

COMPASSIONATE APPOINTMENT: CRITICAL ANALYSIS

Chemmalar. S

Assistant Professor, SRM School of Law, SRM Institute of Science and Technology.

Abstract - This article is an attempt to give the bird's eye view of the concept of compassionate appointments. This paper discusses in detail the major existing law and practice pertaining to compassionate appointments. At present compassionate appointments are regulated by rules made by the concerned government departments based upon the scheme for compassionate appointment under Central Government which was consolidated and issued vide DOPT O.M.No.F.No. 14014/02/2012. Estt. (d) Dated 16/01/2013. As there is no specific law for this area, the confusion often arises with such appointments and the claimants seek the decision of the court when the employments are denied. In such cases the law relating to such appointments has evolved through judicial decisions. This is evident from the cases decided by the courts that the present practice of providing compassionate appointments fails to comply with the contemporary issues relating to such appointments. This paper attempts to examine the issue involved in lack of proper law that is applicable uniformly to both central and state governments. Also this paper examines the scope of courts and tribunals involvement to give effect to compassionate appointments.

Key words: Compassionate appointments, courts and tribunals, Service laws, Government department, rules and regulations

I. INTRODUCTION

Equality of opportunity in matters of public employment is the constitutional mandate in India. However keeping in consonance with the tenets of Directive principles of State Policy, an exception has been carved out to the said rule. The scheme for Compassionate appointments is a social security scheme exists in almost all states, under which appointments can be made on compassionate ground to the legal heirs of the deceased government servants died while in service. In *Basavraj Fakirappa Manavi v. Managing Director K.S.R.T¹* and in also in *Prakash Chand Jaine v. State of Rajasthan²*, 1992(5) S.L.R,680,683 the courts said that "Rules providing for compassionate appointments are welfare legislation intended to benefit a class of person, namely the dependents of the deceased employee. This concession is also extended to the legal heirs of medically invalidated persons". Until now the appointments are regulated by policy guidelines framed by the Department of Personnel & Training Instructions (DOP&T). Based on the requirements of the organization, conditions and guidelines are framed in order to implement the policy. These benevolent schemes were framed on humanitarian consideration. The appointment under the scheme is only in accordance with relevant provisions and guidelines given under the scheme by the government. So far there is no uniform practice being followed in providing such appointments since it does not have statutory basis.

It is pertinent to note that in the absence of any comprehensive law, various clauses of policy were being interpreted differently by various departments. The livelihood and future of so many families was being decided without any sound basis by the managements in the absence of any definite, uniform and codified policies. This rampant injustice was being perpetrated by the departments on the unfortunate families of its ex-employees. They rely on flimsy grounds for rejecting the grounds for compassionate appointments. The scheme opened a floor gate of litigation in the country. Numerous cases filed on daily basis under service law issues challenging the actions of the Government taken under the policy.

In this context, the role played by judiciary upholding the relevance of policy in Central and State Governments, PSUs and Departments is of great importance. However the precise theory of compassionate appointment was not given in any judgment. The courts proceeded on a case to case basis. The state's obligation in this regard confined to its employees who die in harness during service is the focus of this paper. The purpose of this paper is to critically examine the law of compassionate appointments with the help of judicial pronouncements.

II. CONSTITUTIONAL BASIS

A. Articles 14 and 16

Compassionate appointments has raised constitutional question i.e. whether a compassionate appointment is hit by Article 14 and 16. Article 16 of Indian Constitution ensures equality of opportunity in matters of public employment. It bars discrimination in employment on the ground, inter alia only of decent. Appointments in public service should be

¹ 1994(7) S.L.R.342,345046

² 1992(5) S.L.R,680,683

made strictly on the basis of open invitation of applications and comparative merit, having regard to Art 14 and 16 of Indian Constitution. Though no other mode of appointment is permissible appointments on compassionate grounds are well recognized exception to the said general rule, carved out in the interest of Justice to meet certain contingencies.

Two well recognized contingencies which are carved out as exceptions to the general rule are: (i) Appointment on compassionate ground to meet the sudden crisis occurring in a family on account of death of the bread winner while in service. (ii) Appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the bread winner.

