision

of the respondents and incorporation of clause 2(iv) in the instructions contained in the memo dated 8th May, 1995 (Annexure P-4) is arbitrary and unconstitutional because there is no noxus between clause (iv) and the object of giving employment to the dependents of a deceased employee.

(4) The respondents have pleaded that in view of the policy of the Government only unmarried children are eligible for appointment under the *Ex-Gratia* Scheme which has been framed keeping in view the observations made by the Supreme Court in SLP No. 10504 of 1993—*Umesh Kumar Nagpal v. State of Haryana and others*, Respondents have further pleaded that mere inclusion of the name of the petitioner in the priority list does not confer any right upon him to be appointed in the Government service and in view of the policy instructions issued by the Government, the petitioner cannot be given appointment on compassionate grounds.

(5) Two points which require adjudication by the Court are, whether the petitioner can be deprived of employment on compassionate grounds being a dependent of late Shri Ranjit Singh on the basis of the instructions contained in the Memo dated 8th May, 1995 (Annexure P-4) and whether clause 2(iv) of the Memo (Annexure P-4) is unconstitutional.

(6) Perusal of the averments made in the writ petition and the reply and the accompanying documents shows that the name of the petitioner was entered in the priority list of the Government at serial No. 463 because the petitioner was considered eligible to be appointed as a dependent of the deceased employee. Letter (Annexure P-3) dated 11th July, 1995 shows that a post of Chowkidar-cum-Mali was lying vacant under the Zila Sainik Board at Narnaul since 9th April, 1994. It is thus clear that on the date of making an application by the mother of the petitioner for his appointment under the *Ex-Gratia* Scheme a clear post of Chowkidar-cum-Mali was available and but for laxity on the part of the respondent-department to take a decision on the application submitted by the petitioner's mother, the petitioner would have been appointed as Class IV servant. The instructions issued on 8th May, 1995,—*vide* memo Annexure P-4 cannot be applied retrospectively so as to prejudicially affect the right of the petitioner to be considered for appointment on compassionate grounds. It is, therefore, reasonable to hold that due to their failure to act upon the application filed by the petitioner, the respondents have deprived the petitioner of his right to be considered for appointment as a dependent of late Shri Ranjit Singh.

(7) Coming to the second issue, we may refer to clause 2(iv) of Annexure P-4 which reads as under :—

“Dependent of the deceased employee would denote only his/her spouse and unmarried children. If any dependent of deceased Government employee's family married at the time of death of the employee, he/she would not be eligible for employment under the scheme.”

(8) From the above quoted clause of the Government memo dated 8th May, 1995 (Annexure P-4) it is clear that a distinction has been made by the Government between a dependent who is married at the time of the death of the deceased and the one who is not married. The former is not entitled to be considered for appointment on compassionate grounds whereas the latter is. The inclusion of clause 2(iv) in its present form in the instructions contained in Annexure P-4 shows total non application of mind by the competent authority because dependent of the Government deceased would include his wife also. If the provision is literally interpreted, all the widows would stand excluded from the policy of appointment on compassionate grounds. However, keeping in view the well established canon of interpretation namely that absurd interpretation of a provision should be avoided, we hold that clause 2(iv) does not apply to the widow of the deceased who is ordinarily a dependent of the deceased employee. The distinction made between a married dependent and unmarried dependent has been sought to be justified with reference to the decision of the Supreme Court in *Umesh Kumar Nagpal v. State of Haryana and other* (1). That was a case in which the petitioner had sought appointment on higher posts under the policy of the Government to give appointment on compassionate grounds. While rejecting the claim made by the petitioners to be appointed on the basis of their qualifications the Supreme Court held that policy of giving appointments on compassionate grounds is one of the exceptions to the rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit. Their Lordships observed :

“One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury 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 dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial conditions 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.

(9) From the above extracted portion of the judgment of the Supreme Court, it is clearly borne out that what is to be kept in mind by the Government while considering the case of a dependent for employment on compassionate grounds is the financial conditions of the family. Their Lordships did not indicate that a married dependent of the deceased employee should be excluded because he must be presumed to be earning sufficient money to sustain the family. In Indian society children are married by their parents during their life time. This is one of the pious wish of the parents that their child is married during their life time. In majority of cases such marriages are performed without regard to the fact whether boy is capable of earning to such an extent which should sustain him and his family. In rural India, marriages of children are performed immediately after they attain the age of majority irrespective of the fact that the married children may or may not be earning an amount which would be sufficient to sustain the family. Similarly an unmarried child may be earning sufficient amount so as to sustain the family. Therefore, the financial condition of the family has no direct nexus with the marriage of the dependent of the deceased. A married child may be dependent on the deceased and unmarried child may not be dependent on the deceased. Therefore, merely on the basis of marriage of the child, a classification cannot be made between the dependents of the deceased employee. Such classification has nothing to do with the criteria of economic condition of the family of the deceased as indicated in the Supreme Court

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judgment. In fact clause (2) (i) of Annexure P-4 reflects the Government's intention to restrict employment only to those cases where monthly income of the family is less than Rs. 2,500 per month. In our opinion, clause (2) (i) sufficiently meets the guidelines laid down by the Supreme Court and classification made between married and unmarried dependents of the deceased Government employee is wholly arbitrary and irrational. This classification has no nexus, whatsoever, with the object sought to be achieved and it is, therefore, contrary to Article 14 of the Constitution.

(10) For the reasons mentioned above, we allow the writ petition. Clause 2(iv) of Memo dated 8th May, 1995 (Annexure P-4) is declared to be unconstitutional and is struck down. The respondents are directed to consider the case of the petitioner for appointment on compassionate grounds and pass a necessary order within a period of two months from the submission of the certified copy of this order.

(11) The parties are left to bear their own costs.

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R.N.R.

*Before Hon'ble Jawahar Lal Gupta, J.*

**DALIP KAUR ETC.,—Appellants.**

*versus*

**JEEWA RAM & OTHERS.—Respondents.**

*Execution Regular Appeal No. 2120 of 1995*

**8th December, 1995.**

*Code of Civil Procedure, 1908—S. 144—Constitution of India, 1950—Art. 136—Possession taken in execution of decree—Decree set aside by Supreme Court in appeal—Restoration of possession—Objection to restoration by subsequent purchasers—Principle of lis pendens—Applicability of.*

**Held,** that the Supreme Court is at the head of the 'pyramid' of the judicial system in this country. It exercises original and appellate jurisdiction. It has the power to pass such decree or make such order as is necessary for doing complete justice in any cause or matter