IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWPOA No.5810 of 2019
Decided on :07.04.2026

Vikash Thakur ...Petitioner

Versus

State of HP and others ...Respondents

Coram
Hon'ble Mr. Justice Jiya Lal Bhardwaj, Judge
Whether approved for reporting? [1]

For the petitioner: Mr. Praveen Chandel, Advocate.

For the respondents: Mr. Sikander Bhushan, Deputy Advocate General.

Jiya Lal Bhardwaj, Judge (Oral)

By way of present petition, the petitioner has laid challenge to the communication dated 05.05.2015 (Annexure A-8), whereby the claim of the petitioner, for appointment on compassionate ground, has been rejected on the ground that as per the criteria prevailing on the date of application, the income limit was ₹1,00,000/- per annum for a family of 04 members, however, in case of the petitioner, the family income of the deceased employee was exceeding the maximum PCI income ceiling fixed for compassionate employment.

[1] *Whether reporters of Local Papers may be allowed to see the judgment?*

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2. Shorn of unnecessary details, the undisputed facts of the case are that the father of the petitioner was appointed as Drawing Teacher at Government Middle School Keori under complex GSSS Bir, District Kangra on 11.12.1998, who died on 02.08.2008. After his death, the respondents had granted family pension to the mother of the petitioner w.e.f. 01.03.2008 to 28.02.2009 of ₹60,110. The respondents under the policy of Compassionate Appointment had offered the appointment to the mother of the petitioner, however, due to ill health, she had requested to offer the appointment to the petitioner and had submitted the affidavit before the competent authority. The petitioner thereafter had applied for compassionate appointment with the respondents, however, when no action was taken, the petitioner was compelled to approach this Court by way of writ petition bearing CWP No.6888 of 2014, titled, ***Vikas Thakur vs. State of H.P. & others,*** wherein directions were issued to the respondents to consider the claim of the petitioner for compassionate appointment and as per communication dated 05.05.2015, his claim came to be rejected on the ground that as per the certificate of year 2011 submitted by the petitioner, his

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income from all sources was ₹1,45,240/- per annum and from pension, it was ₹1,13,820/- per annum, for the year 2009-10. As per the policy of Compassionate Appointment, the income of the family at the time of application has to be taken into consideration for deciding the entitlement. The application was made on 06.08.2009 and as per the criteria prevailing on the date of application, the income limit was ₹1,00,000/- per annum for a family of 4 members. However, the income of the family of the petitioner is more and further as per the judgment of the Hon'ble Supreme Court, the pension has to be taken as income of the family of the deceased. The petitioner has placed on record the income certificate dated 27.11.2008, in which the income of the petitioner, from all sources have been depicted and shown as ₹98,000/- per annum (page 52). It has been averred in the petition that the appointment on compassionate grounds is to be offered to a dependent of deceased is an exception and once the respondents had offered the appointment to the mother of the petitioner in the year 2008, when their income was ₹98,000/- and criteria fixed was ₹1,00,000/-, who was unable to do job due to her illness, the claim of the petitioner ought not to have been

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rejected.

3. The respondents filed reply to the petition. Respondents No. 4 & 5 have averred that the cases of appointment on compassionate ground are being decided on the basis of indigent as well as economic status of the family of the deceased Government employee and the same cannot be claimed as a matter of right. It has also been averred that at the time of submission of the application by the petitioner, the instructions dated 18.01.1990 were in existence. As per the income certificate furnished by the petitioner, income of the family of the petitioner was ₹98,000/-, however as per the instructions issued by the Government, the income limit for being below poverty line is ₹30,000/-. Further for claiming the pension under the scheme being implemented by the Social Justice and Empowerment Department is ₹15000/- per annum. Both these limits are below the income of the petitioner and hence claim of the petitioner for appointment on compassionate ground has rightly been rejected. It has further been averred that the case of the petitioner was not considered by the respondent-State due to the reason that the income of the petitioner’s family was ₹98,000/- per

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annum.

