



CWP-18530-2020 (O&M) & -1-
CWP-11660-2021 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237 CWP-18530-2020 (O&M)
Date of Decision :07.05.2024

Anil Kumar and others ...Petitioners

Versus

State of Haryana and othersRespondents

CWP-11660-2021 (O&M)

Rakesh Kumar and others ...Petitioners

Versus

State of Haryana and othersRespondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. R.K. Malik, Senior Advocate with
Mr. Ankur Sheoran, Advocate for the petitioners
in both the petitions

Mr. Harish Rathee, Sr. DAG, Haryana.

Mr. Sunil Kumar Nehra, Advocate for respondent No.3
in CWP-11660-2021 and for respondents No.3 and 4
in CWP-18530-2020.

Mr. Raj Kapoor Malik, Advocate for
respondent No.4 in CWP-11660-2021.



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* * *

Harsimran Singh Sethi, J. (Oral)

1. By this common order, above mentioned two writ petitions are being disposed of as both the writ petitions involve the same question of law i.e. whether a candidate who has once accepted appointment on compassionate ground on a particular post can subsequently stake claim for upgradation to a higher post on compassionate ground itself on the basis of having been eligible for the same at the time of initial appointment.

2. For the purpose of this order facts are being taken from CWP-11660-2021.

3. The petitioners in the said present petition were recruited as Forester by way of direct recruitment in the year 2004. Thereafter, all of them have been promoted as Deputy Forest Ranger starting from year 2015 onwards till 2019. The grievance of the petitioners is that though, they were regularly working on the said post but now, by granting private respondents No.3 and 4 who were initially given compassionate appointment on the post of Forest Guard the benefit of upgradation of their appointment to the post of Forester with effect from their initial date of appointment as Forest Guard, private respondents have been made senior to the petitioners, hence, the challenge is to the orders dated 08.01.2001 (Annexure P-1) and 01.09.2020 (Annexure P/3) by which, the private respondents have been appointed as a Forester on compassionate ground with effect from their initial date of appointment, which was more than two decades ago and

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further challenge is to order dated 18.02.2021 (Annexure P/2) and 11.12.2020 (Annexure P/4) vide which private respondents No.3 and 4 have been given further promotion to the post of Deputy Forest Ranger by reframing the seniority.

4. It may be noticed here that father of respondent No.3 namely, Sanjeev Kumar, unfortunately died on 18.07.1992 and at the time of his death, he was working as Forester. Similarly, the father of respondent No.4 unfortunately died on 22.02.1999 while working as Forest Conservator. Both the private respondents No.3 and 4 applied for appointment on compassionate ground and were appointed as Forest Guard on compassionate ground vide order dated 07.03.1996 and 02.06.1999 respectively. The private respondents No.3 and 4 continued working as such for about two decades whereafter representations were made by them to the respondent-State for re-consideration of their initial appointment in view of the Ex-gratia grant policy of State and Instruction in force at the time of their initial appointment and for granting them appointment on a higher post in view of the same from the date of their initial appointment which was on compassionate ground. It has although been stated that the private respondents No.3 and 4 had kept on making such representations from the date of their initial appointment however, the respondent-State in its reply has stated that such representations were received by it in the year 2020 which happens to be after a long gap of more than two decades from the date of initial appointment of private respondents No.3 and 4.



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5. Learned Senior counsel appearing for the petitioners argues that the petitioners were appointed directly through competitive examination on the post of Forester and they got further promotion to the post of Deputy Forest Ranger but now the private respondents, who were initially appointed on the post of Forest Guard have been given appointment on higher post of Forester with effect from their initial date of appointment on compassionate ground as Forest Guard and thereafter have been further given promotion to the next higher post of Deputy Forest Ranger by reframing the seniority thereby making them senior to the petitioners. Learned Senior counsel for the petitioners further argues that once a candidate has been appointed on compassionate ground and he/she has accepted the said appointment, the same cannot be upgraded, much less after a period of two decades and, therefore grant of appointment on higher post with retrospective effect to the private respondents is arbitrary, illegal and contrary to the settled principle of law.

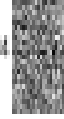
6. Learned Senior counsel for the petitioners submits that by the grant of benefit in question, which has been impugned in the present petitions, the petitioners have been made junior to the private respondents whereas, for a period of two decades, the private respondents were junior to the petitioners and working under them.

