

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWP No.1261 of 2020
Decided on: 31st July, 2026

Vijay Kumar

...Petitioner

Versus

State of H.P. and another

...Respondents

Coram

Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge

*Whether approved for reporting?*¹

For the petitioner:	Mr. Vijay Kumar Arora, Senior Advocate with Mr. Hitansh Raj, Advocate.
---------------------	--

For the respondents:	Mr. Sumit Sharma, Deputy Advocate General.
----------------------	--

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has prayed

for the following substantive reliefs:-

"i) That a writ in the nature of certiorari may be issued thereby quashing the communication dated 13.9.2019 (Annexure P-24) whereby case of the petitioner has been rejected may kindly be quashed and set aside.

ii) That a writ in the nature of mandamus may very kindly be issued thereby directing the respondents to consider the case of the petitioner for appointment on compassionate grounds as per policy in vogue on the date of death of father of the petitioner, against a post as per his educational qualification."

¹ Whether reporters of Local Papers may be allowed to see the judgment?

2. The undisputed facts, which emerge from the pleadings are that the father of the petitioner was working as a Senior Assistant with the respondent-Department, who died in harness on 10.09.2005. The petitioner immediately after the death of his father moved an application for employment assistance before the respondent-Department in the month of May 2006, which was forwarded through proper channel on 01.06.2006. Certain queries were raised by the respondent-Department, which were answered by the petitioner and thereafter his case was forwarded to the concerned Administrative Department by the respondents seeking necessary approval. His case came to be tossed from one table to another and ultimately vide letter dated 13.09.2019 (Annexure P-24), his claim for employment assistance came to be rejected on the ground that he is not eligible as per the guidelines issued by the State Government dated 07.03.2019, since he possess only the qualification of 8th pass.

3. The petitioner feeling aggrieved by the said decision communicated to him, vide letter dated 13.09.2019 (Annexure

P-24), has approached this Court *inter alia* on the grounds that the policy, which was in vogue on the date of death has to be applied for considering his claim for employment assistance and not the subsequent policy dated 07.03.2019.

4. Learned senior counsel for the petitioner has brought to the notice of the Court a judgment passed by a three-Judge Bench in ***N.C. Santhosh versus State of Karnataka and others***, (2020) 7 SCC 617, wherein it has been held that the actual date of determination of the claim for consideration to offer appointment on compassionate grounds is the date of death, which does not change and the policies go on changing. The aforesaid view taken by the Hon'ble Supreme Court has been followed by the Division Bench of this Court on 07.04.2026 in CMP(M) No.1743 of 2025 in LPA No.186 of 2026, titled, ***Principal Secretary (Education) and others vs. Bhanu Prakash***.

The relevant paras of the judgment read as under:-

"6. In LPA No. 797 of 2025, State of Himachal Pradesh and anr. Vs. Sarita Devi, we have noticed the inconsistent views taken by the Apex Court and eventually followed the Three Judges Bench judgment to conclude that the only consistent factor would be the date of death, as such, and the date of application and

the date of consideration of the policy would be different and the differential treatment should not be given to the employees. As noticed, the applicant was a minor at the time of accident and could not be given the compassionate appointment on account of his minority at that point of time.

7. Similar circumstances had arisen in LPA No. 797 of 2025, where, we, while dismissing the appeal of the State have taken a similar view while noticing the contention of the State, keeping in view the judgment in N.C. Santosh vs. State of Karnataka and others, (2020) 7 SCC 617, and another three Judges Bench judgment which has taken the contrary view in State of Madhya Pradesh and others vs. Amit Shrivastava (2020) 10 SCC 496, which was subsequent to the judgment in N.C. Santosh case (supra). The relevant portion of our reasons to take the said view reads as under:-

“14. In spite of that the attitude of the State to pursue the litigation continue. The law as such has also been relied upon by the State primarily, placing reliance upon the judgment of the Apex Court in N.C. Santhosh Vs. State of Karnataka and Others (2020) 7 SCC 617, wherein it has been held that consideration should be done as per the policy in force. 15. However, counsel for the respondent has fallen back on another three-Judge Bench judgment of the Apex Court in State of Madhya Pradesh and Others Vs. Amit Shrivastava (2020) 10 SCC 496, decided on 29.09.2020, subsequent of the judgment of N.C. Santhosh case (supra), which was decided on 04.03.2020. The observations in subsequent judgment as such would go on to show that it is the date of demise which has to be seen, unless a subsequent policy is made applicable retrospectively. The relevant paragraph reads as under:-

“16. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria,

especially to provide succour to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. Insofar as providing succour is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succour to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the Policy prevailing was one dated 18- 8-2008. Clause 12.1 clearly prescribes workcharge/contingency fund and daily wage employees from compassionate appointment. The gravamen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularisation of his service."