4. I have heard the learned counsel for the parties and also pursued the record carefully.

5. As per the communication dated 05.05.2015, whereby the claim of the petitioner was rejected to offer him appointment on compassionate ground, the respondents have taken the date for considering the claim as 06.08.2009, when he had applied for appointment. Further, as per the certificate, which he had submitted, the income of the petitioner was shown to be ₹1,42,240/- per annum in the year 2011 and from pension was ₹1,13,820/- per annum for the year 2009-10. It is not in dispute that the father of the petitioner had died on 02.08.2008. The respondents have also not disputed the factum that earlier the mother of the petitioner was offered the appointment, but due to her illness, she could not join and thereafter the petitioner had sought the appointment on compassionate grounds. The respondents have not even disputed the certificate of income dated 27.11.2008, where income of the family of the petitioner has been shown as ₹98,000/- per annum. As per the communication under challenge, the criteria of income prevailing on the date of application was

₹1,00,000/- per annum for 4 members of the deceased employee.

6. The respondents while filing reply has now taken a different stand that the family income of the petitioner was ₹98,000/- per annum, but as per the instructions issued by the Government, the income limit for below poverty line is ₹30,000/- and thus, the claim of the petitioner was rightly rejected. The said plea cannot be countenanced and the same is rejected for the reason that it was not the ground, while rejecting the claim of the petitioner. Further, now it is settled by the Hon'ble Supreme Court that the policy and criteria which were in existence on the date of death of an employee, whose dependent applies for compassionate appointment, have to be taken while processing the application. Further the respondents cannot take other grounds while filing reply, which were not communicated to the petitioner at the time of rejecting his claim for offering him appointment on compassionate grounds.

7. The Hon'ble Supreme Court in ***State of Madhya Pradesh and others vs. Ashish Awasthi,*** **(2002) 2 SCC 157** has held that it is the policy, which is prevalent at the time of death of an employee, which is to be considered for

the purpose of considering the claim of compassionate appointment and not the subsequent policies framed by the State Governments. Again a three-Judge Bench of the Hon'ble Supreme Court in ***State of Madhya Pradesh and Others vs. Amit Shrivas,*** **(2020) 10 SCC 496,** has held that it is the date of demise, which is to be seen, unless a subsequent policy is made applicable retrospectively. In ***State of Karnataka vs. Bheemesh alias Bheemappa,*** **(2021) 20 SCC 707,** after considering the earlier judgments, the Hon'ble Supreme Court, has held that the fixed factor is only the date of death, which does not change. Therefore, the date of application and consideration should not be considered, while considering the claim for offering the appointment on compassionate grounds.

8. A Division Bench of this Court had the occasion to deal with the similar issue in CMP(M) No.367 of 2025 and LPA No.797 of 2025, decided on 19.11.2025, titled, ***State of Himachal Pradesh & another vs. Sarita Devi,*** and affirmed the judgment passed by the learned Single Judge, wherein the direction was given to consider the case of the petitioner in terms of the policy which was in vogue when her husband died. The relevant paras of the judgment reads

as under:-

> *"8. While placing reliance upon the judgment of the Apex Court in* ***State of Madhya Pradesh and others Vs. Ashish Awasthi (2022) 2 SCC 157,*** *it was held that if there was a subsequent policy in place the consideration had to be done as per policy prevalent at the time of the death.*
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> *9. It is not disputed that vide policy dated 18.01.1990* ***(Annexure P-1),*** *as per Clause-7, there is an extent of relaxation and power regarding the appointment of Class-IV employees which is to be relaxed in genuine cases. The relevant Clause reads as under:-*
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> > *"7) Extent of relaxation and power to make relaxation:- while providing employment on compassionate grounds the following relaxation can be made by the Administrative Department:*
> >
> > *(a) Recruitment procedure, i.e. without the agency of Public Service Commission or employment Exchange.*
> >
> > *(b) If there is ban on filling up the posts, the ban shall be deemed to have been releaxed for the purpose of making compassionate appointments.*
> >
> > *(c) The educational qualification for Class IV posts will be relaxable in genuine cases with the prior approval of the Cabinet. However in case of a widow of Govt. Servant to be appointed as Class IV employee, the educational qualification can be relaxed by the concerned Administrative Department.*
> >
> > *(d) Age relaxation shall not be given by any authority. Genuine cases will be placed before the Cabinet for allowing age relaxation by the Deptt. concerned."*
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> *10. As per the revised policy dated 07.03.2019* ***(Annexure R-I),*** *the appellants-State has stated in the reply that the power of relaxation is missing and there is a general bar as such for providing relaxation in the minimum educational qualification, while there is a flexibility of relaxation in upper or lower age limit for employment and in genuine cases which was placed before the Cabinet.*

11. It is in such circumstances, counsel for the appellants-State has opposed the order passed by the learned Single Judge on account of the fact that subsequent policy has to be taken into consideration and the order of the learned Single Judge directing consideration in terms of the earlier policy, was not justified.