The issue of compassionate appointment derives its origin from Article 16(2) of Indian Constitution. This type of the matter was considered by the court in the celebrated case of “**State of Haryana and others v. Rani Devi and another**”³, in this case the court said that it need not be pointed out that claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Art 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. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Art 14 and 16. Thus if an employee dies while in service then according to rule framed by the central Government or State Government to appoint one of the dependents shall not be violated of Articles 14 and 16 of the Constitution because it is to mitigate the hardship due to the death of the bread earner of the family and sudden misery faced by the members of the family of such employee.

While reiterating the purpose of making appointment on compassionate ground the court in **National Institute of Technology Vs. Niraj Kumar Singh**⁴ emphasized that all public appointments must be in consonance with Art 16 of the constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute.

The question often arises whether it is a legal right. The court in all cases emphasized that the appointment on compassionate ground cannot be claimed as a matter of rights. In “**Sail vs. Madhusudan Das**”⁵ the apex court held that compassionate appointment is concession and not a right. It is meant to provide for a minimum relief. Article 14 and 16 of the constitution mandate that all eligible candidates should be considered for appointment in the post which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule.

In **General Manager, SBI Vs. Anju Jain**⁶ the apex court while upholding the particular clause in the policy of compassionate appointment under which appointment could be denied to dependents of employee whose service records was blemished on account of disciplinary action having been taken against him and reversing the decision of the High court, holding that past misconduct of an employee was not a relevant consideration for the purpose of compassionate appointment of the dependent of the deceased employee. It further held that appointment on compassionate ground is never considered a right of person. In fact such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates must be considered alike. That is the mandate of Art 14. Normally therefore, State or its instrumentality making any appointment to public office cannot ignore such mandate. At the same time, however, in certain circumstances appointment on compassionate ground of dependents of deceased employee is considered inevitable, So that the family of the deceased may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of sole bread earner. It is thus an exception to the general rule of equality and not another independent and parallel service of employment.

B. Directive principles of state policy

The concept of Directive Principles of State Policy is non-justifiable and non-enforceable rights which lay down the objectives to be followed by the states. Directive Principles of State Policy directs the states to take social welfare measures such as employment, equal pay for equal work, education etc. Article 38 of the Indian Constitution states that “The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life”. Article 39

³ (1996) 5 SCC 308

⁴ (2007) 2 SCC 481

⁵ (2008) 15 SCC 560

⁶ (2008) 8 SCC

provides for adequate means of livelihood. Hence the policy of compassionate appointments has evolved in Government, its Public Sector Undertakings, Organizations etc., are a measure of social security net.

C. Services under the Union and States:

Article 309 of Indian Constitution provides for Recruitment and conditions of services of person serving the Union or the States. Article 309 says “Subject to the provisions of the Constitutional Acts the appropriate legislation may regulate the recruitment and conditions of services of persons appointed to public services and posts in connection with the affairs of the Union or of any State”. However, the provision is not clear with respect to the rules for recruitment and the conditions of services of union or the states. The legislature is empowered to frame rules with respect to the services and such rules or conditions shall be void if it contravenes any of the provision of the constitution. The legislature can delegate the authority of making the rules and conditions to the executive.

Article 309 is transitional or temporary in nature which empowers the executive to make rules until the appropriate legislatures make laws on the subject. The rules made by the executive have the force of law and have binding nature. Thus term compassionate appointment is not used anywhere in the constitution. The exception has been carved out of the Articles 14 and 16 in order to provide compassionate appointment.

