

Item No.9

THE HON'BLE THE CHIEF JUSTICE HIMA KOHLI
AND
THE HON'BLE SRI JUSTICE B. VIJAYSEN REDDY

W.A.No.27 OF 2020

JUDGMENT: *(Per the Hon'ble the Chief Justice Hima Kohli)*

1. On the last date of hearing, learned counsel for the appellant had absented himself though the matter was passed over twice. As a result, the same has been listed today for dismissal. Today, learned counsel appears and states that he could not login into the hearing on the last date due to network problems.

2. The present appeal is directed against an order dated 30.09.2019 passed by the learned Single Judge whereby, a writ petition filed by the appellant/writ petitioner (W.P.No.21610 of 2019) praying *inter alia* for issuing directions to the respondents Nos.2 to 4/Municipal Authorities to cancel the appointment of his younger brother, respondent No.5 on the post of Junior Assistant in the respondents No.2 to 4/Municipal Corporation, that was granted on compassionate grounds, upon the demise of the father of the parties on 12.12.2017, and to consider the him for appointment as a Driver.

3. The facts of the case lie in a narrow compass. Sri Dubba Gangaram, father of appellant and the respondent No.5 was employed as a Driver in the respondents No.3/Municipality. He expired on 12.12.2017 while in service. On an application moved by the respondent

No.5, seeking appointment on compassionate grounds on the demise of the father, the respondents No.2 to 4 issued proceedings dated 31.01.2019, appointing him as a Junior Assistant. Aggrieved by the said order of appointment, the appellant filed the subject writ petition stating *inter alia* that the respondent No.5 ought not to have been granted appointment on compassionate grounds and that the mother of the parties had colluded with the respondent No.5. Without intimating the appellant and without obtaining his consent, the mother had approached the respondents No.2 to 4 for appointment of the respondent No.5 on compassionate grounds. It has been observed in the impugned order that in terms of the compassionate appointment scheme of the respondents No.2 to 4/ Municipal Corporation, a spouse/dependant family member of the deceased, who expires while in harness, is entitled to be appointed on compassionate grounds. The said scheme is silent as to which member of the family should be given preference. Noting that the appellant/writ petitioner is already married and living separately whereas, the widow of late Dubba Gangaram is living at some other place along with the younger son/the respondent No.5, the court held that it cannot be said that the appointment of the respondent No.5 made on compassionate grounds, is either illegal or in contravention of the scheme.

4. Learned counsel for the appellant/writ petition assails the impugned order on the ground that the learned Single Judge ought to have taken note of the fact that there was no understanding between the parties as to who would be given compassionate appointment and the

mother is biased towards the respondent No.5, that the mother has supported respondent No.5 for securing an appointment on compassionate grounds without taking the appellant into confidence. He further submits that the appellant has a driving licence and is eligible for appointment as a Driver, but his claim has been wrongly ignored by the respondents No.2 to 4/Municipal Corporation in favour of the respondent No.5.

5. On the other hand, Mr. Ramgopal Rao, learned counsel for the respondent No.5 supports the impugned judgment and states that it is the widow of the deceased employee (mother of the appellant and the respondent No.5) who had approached the respondents No.2 to 4 with an application for appointing the respondent No.5 on compassionate grounds. He submits that the appellant had separated from his family on the demise of the father and is living with his family elsewhere. Another sibling of the appellant and the respondent No.5, namely a daughter is already married and settled in her matrimonial home. Since there was no other earning member in the family, the mother had approached the Department requesting to grant compassionate appointment to the younger son, respondent No.5.

6. The whole purpose of granting appointment on compassionate grounds is to provide financial succour to the bereaved family on the loss of its sole bread earner. Compassionate appointment cannot be claimed as a matter of right. Such an appointment is only granted to

redeem the family in distress. As recently as in the case of State of Himachal Pradesh v Parkash Chand reported as (2019) 4 SCC 285, the Supreme Court has restated its consistent view that compassionate appointment is not a matter of right and that it must be governed by the terms on which the State has based its policy of offering employment/assistance to a member of the family of the deceased government employee. (Also refer: *Umesh Kumar Nagpal v. State of Haryana* ((1994) 4 SCC 138), *SBI v. Kunti Tiwary* ((2004) 7 SCC 271), *Punjab National Bank v. Ashwini Kumar Taneja* ((2004) 7 SCC 265), *SBI v. Somvir Singh* ((2007) 4 SCC 778), *Mumtaz Yunus Mulani v. State of Maharashtra* ((2008) 11 SCC 384), *Union of India v. Shashank Goswami* ((2012) 11 SCC 307, *SBI v. Surya Narain Tripathi* ((2014) 15 SCC 739) and *Canara Bank v. M.Mahesh Kumar* ((2015) 7 SCC 412)).

7. We have enquired from learned counsel for the appellant if the scheme of compassionate appointment governing the respondents No.2 to 4/Municipal Corporation permits appointment of more than one family member on compassionate grounds. Learned counsel concedes that there is no such provision in the scheme. It is not as if the appellant was not gainfully employed. He is working in the private sector as a driver. On the demise of his father, he had moved out of the common house and started to reside elsewhere with his wife and two children, leaving his mother and younger brother to fend for themselves.

8. In view of the fact that the widow of the deceased employee who was herself eligible under the scheme to apply for compassionate appointment, had approached the Department and requested that her son/respondent No.5 be appointed on compassionate grounds and he qualified in terms of the scheme, the respondents No.2 to 4 cannot be faulted in appointing him. The plea of the appellant that being the elder son in the family, he had a prior claim for being appointed on compassionate grounds, is wholly untenable and is rejected.

9. We therefore concur with the findings returned by the learned Single Judge and uphold the impugned order while dismissing the present appeal as merit less along with the pending applications, if any.

HIMA KOHLI, CJ

B.VIJAYSEN REDDY, J

01.07.2021

Lrkm/pln