

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-5336-C-2020 in/&
RSA-1089-2002 (O&M)
Date of Decision :28.02.2023

Food Corporation of India and another

...Appellants

Versus

Nischalta

...Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present:- Mr. Ish Puneet Singh, Advocate for the appellant-Corporation.

Ms. Himani Kapila, Advocate for the respondent.

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Harsimran Singh Sethi, J. (Oral)

CM-5336-C-2020

Present application has been filed for fixing the main regular second appeal at an actual date of hearing.

Keeping in view the averments made in the application, which are duly supported by an affidavit, application is allowed. Main regular second appeal is taken up for hearing today itself.

RSA-1089-2002

The present regular second appeal has been filed challenging the judgment and decree dated 05.09.2000 of the trial Court by which, the suit filed by the respondent-plaintiff so as to claim appointment to the post of AG-III on compassionate ground instead of Sifter, was allowed as well as judgment and decree dated 02.01.2001 passed by the Lower Appellate

Court by which, an appeal preferred by the appellant-Corporation against the judgment and decree of the trial Court dated 05.09.2000, was dismissed.

Certain facts need to be mentioned to appreciate the controversy in a correct perspective.

Husband of the respondent-plaintiff was in the service of the appellant-Corporation and was working as Technical Assistant Grade-II. Unfortunately, the husband of the respondent-plaintiff was killed by the terrorists on 26.11.1991 and appellant-Corporation decided to grant the compassionate appointment to the respondent-plaintiff. Keeping in view the fact that a post of Sifter was lying vacant, an offer was made to the respondent-plaintiff by the appellant-Corporation on 19.09.1992 to be appointed on the said post to which the respondent-plaintiff agreed and was ultimately appointed as Sifter on compassionate ground on 29.09.1992. While discharging duties of the said post, in the year 1995, respondent-plaintiff raised a grievance that instead of the appointment to the post of Sifter, the respondent-plaintiff should have been appointed on the post of AG-III, keeping in view the fact that husband of the respondent-plaintiff was working as Technical Assistant Grade-II.

As the said request of the respondent-plaintiff was not accepted by the appellant-Corporation, respondent-plaintiff filed a civil suit, which was allowed by the trial Court vide judgment and decree dated 05.09.2000 holding that keeping in view the instructions, which have been issued by the appellant-Corporation rather than being appointed as Sifter, the respondent-plaintiff should have been appointed as AG-III keeping in view the qualification of the said post and those possessed by the

respondent-plaintiff .

Aggrieved against the said judgment and decree dated 05.09.2000 of the trial Court, an appeal was preferred by the appellant-Corporation, which also came to be dismissed on 02.11.2001 by the Lower Appellate Court. Hence, the present regular second appeal.

Learned counsel for the appellant-Corporation argues that it is a conceded fact that an offer for appointment to the post of Sifter was made to the respondent-plaintiff, which offer was accepted by respondent-plaintiff without raising any grievance at that point of time and she also discharged the duties of the said post for more than three years before raising her claim for appointment to the post of AG-III instead of Sifter hence, entertaining the prayer of the respondent/plaintiff by the Court below was bad.

Learned counsel for the appellant-Corporation further argues that Courts below have granted the said benefit to the respondent-plaintiff for appointment to the post of AG-III without going into the fact that the qualification required for appointment to the post of AG-III was not possessed by the respondent-plaintiff but still directions were given on the ground that some appointments on compassionate ground were made on the said post with the qualification as possessed by the respondent-plaintiff hence, the direction being given by the Courts below to appoint her as AG-III is contrary to the rules governing the service as well as the settled principle of law that once a compassionate appointment has already been offered and duly accepted, the same cannot be reviewed for a higher post.