III. JUDICIAL APPROACH

There has been a plethora of judicial pronouncements on compassionate appointment dealing with important questions as to whether legal heirs in case of death of an employee can apply for compassionate appointment apart from the eligible terminal benefits? Whether a married daughter would fall under the ambit of “dependent”? Whether an illegitimate son can claim compassionate appointment? Whether second wife is eligible for compassionate appointment? Thus the scheme for compassionate appointment itself is not very clear on these issues. These questions are clarified by the courts and tribunals in its various judgments. Regarding married daughter the scheme states that they can be considered for compassionate appointments, provided she was wholly dependent on the Government servant at the time of his/her death or retirement on medical grounds and She must support other dependents members of the family. However, there are instances where, married daughter are denied Compassionate Appointments merely on the ground of marriage. The court in number of cases has held that denying compassionate appointment on the ground of marriage is against the principles of equality enshrined in the constitution. There should not be any gender discrimination in between a son and a daughter on the basis of marital status. For instance, Madurai bench of Madras High Court has held that denying employment to the petitioner on the ground of marriage is in violation of Articles 14, 15 and 16 of the Constitution (The joint Registrar, Co-operative Bank Ltd vs. W.A. (MD).NO.122 of 2017). Similarly in *Putul Rabidas v. Eastern Coalfields Ltd.*, 2017 SCC online Cal 13128, dated 13-9-2017 Calcutta High Court, while answering the question whether divorced daughter falls under the ambit of “dependents”? said that a divorced daughter would come under the definition of an “unmarried daughter” and would be eligible for appointment on compassionate. In *Champa Devi – Lt. Governor of Delhi*⁷, decided on 17-1-2017 a case regarding compassionate employment to a second wife of the deceased husband came up. In this case the court held that the second wife cannot claim the status of legally-wedded wife.

In *Ramesh Chand v. Executive Engineer and others*⁸, the Allahabad High Court was faced with an interesting question. Can a child born from the second marriage of a person during the subsistence of the first marriage, claim the right of compassionate appointment. Although a second marriage during the lifetime of the first spouse is invalid, Section 16 of the Hindu Marriage Act, grants legitimacy to the children born out of such a marriage. They have the same right as children born out of valid marriage unless there is any specified exception. The Court concluded that the petitioner was the legitimate child of the deceased employee under Section 16(1) of the Hindu Marriage Act. In *Balbair Kaur v. Steel Authority of India Ltd.*, the court reiterated that compassionate appointment and the benefits flowing from a Family Benefit Scheme cannot be equated since a lump sum monetary benefits cannot replace the bread earner: although constitutional obligation was emphasized, the actual decision was based on the preservation of the right to be considered for compassionate appointment in a tripartite agreement. The rules/regulations defined the specific categories for the dependent of the deceased employees. But Indian courts while dealing on compassionate appointment related cases has broaden the categories in on grounds of immediate need of assistance in the event of there being no

⁷ SCC online Del 6562,

⁸ 2012 (90) ALR 322

other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, though it is unexceptionable.

A. Minor

In **Jagdish Prasad v. State of Bihar and another**⁹, it has been held that no person is entitled to claim compassionate appointment with a huge delay of 20 years since the object of compassionate appointment is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. In the case of a person who was very much minor at the time of death of the government servant, it cannot be said that he is entitled to be appointed after he attained majority long thereafter, for if such contention is accepted, it would amount to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged.

B. Married daughter

V.Rajalakshmi v. The District Collector¹⁰. In this case the father of the petitioner was working as a Revenue Assistant in the office of the Excise officer. He died, while in service, leaving his wife, son and daughter as legal heirs. The petitioner got married prior to the death of her father. After getting no objection certificate from the other legal heirs, when the petitioner submitted an application for compassionate appointment, the same was declined by the respondent on the sole ground that she got married prior to the death of her father.

The Madurai bench of Madras High court held that the government cannot deny compassionate appointment to the daughter of the deceased Government servant on the ground of marriage and quashed the Government orders denying compassionate appointments to the married daughter.

R. Bhuvaneshwari v. Tamil Nadu Generator Corporation Limited (TANGEDCO)¹¹. In this case the petitioner's father was working as foreman in TANGEDCO and he died on 04/1/2009 due to illness. The petitioner's only brother also expired before her father's death. As she is the only legal heir available in the family eligible for appointment on compassionate ground, she preferred a representation on 19.07.2012 seeking appointment on compassionate ground. But she was denied appointment only on the reason that she was a married daughter of the deceased employee at the time of making the application seeking for compassionate appointment. She filed writ petition under Art 226 of the constitution of India to issue writ against Government order. The court held that there cannot be any discrimination between son and daughter and the daughter though married is also entitled to claim appointment on compassionate ground and the claim of the married daughter cannot be rejected on the ground that she got married at the time of submitting the application for appointment on compassionate ground.