12. Vide order dated 02.05.2025, we had also noticed that there was alternative plea as such that the daughter of petitioner namely-Ms. Ranjana could be given the said benefits as she had the requisite qualification as per ***Annexure P-6*** *being a plus-two pass-out and directed the appellants-State to consider her case, keeping in view the fact that since the deceased had died on 26.08.2016, almost a decade ago. Unfortunately, the said order also has not been granted the due deference as such but the appellants-State has followed its blanket "stonewalling attitude" by holding out that the relaxation would open up a "pandora's box" and the later policy would prevail, in view of the judgments of the Apex Court. The case of the daughter as such was rejected on the ground that the substitution of the deceased claims was also not permissible.*

13. We are of the considered opinion that the State as such has lost sight of the fact that the primary purpose of the compassionate appointment is to give succour to the family and to genuine cases, there can be no other genuine cases at all for a widow as such to support three girl children.

14. In spite of that the attitude of the State to pursue the litigation continue. The law as such has also been relied upon by the State primarily, placing reliance upon the judgment of the Apex Court in ***N.C. Santhosh Vs. State of Karnataka and Others (2020) 7 SCC 617,*** *wherein it has been held that consideration should be done as per the policy in force.*

15. However, counsel for the respondent has fallen back on another three-Judge Bench judgment of the Apex Court in ***State of Madhya Pradesh and Others Vs. Amit Shrivas (2020) 10 SCC 496,*** *decided on 29.09.2020, subsequent of the judgment of* ***N.C. Santhosh case*** *(supra), which was decided on 04.03.2020. The observations in subsequent judgment as such would go on to show that it is the date of demise which has to be seen, unless a subsequent policy is made applicable retrospectively. The relevant pragraph reads as under:-*

> *"16. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succour to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. Insofar as providing succour is concerned, unfortunately, since the demise of the late father of the respondent, 11 years have passed and really speaking, the aspect of providing succour to the family immediately does not survive. We have still examined the matter in the conspectus of the applicable policy. It is not in question that the Policy prevailing was one dated 18-8-2008. Clause 12.1 clearly prescribes work-charge/contingency fund and daily wager employees from compassionate appointment. The gravemen of the submission of the respondent is based on the classification of his late father as a permanent employee on account of having worked for more than 15 years and the consequent regularisation of his service."*

16. It is also to be noticed that in the judgment of the Apex Court in ***State of Karnataka Vs. Bheemesh (2021) 20 SCC 707,*** *while taking into consideration the three-Judge Bench judgment of* ***N.C. Santhosh case*** *(supra) another two Judge of the Apex Court as such had come to the conclusion that the fixed factor is only the date of death that does not change and therefore on account of the fact that the date of application and the date of consideration of the policy would be different, the differential treatement should not be given to the employees. The relevant paragraph reads as under:-*

> *"20. The important aspect about the conflict of opinion is that it revolves around two dates, namely, (i) date of death of the employee; and (ii) date of consideration of the application of the dependant. Out of these two dates, only one, namely, the date of death alone is a fixed factor that does not change. The next date, namely, the date of*

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consideration of the claim, is something that depends upon many variables such as the date of filing of application, the date of attaining of majority of the claimant and the date on which the file is put up to the competent authority. There is no principle of statutory interpretation which permits a decision on the applicability of a rule, to be based upon an indeterminate or variable factor. Let us take for instance a hypothetical case where 2 government serviant dies in harness on 1-1-2020. Let us assume that the dependants of these 2 deceased government servants make applications for appointment on 2 different dates say 29-5-2020 and 2-6-2020 and a modified Scheme comes into force on 1-6-2020. If the date of consideration of the claim is taken to be the criteria for determining whether the modified Scheme applies or not, it will lead to two different results, one in respect of the person who made the application before 1-6-2020 and another in respect of the person who applied after 1-6-2020. In other words, if two employees die on the same date and the dependants of those employees apply on two different dates, one before the modified Scheme comes into force and another thereafter, they will come in for differential treatment if the date of application and the date of consideration of the same are taken to be the deciding factor. A rule of interpretation which produces different results, depending upon what the individuals do or do not do, is inconceivable. This is why, the managements of a few banks, in the cases tabulated above, have introduced a rule in the modified scheme itself, which provides for all pending applications to be decided under the new/modified scheme. Therefore, we are of the considered view that the interpretation as to the applicability of a modified Scheme should depend only upon a determinate and fixed criteria such