7. Upon notice of motion, the respondents have filed reply.

Surprisingly, the State in the reply have submitted that as the private

respondents had placed reliance upon Ex-gratia grant policy of State and instructions in force at the time of their initial appointment respectively contending that they were eligible for consideration under the same at the time of grant of compassionate appointment initially, which was not made applicable upon them at the said point of time and had claimed parity with other employees who were granted benefit of appointment on higher post with retrospective effect by reconsideration of their claim for compassionate appointment at belated stages, therefore, after considering the same they were given appointment on higher post of Forester with retrospective effect. Further, it has been contended that the issue of appointment of private respondents is of no concern to the petitioners and the same has been done keeping in view the eligibility of private respondents to be appointed on the post of Forester by giving reconsideration to their claim of compassionate appointment albeit after more than two decades of their initial appointment

8. Private respondents No.3 and 4 have also filed reply and it has been argued on their behalf that the private respondents No.3 and 4 were entitled for the grant of appointment on the post of Forester under the Ex-gratia grant Policy dated 03.11.1988 and instructions dated 08.06.1999 respectively, which was arbitrarily denied to them at the time of extending the post of Forest Guard and as there was no choice with them but to accept the post of Forest Guard, they joined on the said post at the relevant time and kept on making representation and ultimately, the Government realised its mistake of not granting the private respondents the benefit for which they



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were entitled initially and the same has now been granted to them keeping in view the said ex-gratia grant policy and instructions and also keeping in view the fact that similarly situated employees had already been granted the said benefit, which action of the respondent-State cannot be said to be arbitrary or illegal, as only the entitled benefit has been extended to the private respondents.

9. Learned counsel for the private respondents submits that keeping in view the settled principle of law settled by the Hon'ble Supreme Court of India in **Civil Appeal No.3311-1990 titled as Kamala Gaind vs. State of Punjab and others decided on 21.07.1990** as well as in **Civil Appeal No.7213-7214-1997 titled as Surya Kant Kadam vs. State of Karnataka and others decided on 16.01.2001** the benefit which has been extended to the private respondents for appointment on a higher post of Forester as per their entitlement with retrospective effect, is perfectly valid and legal and is liable to be upheld keeping in view the fact that the policy, which was in existence at the time of death of employee concerned envisages the said benefit, which has been extended to the private respondents by the impugned orders.

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

11. The first aspect which needs to be appreciated before adjudicating upon the present petition is, whether compassionate appointment is a source of appointment or is to mitigate the hardships,



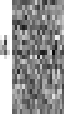
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which the family of the deceased employee face after untimely demise of the family's sole breadwinner.

12. The Hon'ble Supreme Court of India in **Umesh Kumar Nagpal vs. State of Haryana 1994 (3) S.C.T. 174** has categorically held that the compassionate appointment is not a source of appointment but an appointment given to a bereaved family so as to come out of the financial distress and the same cannot be claimed and offered whatever the lapse of time be after such crises is over. Relevant paragraphs of the judgment are reproduced as under:-

“2.The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is 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 rule 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



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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 dependent 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



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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.

3.Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

6.For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

13. Keeping in view the said principle of law, the question which has been posed in the present petitions is, whether after a period of more than two decades, an initial appointment made on compassionate ground can be upgraded to a higher post by giving reconsideration on the basis of eligibility and that too with retrospective effect or not.

14. The said law is clear since long. Hon'ble Supreme Court of India while deciding **Civil Appeal No.6492/94 titled as, State of Rajasthan vs. Shri Umrao Singh, decided on 29.09.1994** held that once an



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consumed by a candidate after accepting the said offer, his right extinguishes and no benefit of higher post can be given on later point of time. Relevant paragraph of the judgment is as under:-

“8. Admittedly the respondent’s father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of ‘endless compassion’. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”

15. Similar view has further been reiterated by the Hon’ble Supreme Court of India in **Civil Appeal No.2208-2007, I.G. (Karmik) and others vs. Prahalad Mani Tripathi decided on 27.04.2007** and further coordinate Bench of this Court while passing order in **CWP-311-2009 titled as Kiran Jyoti vs. State of Punjab and others decided on 14.01.2009** has held on the basis of **Umrao Singh (supra)** as well as in **Prahalad Mani**