G. Girija v. Assistant Director (Panchayats)¹² The court stated that "if marriage is not a bar in the case of son, the same yardstick shall be applied in the case of daughter also. At this juncture, it is relevant to take note of the statute, namely the maintenance and welfare of parents and senior citizens Act, 2007 which places equal duty on both the son and daughter to take care of the parents at the old age. Therefore parents, there cannot be any unequal treatment among the children based on sex".

C. Higher qualification of the dependent

The question often arises as to whether the dependent of the deceased government employee who has higher qualification can claim for Group A or Group B post. This aspect of the matter was considered by the High Court of Madras in **P.G. Ramesh Vs. The Government of Tamil Nadu (2008)** in this case the petitioner, a post graduate is the son of one late Govondasamy, who was working as sweeper at Polur Town Panchayat. The said Govindasamy died in harness while he was in service on 13.11.1998. Thereafter, the petitioner was appointed as a sweeper on compassionate grounds at Polur Town Panchayat. The petitioner at the time of appointment, possessed educational qualification of B.Sc, and thereafter he completed his master's Degree in Sociology. While so, the Petitioner made a representation to the secretary stating that he is entitled to be appointed as Junior Assistant in terms of G.O. Ms. No. 206 Municipal Administration and water supply Department. Since the respondent deny the claim made by the petitioner, he was forced to file writ petition under Art 226 to issue a writ of mandamus directing the respondent to consider the case of the petitioner for appointment to the post of Junior Assistant on compassionate grounds in accordance with the guidelines issued in G.O. Ms.No. 206. The respondent has filed a counter affidavit stating that the benefit of the said G.O. does not apply to the post of sweeper. The court allowed the writ petition and held that the government is bound to modify or

⁹ 1996 (1) SCC 301

¹⁰ W.P. (MD) No 22 of 2016

¹¹ W.P. (MD) NO. 180 of 2015

¹² 2008 (5) CTC 685

amend the G.O. to include such of these categories of employees. The government directed the respondent government to issue suitable orders to appoint the petitioner in the post of Junior Assistant.

D. Past misconduct of the deceased

Whether the past misconduct of the deceased government employee will affect the appointment of the dependent is considered in the case **General Manager, SBI Vs Anju Jain**¹³. The apex court while upholding the particular clause in the policy of compassionate appointment under which appointment could be denied to dependents of an employee whose service record was blemished on account of disciplinary action having been taken against him and reversing the decision of the High Court holding that past misconduct of an employee was not a relevant consideration for the purpose of compassionate appointment of the dependent of the deceased employee.

E. In banking sectors and insurance corporations

Govind Prakash Verma v. LIC of India and Ors.¹⁴ In this case the question prayed before the court was whether the family pension paid to the widow of the deceased and other amounts paid on account of terminal benefits should be taken into consideration under the rules. The court observed that compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the rules.

In Punjab National Bank and Ors. V. Ashwini Kumar Taneja¹⁵, The respondent's father died on 3.12.1999 while working as a Class-IV employee of the appellant Bank leaving behind his mother, widow, two sons and one daughter. Compassionate appointment sought by the respondent shortly thereafter was denied by the bank on the ground that there was no financial hardship to the family as they had received substantial amounts after the death of the respondent's father. The Rajasthan High Court directed the Bank to consider the case of the respondent for compassionate appointment by holding that the retrial benefits received by the heirs of the deceased employee would not justify rejection of the application for compassionate appointment. It was held by the supreme court that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits and that basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood and that the object is to enable the family to get over sudden financial crisis.

IV. CONCLUSION

It is pertinent to note that there is lack of precision in the rules and guidelines, formulated till date by various Organization's and Departments, and is a major handicap in implementing the scheme in its true spirit. The implementation of the scheme is in taught fraught with so many intricacies that the court and tribunals have to be approached to resolve the discrepancies in appointment. This has been the reason for various conflicting judgments by the courts. It is clear hence, that the states must take all steps necessary to formulate a uniform scheme to provide compassionate appointments so that the recurrent judgments by the courts can be avoided if a uniform and transparent policy is envisaged in all the organization's and departments. Thus giving this policy statutory backing would rectify the anomalies which exist at present in this regard.

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¹³ (2008) 8 SCC

¹⁴ 2005 SCC (L&S) 590

¹⁵ 2004 SCC 938