

CWP-751-2020

1

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

201

CWP-751-2020

Date of Decision: 27.07.2023

Comptroller and Auditor General of India and othersPetitioners.

Versus

Bhanu Partap and another ...Respondents.

**CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR**

.....

Present: Mr. Barjesh Mittal, Advocate for the petitioners.

Mr. Deepak Arora, Advocate for respondent No.1.

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the judgment dated 02.04.2019 passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for short, 'the Tribunal') passed in OA No.060/565/2018—Bhanu Partap Vs. Union of India and others.

2. The father of respondent No.1-Mohd. Riaz was serving as a Senior Accountant in the Office of the Comptroller & Auditor General of India (for short, 'the CAG'). He died in harness on 13.08.2016. Mohd. Riaz was earlier named as Romesh Kumar and was married to Satvir Kaur. Out of their wedlock one Munish Kumar was born. Thereafter, he embraced Islam and married Harjinder Kaur @ Hamida Begum and out of their wedlock respondent No.1-Bhanu Partap and Dharna were born. On the death of Mohd. Riaz, Munish Kumar applied for compassionate appointment but his

CWP-751-2020

2

candidature was rejected on the ground that he did not fulfil the criteria under the applicable policy. Thereafter, respondent No.1 applied for being appointed on compassionate basis. His application was also rejected but on the ground that he, being the son of Mohd. Riaz from his second wife would not fall within the definition of 'son' as contained in the policy for compassionate appointment. Respondent No.1 challenged the rejection of his application before the Tribunal. His challenge was accepted primarily on the basis of the law laid down by the Supreme Court in **Union of India and another Vs. V.R. Tripathi, (2019) 14 SCC 646**. Such order of the Tribunal has been challenged by the CAG before this Court through the instant petition.

3. Learned counsel for the parties have been heard and with their able assistance the record of the case has also been perused.

4. Respondent No.1's application for compassionate appointment has been rejected only on the ground that he is the son of the deceased employee from his second marriage which he contracted during the subsistence of his first marriage.

5. A similar issue has been decided by the Supreme Court in **V.R. Tripathi's** case (supra), wherein it has been held as follows:-

*“14. The issue essentially is whether it is open to an employer, who is amenable to Part III of the Constitution to deny the benefit of compassionate appointment which is available to other legitimate children. Undoubtedly, while designing a policy of compassionate appointment, the State can prescribe the terms on which it can be granted. However, it is not open to the State, while making the scheme or rules, to lay down a condition which is inconsistent with **Article 14** of the*

Constitution. The purpose of compassionate appointment is to prevent destitution and penury in the family of a deceased employee. The effect of the circular is that irrespective of the destitution which a child born from a second marriage of a deceased employee may face, compassionate appointment is to be refused unless the second marriage was contracted with the permission of the administration. Once [Section 16](#) of the Hindu Marriage Act, 1955 regards a child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the State, consistent with [Article 14](#) to exclude such a child from seeking the benefit of compassionate appointment. Such a condition of exclusion is arbitrary and ultra vires.”

“15. x x x x x x x x

Having regard to the purpose and object of a scheme of compassionate appointment, once the law has treated such children as legitimate, it would be impermissible to exclude them from being considered for compassionate appointment. Children do not choose their parents. To deny compassionate appointment though the law treats a child of a void marriage as legitimate is deeply offensive to their dignity and is offensive to the constitutional guarantee against discrimination.”

“16. x x x x x x x x

The exclusion of one class of legitimate children from seeking compassionate appointment merely on the ground that the mother of the applicant was a plural wife of the deceased employee would fail to meet the test of a reasonable nexus with the object sought to be achieved. It would be offensive to and defeat the whole object of ensuring the dignity of the family of a deceased employee who has died in harness. It brings about unconstitutional discrimination between one class of legitimate beneficiaries – legitimate children.”

CWP-751-2020

4

6. In **V.R. Tripathi's** case (supra) the Supreme Court has clearly held that a child like respondent No.1, who was born from a marriage which was contracted during the subsistence of the first marriage, could not be denied compassionate appointment and that any clause of the policy which denied compassionate appointment to any such child would be ultra virus Article 14 of the Constitution of India. According to the Supreme Court if compassionate appointment is denied to children from a void marriage by labelling them as illegitimate, such action on the part of the State would not only be offensive to the constitutional guarantee against discrimination but would also be against the very objects of the policy for compassionate appointment.

7. Respondent No.1's case is fully covered in his favour by **V.R. Tripathi's** case (supra). Learned counsel for the petitioners also very fairly concedes to that effect.

8. In the light of the above, no error is found in the impugned judgment of the Tribunal.

Dismissed.

(DEEPAK SIBAL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

27.07.2023

Komal

Whether speaking/reasoned? : Yes/ No
Whether reportable? : Yes/ No