16. It is also to be noticed that in the judgment of the Apex Court in State of Karnataka Vs. Bheemesh (2021) 20 SCC 707, while taking into consideration the three Judge Bench judgment of N.C. Santhosh case (supra) another two Judge of the Apex Court as such had come to the conclusion that the fixed factor is only the date of death that does not change and therefore on account of the fact that the date of application and the date of consideration of the policy would be different, the differential treatment should not be given to the employees. The relevant paragraph reads as under:-

"20. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one,

namely, the date of death alone is a fixed factor that does not change. The next date, namely, the date of consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 government servant dies in harness on 1-1-2020. Let us assume that the dependants of these 2 deceased government servants make applications for appointment on 2 different dates say 29-5-2020 and 2-6-2020 and a modified Scheme comes into force on 1-6-2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before 1-6-2020 and another in respect of the person who applied after 1-6-2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all

pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such as the date of death and not an indeterminate and variable factor."

17. *Faced with this situation, the appellants-State has fallen back on the judgment of a two-Judge Bench of the Apex Court in State of Himachal Pradesh and Others Vs. Abhishek Kumar (2024) 5 SCC 280, to point out that the view in N.C. Santhosh case (supra), was held to be correct.*

18. *We have gone through the above said judgment in which the judgment in Amit Shrivastava case (supra) also of a three-Judge Bench, had been passed, subsequent to the judgment in N.C. Santhosh case (supra) had not been brought to the notice of the said Bench as such.*

19. *It is in such circumstances, keeping in view the law on precedent, we are of the considered opinion that once there is a conflict as such between the two Benches of equal strength of the Apex Court the judgment which lays down the law more elaborately is to be followed.*

20. *Reference can be made to the judgment of the Full Bench in Indo Swiss Time Limited Vs. Umrao and Others AIR 1981 (Punjab & Haryana) 213, wherein it was observed as under:-*

"23. Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of coequal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous

circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant than both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches of the superior Court are earlier or later is a consideration which appears to me as hardly relevant."

21. Resultantly, we are of the considered opinion that the order dated 31.07.2024, passed by the learned Single Judge, in such circumstances is well justified and therefore we not only uphold the same but also quash the order dated 16.09.2025, passed by the Additional Secretary (PW) to the Government of Himachal Pradesh during the pendency of the appeal, whereby the rejection had been done as noticed above.

22. It is also pertinent to notice that the same view has been followed by us in LPA No.214 of 2025 titled State of Himachal Pradesh & others Vs. Sh. Radha Mohan, decided on 06.05.2025.

23. Resultantly, the present appeal stands dismissed.

24. Pending miscellaneous application(s) if any, are accordingly disposed off."

8. Thus, a consistent view has been followed by us and therefore, we do not see any plausible reason to take a different view from the above mentioned view, since our view is supported by the observations of the Apex Court, that the date of death is one date which remains fixed, whereas the date of consideration and the revised policies will always keep on changing, which can put the employee at a disadvantage, only on account of the delay in consideration in many cases."

5. Once the Hon'ble Supreme Court, in the aforementioned judgment, has clearly held that it is the date of death, which is to be considered for the purpose of determination of the claim for employment assistance, the decision taken by the respondents to reject the claim of the petitioner on the basis of the Policy dated 07.03.2019 is contrary to the law propounded in the aforementioned judgment.

6. In the present case, the poor petitioner had immediately moved an application in the month of May 2006, for employment assistance, which fact has not been disputed by the respondents while filing reply to the petition. The annexures appended with the writ petition have also not been disputed. More than 20 years have passed, but till date, the petitioner, who was to be appointed on compassionate grounds, has not been provided employment assistance. Therefore, instead of asking the respondents to consider his claim under the policy, which was in existence on the date of death of his father on 10.09.2005, this Court directs the respondents to offer him appointment as a Class-IV employee since his claim has only

been rejected on the ground that he did not possess the requisite qualification as per the policy dated 07.03.2019.

7. Consequently, the present petition is allowed and the impugned decision communicated vide letter dated 13.09.2019 (Annexure P-24) is quashed and set aside and the respondents are directed to offer appointment to the petitioner as a Class-IV employee within a period of three months from today. In case, the petitioner is not offered appointment within three months, the respondents shall be liable to pay him salary w.e.f. 01.11.2026 onwards.

8. The petition is accordingly disposed of. No order as to costs. Pending application(s), if any, shall also stand disposed of.

31st July, 2026

(ankit)

**(Jiya Lal Bhardwaj)
Judge**