Learned counsel for the respondent-plaintiff argues that once the compassionate appointment has been made on the post of AG-III to the

other candidates having same qualification as possessed by respondent-plaintiff, denial of the said benefit to the respondent-plaintiff violates Articles 14 and 16 of the Constitution of India. Hence, prayer has been made to uphold the judgments and decrees of the Courts below and dismiss the present regular second appeal.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

Once, it is a conceded position that the rules governing the service prescribes a particular qualification for the post of AG-III, which was not possessed by the respondent-plaintiff, no direction could have been given for appointment on the said post ignoring the qualification as prescribed under the rules governing the service. No direction can be given to appoint a person, who does not possess the qualification as per the prescribed rules, to be appointed on a particular post. This fact has not been noticed by the Courts below while passing the impugned judgments and decrees hence, once, the learned counsel for the respondent-plaintiff has not been able to dispute that respondent-plaintiff does not possess the qualification required to be appointed on the post of AG-III, direction given by the Courts below to appoint the respondent-plaintiff on the said post is contrary to the rules governing the service, hence the same cannot be sustained.

With regard to the argument of the learned counsel for the respondent-plaintiff that some other persons have been given appointment on compassionate ground on the post of AG-III though, they also did not have qualification required to be appointed on the said post cannot be

accepted as there cannot be a negative discrimination. In case anyone has been appointed against the rules, the same relief cannot be made a ground to follow such incorrect practices which the Corporation might have indulged into. Once, a person approaches the competent Court of law raising a grievance, the said grievance can be allowed keeping in view the rules governing the service and settled principle of law. No direction can be given by the Court contrary to the rules governing the service only on the ground that department itself did not follow the said rules on an earlier occasion. Hence, the argument raised by the learned counsel for the respondent-plaintiff cannot be accepted.

Even otherwise, as per the settled principle of law, once the compassionate appointment has been made and accepted, the same cannot be changed at later stage claiming appointment to another post. Hon'ble Supreme Court of India in **Civil Appeal No.2208-2007** titled as **I.G. (Karmik) and others vs. Prahalad Mani Tripathi** decided on 27.04.2007 held that once an appointment has been made on a particular post and the same was accepted, the employee concerned cannot turn around and contend that he was entitled to be appointed on a higher post. Relevant paragraphs of the judgment is as under:-

“6.Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of

the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

In [National Institute of Technology & Ors. v. Niraj Kumar Singh](#) [2007 (2) SCALE 525], this Court has stated the law in the following terms:-
"16. All public appointments must be in consonance with [Article 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. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder."

In [State of Rajasthan v. Umrao Singh](#) [(1994) 6 SCC 560], this Court has categorically stated that once the right is consummated, any further or second consideration for higher post on the ground of compassion would not arise.

Again in [State of Haryana and Another v. Ankur Gupta](#) [(2003) 7 SCC 704], this Court held;
"6. As was observed in [State of Haryana v. Rani Devi](#) it need not be pointed out that the 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 [Article 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 [Articles 14](#) and [16](#). Appointment on compassionate ground cannot be claimed as a matter of right. Die- in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In [Rani Devi](#) case it was held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In [LIC of India v. Asha Ramchandra Ambekar](#) it was pointed out that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments. It was noted in [Umesh Kumar Nagpal v. State of Haryana](#) that as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate

ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

See also Food Corporation of India & Anr. v Ram Kesh Yadav & Another [JT 2007 (4) SC 1].

Respondent, thus, could be offered an appointment only to the post for which he was suitable.

Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power.

The pre-requisite for making such a appointment by granting relaxation has been laid down by this Court in [Indian Drugs & Pharmaceuticals Ltd. v. Devki Devi and Others](#) [(2006) 5 SCC 523]. See also [Kendriya Vidyalaya Sangathan and Others v. Sajal Kumar Roy and Others](#) [(2006) 8 SCC 671]”.

It may be noticed here that the respondent-plaintiff has already attained the age of superannuation and retired on 13.11.2020.

Keeping in view the facts and circumstances stated hereinbefore coupled with the settled principle of law, judgements and decrees of the Courts below dated 05.09.2000 and 02.11.2001 being contrary to the rules governing the service as well as to the settled principle of law are set aside and the present regular second appeal filed by the appellant-Corporation is allowed and the suit filed by the respondent-plaintiff is dismissed for the reasons mentioned in this order.

February 28, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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