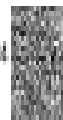
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Tripathi (supra) that once, a compassionate appointment has been accepted, the right of the candidate extinguishes and no right to seek consideration for higher post exists. Relevant paragraphs of the judgment in *Kiran Jyoti (supra)* are as under:-

“4.The compassionate appointment is not a source of recruitment. The object and purport of compassionate appointment is to enable the family of the deceased to overcome immediate financial problems. It is for this purpose that an exception has been carved out under the mandate of [Articles 14 and 16](#) of the Constitution of India. The right of a person to ask for a higher post after the appointment has been considered by the Hon'ble Apex Court in the case of [State of Rajasthan v. Umrao Singh](#), (1994) 6 SCC 560 wherein the Apex Court held that once the right is consummated, any further or second consideration for higher post on the ground of compassion would not arise. This view has been followed in the case of [I.G. \(Karmik\) and others vs. Prahalad Mani Tripathi](#), (2007) 6 Supreme Court Cases 162 wherein it has been observed as under:-

"7.Public appointment 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 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.



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12. Furthermore, the respondent 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....."

5. In the instant case, the petitioner's claim for compassionate appointment was accepted by the respondents and she was offered the Class IV appointment which she accepted without any reservation. It was only after she got the benefit of appointment and confirmation that she tried to raise the issue of appointment on a higher post. In view of the aforesaid observations made by Hon'ble Supreme Court, the petitioner cannot be permitted to raise the issue after seeking appointment without reservation. I find no merit in this petition which is accordingly dismissed."

16. Similar view has been further reiterated by the Hon'ble Supreme Court of India in **Civil Appeal No.4422-1994 titled as, State of Haryana vs. Naresh Kumar Bali, decided on 17.05.1994**. In the said case, feeling aggrieved against the decision of this Court wherein direction was issued to grant the compassionate appointment on a higher post, State approached the Hon'ble Supreme Court of India with a plea that once, compassionate appointment has been offered and accepted, same cannot be upgraded to a higher post which plea was accepted by the Hon'ble Supreme Court of India

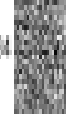
17. A bare perusal of the settled principle of law observed

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hereinbefore will show that a consistent view starting from year 1994 is that a candidate, who has already accepted a particular post offered on compassionate ground cannot be allowed to turn around to claim benefit of higher post. The said view has been taken on the ground that compassionate appointment is not a source of appointment but to mitigate the circumstances, which the family of the deceased employee is facing and once, the said offer of appointment on compassionate ground has been accepted by a candidate, he/she cannot be allowed to turn around to claim a higher post. The said right consummate on the grant of appointment and no further consideration can be sought or offered at a belated stage when such hardship as it occurs upon the untimely demise of the employee, who happens to be a breadwinner of the family has been addressed by grant of the appointment. It has been categorically observed that the issue of compassionate appointment cannot remain open once appointment has been granted, the right of the same consummated and reconsideration of the same would constitute as a case of endless compassion which would be against equity in the light of the fact that compassionate appointment happens to be an exception to the general rule which govern the aspect of appointment with the State.

18. A similar view was taken by another Coordinate Bench of this Court in **CWP-14282-2007 titled as, Jang Bahadur Singh vs. State of Punjab and others, decided on 07.01.2013**, wherein, a candidate, who was given an appointment on compassionate ground was claiming appointment

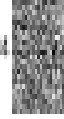


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on a higher post, which claim was rejected by the Coordinate Bench of this Court holding that once, an appointment has already been accepted, the claim for higher post cannot be accepted. Relevant paragraphs of the judgment are as under:-

8.The petitioner having been appointed to the post of Peon in the year 1991 and, that too, on a priority basis and under a Rehabilitation Scheme, the objective of such scheme stood achieved. The claim as raised in the present writ petition would be in the nature of asking for endless compassion. The same is not permissible. The observations of the Hon'ble Supreme Court in the case of [State of Rajasthan v. Shri Umrao Singh](#), 1995(1) S.C.T.46 in somewhat similar circumstances would be relevant and read in the following terms:
"Admittedly the respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the



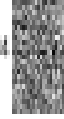
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right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of 'endless compassion'. Eligibility to be appointed as Sub-Inspector of Police is one thing; the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

Since both the sides relied on Naresh Kumar Bali's case (supra), we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under:

"Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a Teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a Clerk and his claim for consideration for the post of Teacher was



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one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed."

Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise.

It is true that in the decision cited, the direction by the High Court was a positive direction to make the appointment but here the direction was to consider the case. Nevertheless, we find that the High Court was not legally justified in directing a further consideration of the candidature of the respondent for the post of Sub-Inspector. The Civil Appeal will stand allowed and in reversal of the orders of the courts below respondent's writ petition is dismissed. There shall be no order as to costs."

19. In the present case, after a period of 22 years of the initial appointment on compassionate ground, a plea of the private respondents to reconsider them for higher post in view of the eligibility during the time of their initial time been accepted by the respondents through the impugned orders, which is contrary to the said settled principle of law.

20. So far as the claim of the private respondents that they are entitled for appointment on a higher post, as per the judgment of the Hon'ble



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Supreme Court of India in **Kamala Gaiind (supra)** as well as **Surya Kant Kadam (supra)**, the same is misplaced.

21. In the case of **Kamala Gaiind (supra)**, nothing has come on record that the son of the appellant therein had accepted the appointment, which was being offered to him and upon non-grant of the entitled post, petitioner therein challenged the said act of the State before the Hon'ble Court forthwith, which claim was then accepted keeping in view the fact that case was made out. **Kamala Gaiind (supra)** is not a case of upgradation of post after acceptance of a particular post on compassionate ground hence, cannot be made applicable in the facts and circumstances of this case.

22. In the present case, in case, the private respondents were not happy with the offer of the appointment as given to them initially on compassionate ground as Forest Guard, they should not have accepted the said offer and should have agitated the same as done in the case of Kamala Gaiind but once, the private respondents accepted the offer, no benefit of appointment on a higher post can be given to them and that too after a period of more than two decades of working on a lower post as given to them initially on compassionate ground.

23. With regard to the claim in **Surya Kant Kadam (supra)**, a claim was raised that the appellant therein was given compassionate appointment on the post of clerk even though, he had applied for the post of Sub-Inspector of Excise whereas, certain other persons who were also appointed on the said post on compassionate ground and appointment of whom were



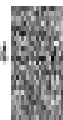
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later in date in comparison to the appellant therein were appointed on the said post of sub Inspector ignoring the claim of the appellant therein, who had a better right than them. It was under these circumstances, Hon'ble Supreme Court of India has held that once, appellant therein had a better claim on the post which was offered to other similarly situated employees who were also appointed on compassionate ground and who were junior to appellant, in light of which, a direction was given to appoint appellant therein on the post of Sub Inspector, Excise. However the same was also stated to be granted prospectively. Whereas, in the present case, facts are entirely different. In the present case, that challenge to the appointment of private respondents is from the regularly appointed employees and in terms of the settled principle of law noted hereinbefore it cannot be said that the private respondents had a better claim in comparison to that of regularly selected employees.

24. Even otherwise, by considering the claim in **Kamala Gaiind (supra)** and **Surya Kant Kadam (supra)**, a Coordinate Bench while passing order in **Jang Bahadur Singh (supra)** has held that once, appointment has been given on a particular post, the same cannot be upgraded therefore, even otherwise, keeping in view the findings recorded in **Jang Bahadur Singh (supra)**, no benefit can be granted to the private respondents.

25. Another argument which has been raised by the learned counsel for the private respondents is that their claim is covered under the ex-gratia grant policy and the instructions, which were in existence on the date of



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death of an employee and State has merely given effect to it in its administrative powers. The ex-gratia policy dated 03.11.1988, which was in existence on the date of the death of the employee concerned has been brought on record by respondent No.3 in CWP-11660-2021. Before proceeding further, said instructions are reproduced hereunder for ready reference:-

“No.16/21/88-6 G.S.II

From

Chief Secretary, Government of Haryana.

To

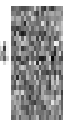
1. All the Head of Departments in Haryana
2. Commission, Ambala and Hisar Division
3. All Deputy Commissioner and Sun
Divisional Officer (Civil)
4. Registrar Punjab and Haryana High
Court, Chandigarh

Dated 03.11.1988

Subject:- To provide jobs and other facilities to the families of Government servants who diene during the service period.

Sir.

