

Item-8. 04-10-2023

MAT 633 of 2019
CAN 2 of 2020

sg Ct. 8

The State of West Bengal & Ors.
Versus
Piyali Sen & Ors.

Mr. Pinaki Dhole, Adv.
Mr. Avishek Prasad, Adv.

...for the appellants

Mr. Chitta Ranjan Chakraborty, Adv.
Mr. Dip Jyoti Chakraborty, Adv.
Mr. Sumit Banerjee, Adv.

...for the respondents

1. The appeal is directed against the order passed by the learned Single Judge in a writ petition filed by the respondent no.1 seeking appointment on compassionate ground.
2. The learned Single Judge allowed the writ petition on consideration that the pensionary benefits cannot be taken into consideration for assessing the financial hardship of the family of the deceased. Although reference was not made to any judgment of the Hon'ble Supreme Court. But it appears that the learned Single Judge possibly had in mind the decision in *Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.* reported in (2005) 10 SCC 289. However, *Govind Prakash Verma* (supra) has not been taken into consideration in the decision of the Hon'ble Supreme Court in *Umesh Kumar Nagpal vs. State of Haryana & Ors.* reported in (1994) 4 SCC 138 and for that reason in *State Bank of India & Ors. vs. Surya Narain Tripathi* reported in (2014) 15 SCC 739, it was observed that the decision in *Govind Prakash Verma* (supra) is a decision *per incurium*

and is no more a good law in view of the earlier and subsequent decisions in this point.

3. Needles to mention that the financial hardship has been assessed on the basis of the scheme and/or guideline prevailing on the date of death of the deceased. In the event the relevant circulars exclude that the provident fund, gratuity and the pensionary benefit cannot be taken into consideration for the purpose of deciding the financial hardship, the authority cannot rely upon the said factor in processing the application for compassionate appointment.
4. In State of *Himachal Pradesh & Anr. vs. Shashi Kumar*; reported in (2019) 3 SCC 653, the Hon'ble Supreme Court presided over by the present Chief Justice of India in paragraph 21 has considered the decision in *Govind Prakash Verma* (supra) The said paragraph reads as follows:

21. The decision in Govind Prakash Verma has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana. The principles which have been laid down in Umesh Kumar Nagpal have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal cases, SCC pp. 139-40, para 2)

"2.... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications

laid down by the rules for the post. However, to this general which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants 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 dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for 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 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. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be

remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

5. If the scheme provides that the income of the family from all sources are required to be taken into consideration, then the authority is obliged to apply the said principle. What should be appropriate income criterion is a matter of policy for the State Government to determine. In *the State of Himachal Pradesh* (supra) it was observed that the State Government may periodically revise the income limits preferably at intervals of three years due to inflation and increase in the cost of living. It was further observed that, in fixing the income criteria for considering cases of compassionate appointment, it would be appropriate if the State revisits the income limits at periodic intervals. It would also be open to the State to revise the income limits at a frequency of less than three years, if the State is so advised. In the *State of Himachal Pradesh* (supra), the policy recognises in paragraph 10 that the benefits which are received by a family on account of those welfare measures are required to be considered. The policy inter alia stipulates that family pension and death gratuity are required to be taken into account in assessing the financial circumstances of the family. It was observed in the said judgment that what the

policy mandates is that the receipt of family pension should be taken into account in considering whether the family has been left in indigent circumstances requiring immediate means of a subsistence. The receipt of family pension is, therefore, one of the considerations which is to be taken into account for the purpose of indigent circumstances of the family.

6. On such consideration, we direct the Commissioner of School Education to decide the application for compassionate appointment in accordance with the scheme and/or Rules prevailing on the date of the death of the deceased within eight weeks from date of communication of this order by either of the parties
7. The DPSC must take into consideration the decision in State of *Himachal Pradesh* (supra) with regard to revision of income criterion in view of the inflation and other reasons specifically stated in the said judgment and shall formulate a revised scheme based on the said decision.
8. The impugned order is set aside. The appeal and the application are accordingly, disposed of.
9. Urgent photostat certified copy of this order, if applied for be supplied to the parties upon compliance of all requisite formalities.

(Uday Kumar, J.)

(Soumen Sen, J.)