as the date of death and not an indeterminate and variable factor."

17. Faced with this situation, the appellants-State has fallen back on the judgment of a two-Judge Bench of the Apex Court in ***State of Himachal Pradesh and Others Vs. Abhishek Kumar (2024) 5 SCC 280,*** *to point out that the view in* ***N.C. Santhosh case*** *(supra), was held to be correct.*

18. We have gone through the above said judgment in which the judgment in ***Amit Shrivas case*** *(supra) also of a three-Judge Bench, had been passed, subsequent to the judgment in* ***N.C. Santhosh case*** *(supra) had not been brought to the notice of the said Bench as such.*

19. It is in such circumstances, keeping in view the law on precedent, we are of the considered opinion that once there is a conflict as such between the two Benches of equal strength of the Apex Court the judgment which lays down the law more elaborately is to be followed.

20. Reference can be made to the judgment of the Full-Bench in ***Indo Swiss Time Limited Vs. Umrao and Others AIR 1981 (Punjab & Haryana) 213,*** *wherein it was observed as under:-*

"23. Now the contention that the latest judgment of a co-ordinate Bench is to be mechanically followed and must have pre-eminence irrespective of any other consideration does not commend itself to me. When judgments of the superior Court are of co-equal Benches and therefore of matching authority then their weight inevitably must be considered by the rationale and the logic thereof and not by the mere fortuitous circumstances of the time and date on which they were rendered. It is manifest that when two directly conflicting judgments of the superior Court and of equal authority are extant than both of them cannot be binding on the courts below. Inevitably a choice, though a difficult one, has to be made in such a situation. On principle it appears to me that the High Court must follow the judgment which appears to it to lay down the law more elaborately and accurately. The mere incidence of time whether the judgments of co-equal Benches

> *of the superior Court are earlier or later is a consideration which appears to me as hardly relevant."*
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> *21. Resultantly, we are of the considered opinion that the order dated 31.07.2024, passed by the learned Single Judge, in such circumstances is well justified and therefore we not only uphhold the same but also quash the order dated 16.09.2025, passed by the Additional Secretary (PW) to the Government of Himachal Pradesh during the pendency of the appeal, whereby the rejection had been done as noticed above."*

9. In the present case, once the respondents themselves have admitted that the income limit was of ₹1,00,000/- per annum for a family of four members and further the income of the family of the petitioner was ₹98,000/- per annum as on 27.11.2008 and the father of the petitioner had died on 02.08.2008, the income of the subsequent years mentioned in the impugned communication could not have been considered for the purpose of considering the claim of the petitioner to offer him appointment on compassionate grounds.

10. No doubt, the appointment on compassionate ground is not a mode of recruitment, but this Court cannot even loose site of the fact that the primary purpose of appointment, on compassionate ground, is to provide succor to the family and in the present case, the petitioner is fighting for seeking employment on compassionate

grounds from the year 2009. The impugned order dated 05.05.2015 (Annexure A-8) passed by respondent No.2 is not sustainable in law and thus, is quashed and set aside.

11. Resultantly, the present writ petition is allowed, with a direction to the respondents/competent authority to consider the case of the petitioner for appointment on compassionate grounds in terms of the policy, which was in vogue when his father died on 02.08.2008. Since the petitioner is fighting for his right to offer him appointment on compassionate grounds, the respondents/competent authority is directed to do the needful within two months from the date of receipt of copy of this judgment. However, there shall be no orders as to cost. Pending application(s), if any, also stand disposed of.

07th April, 2026 **(Jiya Lal Bhardwaj)**
(Anurag) **Judge**