I have been directed to bring your attention to the above subject to Haryana Government Circular No.16/21/88-6 G.S.II dated 09.09.1985 and to say that the Government has been receiving may such cases where the family of the deceased makes a request after a long time to provide jobs and other facilities. After considering this matter, it has been decided that in future in those cases, employment and financial assistance will not be considered. Where such prayer will not be received from the family of the deceased within three years of his death. In cases where the



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person concerned, to whom the facility of employment is to be given, is still minor, the prayer regarding this should also reach the Government within three of the death of the employee for consideration/decision. This decision will be applicable from the date of issue of this letter and the cases which already been received will be dealt with as per the existing instructions.

Apart from this, it has also been decided that in future only those family members of the deceased will be considered for recruitment of category-II posts where the person concerned has technical qualifications M.B.B.S., B.E., B.Tech., B.B.S etc and he can be posed only on Category-II posts or above. In the rest of the cases, no consideration should be given to the appointment of gazetted posts and considering the eligibility of the applicant, the proposal should be sent to the government to fill only category-III and 4 posts.

Please strictly follow these orders and acknowledgment of this letter should also be sent to the government.

Sd/

Deputy Secretary, Protocol

For, Chief Secretary, Haryana Government.”

26. A bare perusal of the above policy would show that it was only mentioned that where the technical qualifications have been obtained by the candidate seeking compassionate appointment like M.B.B.S., B.E., B. Tech., B.B.S etc, they should be given a technical post commensurate to their qualifications. With regard to the rest of the cases, it was mentioned that the consideration should only be given for filling up Class-III and Class-IV posts.



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27. In the present case, the private respondents had already been given Class-III post of Forest Guard. Once, Class-III post, which was the entitlement under the Instructions dated 03.11.1988 had already been given to the private respondents, the private respondents cannot agitate that they were not given benefit for which, they were entitled for under the instructions, which were applicable at the time of death of the employee concerned for the grant of compassionate appointment.

28. Learned counsel for the private respondents submits that once the posts of Forester and Forest Guard both are Class-III posts, now granting the benefit of another Class-III post with retrospective effect could not be treated as arbitrary and illegal.

29. It may be noticed that once a class-III post as per entitlement of the private respondents were offered to them and which was accepted by them, again choosing another post of their choice and that too after a period of two decades of accepting the appointment as Forest Guard is not permissible as the compassionate appointment has only been given to mitigate the financial hardship after the death of the sole bread winner of the family. Further, the said benefit cannot be allowed as the same causes prejudice to the petitioners, who are directly recruited employees and private respondents were working under the petitioners from long period of time hence, by granting the benefit of compassionate appointment on another post, the private respondents will steal march over the petitioners so as to claim seniority, which cannot be allowed. Further, it is to be noticed here



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that administrative powers of the State are not unfettered and once, in accordance of the settled principle of law right to compassionate appointment has been consummated the State will not have the liberty to arbitrarily fiddle with the same as the same shall cause prejudice to the rights of other regularly selected employees.

30. Learned counsel for the private respondents argues that two employees namely, Devender Singh and Surender Pal, who are the respondents No.3 and 4 respectively in CWP-18530-2020 and were working as Forester having been appointed on compassionate grounds were also upgraded to the post of Deputy Forest Ranger w.e.f. their initial date of appointment through the orders which have been impugned in CWP-18530-2020, after they sought to be appointed as Deputy Forest Ranger from the date of their initial appointment on compassionate ground. On the basis of the relief granted to said Devender Singh and Surender Pal, the petitioners also raised a grievance that they are similarly situated and by accepting their claim, respondents No.3 Sanjeev Kumar and respondent No.4-Tarun Gagat were ordered to be appointed as Forester from the date of their initial appointment as Forest Guard hence, benefit was granted so as to remove discrimination therefore no grievance can be raised by the petitioners. The orders granting the benefit of retrospective appointment to Devender Singh and Surender Pal have been impugned in CWP-18530-2020 and are under challenge on the same grounds.

31. Qua the said argument, it may be noticed that reliance being



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placed upon the benefits granted to Devender Singh and Surender Pal, who are the respondents in CWP-18530-2020 wherein, the relief granted of antedated compassionate appointment is also under challenge, it may be noticed that relief granted to Devender Singh and Surender Pal is also struck with arbitrariness and is illegal as they have also been granted antedated appointment on compassionate ground ignoring the settled principle of law, which have already been noticed hereinbefore. Once, the benefit of antedated appointment of the respondents Devender Singh and Surender Pal in CWP-18530-2020 cannot be upheld, any relief granted to the petitioners on the basis of the relief granted to them can also not sustain and is accordingly set aside. The relief granted to Devender Singh and Surender Pal of antedated appointment on a higher post of Deputy Forest Ranger vide impugned order dated 30.09.2020 (Annexure P/4) and 30.09.2020 (Annexure P/5) in CWP-18530-2020 are also set aside being arbitrary and illegal and contrary to the settled principle of law noticed hereinbefore.

32. Keeping in view the facts and circumstances recorded hereinabove, coupled with the settled principle of law cited hereinbefore, it is clear that benefit granted in favour of the private respondents so as to grant them benefit of compassionate appointment on a higher post with retrospective effect and that too after a period of 02 decades so as to cause prejudice to the petitioners are illegal and struck with arbitrariness hence, the order dated 08.01.2021 (Annexure P/1) and dated 01.09.2020 (Annexure



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P/3) as well as order dated 18.02.2021 (Annexure P/2) and dated 11.12.2020 (Annexure P/4) in CWP-11660-2021 and order dated 30.09.2020 (Annexure P/4) and 30.09.2020 (Annexure P/5) in CWP-18530-2020 are set aside. No benefit of the impugned orders shall be given to the private respondents in any manner qua their retrospective appointment and period on which the private respondents have worked on the higher posts be treated as period spent on the post on which, they were working on the date when the impugned orders were passed.

33. Further, certain comments needs to be made against the method in which the department granted the benefit of compassionate appointment on a higher post to the private respondents with retrospective effect after a period of more than two decades. The department is supposed to know the law as similar relief is being agitated by the State tooth and nail in number of cases where the same relief claimed of higher post is being objected by the State. On one hand relief being claimed for compassionate appointment on a higher post is being objected by the State and on the other hand, the similar relief is being accepted by the respondent-State disregarding settled law and its own position in similar cases i.e. **Naresh Kumar Bali (supra)** The private respondents have been given benefit of compassionate appointment on a higher post on an application made by them after two decades of their initial appointment on a compassionate ground upon which right has been consummated since long. It is being argued that the said benefit has been accepted/approved upto the rank of Additional Chief



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Secretary, Department of Forest and Wild Life. Nothing has come on record as to what consideration was given by the said authority while granting the benefit of appointment on a higher post to the private respondents after a period of 02 decades and that too ignoring the settled principle of law as noticed hereinbefore the garb of which State has taken in order to reject such similar claims.

34. It may be noticed that State of Haryana had approached the Hon'ble Supreme Court of India when a similar relief was granted by this Court in the case of **Naresh kumar Bali (supra)** in the year 1994. Taking a decision contrary to their own stand shows that the decision taken was not bonafide but to extend certain undue benefits to respondents No. 3 and 4. Further, nothing has come on record as to why, the recommendations of the Chief Conservators of the Forests, who had opposed the grant of relief to the private respondents were ignored so as to grant the benefit to the private respondents. The officer(s), who has/have sanctioned the impugned orders dated 30.09.2020 (Annexure P/4) and 30.09.2020 (Annexure P/5) in CWP-18530-2020 and order dated 08.01.2021 (Annexure P/1) and dated 01.09.2020 (Annexure P/3) as well as order dated 18.02.2021 (Annexure P/2) and dated 11.12.2020 (Annexure P/4) in CWP-11660-2021 has to be made accountable for passing such orders, which not only create purposeless litigation but also create a situation where entire seniority is reframed to the prejudice of the employees who were otherwise senior after a period of 02 decades by an arbitrary action of an officer, the motivation of whom



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happens to be questionable. The said officer(s) has/have to be made responsible for passing such kind of orders. Keeping in view the same copy of the orders impugned through the present petitions be sent to the Chief Secretary, Government of Haryana to initiate appropriate action against the said officer concerned and to seek his/her explanation and find out as to under what circumstances, such arbitrary and illegal orders disregarding settled law so as to give undue benefits to the employees in a pick and choose manner and that too at the cost of other employees are being passed. The outcome of the said proceedings be also brought to the notice of this Court within a period of three months from the date of receipt of copy of this order.

35. Present petitions are allowed in above terms.
36. Civil miscellaneous application pending, if any is also disposed of.
37. A photocopy of this order be placed on the file of connected case.

May 07, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

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