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Service Law: Compassionate Appointment

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Abstract: Compassionate Appointment is an advantage scheme that allows the Indian Government to give enrolment in employment to the legal successor of the government servants on a compassionate basis by fulfilling certain conditions such as eligibility, the financial situation of the family, availability of vacancy, and other criteria set down by the state or its agencies. It is a social security scheme by the Government of India to grant employment or appointments to a dependent family member on compassionate grounds when any government servant dies while in service or retires on medical grounds. Its objective is to provide immediate financial assistance to the family who is left in poorness and without any means to continue their livelihood as there is no proper solution for this area or it is not defined in any codified law, confusion arises and the claimants seek the decision of the Court when the appointments are denied. This paper examines the scope of the Court's and tribunal's involvement to give effect to compassionate appointments.

Key Words: Compassionate appointment, Service Law, Court, Immediate, dependent, social security scheme.

I INTRODUCTION

According to the "Office Memorandum" issued by the Government of India through the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) on 16th January 2013, where the subject relating to the compassionate appointment was discussed:

> *"For the purpose of compassionate appointment, 'Government Servant' is defined as government servant appointed regularly and not as a daily wage worker on a contractual basis and dependent family member means spouse, son (also included adopted son) and daughter (also includes adopted daughter). In the case of the Government servant being unmarried (brother or sister), they will qualify as dependent family members who are completely relying on the Government servant at the time of his retirement on medical grounds or his death in harness.*
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> *Competent authority to make a compassionate appointment is:*
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> 1. *Joint Secretary in charge of administration in the concerned Department/Ministry.*

2. *In the case of attached and subordinate offices, the head of the Department is the competent authority.*

3. *In the special type of case, the competent authority is the Secretary of the concerned Ministry /Department."*

II Literature Review

The scheme of compassionate appointment is a social security scheme that exists in almost all states, under which appointments can be made on compassionate grounds to the legal heirs or successors of the deceased government servants who died in service or retirement on medical grounds. In Basavaraj Fakirappa Manvi v. Managing Director, Ksrtc[1] the Court said that *"Rules providing for compassionate appointment is welfare legislation intended to benefit a class of person, namely the dependents of the deceased employee. This concession is also extended to the legal heirs of medically invalidated persons."* Till now the appointments are regulated by policy guidelines framed by the Department of Personnel and Training Instructions. The appointment under the scheme is only observed with relevant provisions and guidelines given under the scheme by the government. There is no uniform practice so far that is followed in providing such appointments since it does not have a statutory basis.

STRUCTURAL BASIS

In the case of N.C. Santhosh v. State of Karnataka & Ors[2] Dr. Justice D.Y. Chandrachaud, Supreme Court Judge emphasized that *"appointment to ant public post is to be made as per under Article 14 (Right to Equality) and Article 16 (Right to Equal Opportunity to all citizens in the matter of Employment) of the Constitution of India and the exception to this general rule is compassionate appointment."*

III METHODOLOGY

A. Article 14 and 16 of the Indian Constitution:

Article 16 of the Indian Constitution ensures equality of opportunity in matters of public employment and the appointments in public services must be strictly made on the ground of or through the open invitation of applications and comparative merit, with regards to Articles 14 and 16 of the Indian Constitution. The issue of compassionate appointment obtains its origin from Article 16(2) of the Constitution. It was reconsidered in the case of the State of Haryana and Ors. v. Rani Devi and Anr.[3] And it was stated by the Court that it is not necessary to point out that the claim of a person for appointment on compassionate ground is based on that he was dependent on the deceased employee and this claim

[1] ILR 1994 KAR 2020, 1994 (3) KarLJ 60

[2] 2019 (3) SCC 653

[3] JT 1996 (6),646 1996 SCALE (5) 338

strictly cannot be upheld on the criterion of Article 14 and 16 of the Indian Constitution. However, such a claim is considered reasonable and permissible based on the sudden crisis that occurs in the family of such an employee who serves the state and dies while in service or retires due to medical reasons and due to this, the authorities must frame rules and regulations or issue such administrative orders which can stand the test of Article 14 and 16.

Thus if an employee or government servant dies while in service then in accordance with the rules framed by the Central or State Government to appoint the dependent of the employee at his/her position, shall not be violated of Articles 14 and 16 of the Constitution because it is to relieve the hardships due to the death of the bread earner of the family and the immediate misery faced by the members the family of such employee. While rechecking the purpose of making an appointment on the compassionate ground the Court in the case of National Institute of Technology v. Niraj Kumar Singh[4] highlighted that all public appointments must be in agreement with Article 16 of the Indian Constitution. Exceptions developed, therefore are the cases where appointments are to be provided to the dependent children or widow of the employee who died in harness. Such exception is carved out with a mindset that the family of the deceased employee who died in harness does not become needy, deprived, or poor.

B. Services under Union and states:

Article 309 of the Indian Constitution allows the recruitment and conditions of services of the person serving the Union or the States. Article 309 states *"Subject to the provisions of the Constitutional Acts the appropriate legislation may regulate the recruitment and condition of services of persons appointed to public services and posts in connection with the affairs of the Union or any state".* However, the provision is not specific concerning the rules of recruitment and the conditions of service of the union or the states. The legislature is allowed to frame rules regarding the services and such rules or conditions shall be void if it infringes any of the provisions of the constitution. The legislature can assign the authority of making the rules and conditions to the executive. Article 309 is intermediate or temporary which allows the executive to make rules until the appropriate legislature makes laws on the matter. The rules made by the executive have force in law and are binding in nature. Hence, the term compassionate appointment is not used anywhere in the Indian Constitution. The exception is carved

[4] (2007) 2 SCC 481

out of Articles 14 and 16 for providing appointments on compassionate grounds.

IV RESULT

Judicial Approach There are too many judicial declarations on compassionate appointments dealing with the important queries as to whether delay can be ground for denial of compassionate appointments? Whether an illegitimate son can apply for an appointment on compassionate grounds? Whether or not a married daughter is allowed to receive the benefit of a compassionate appointment? Whether the appointment on a compassionate basis can be granted by the Courts? Hence, the scheme of compassionate appointment is not transparent on these issues and these are verified by the Courts and Tribunals in various cases. In regards to married daughters, the scheme expresses that they are considered for appointment on a compassionate basis only if she is dependent on the Government Servant at the time of their death or if they are retired on medical grounds and she must support other dependent members of the family. The Court has stated in many cases that denying compassionate appointments on the ground of marriage is opposed to the principle of equality set down in the Constitution.

A. Married daughter:

In Mamta Devi v. State of Himachal Pradesh and Others[5] the father dies and left behind two daughters and a widow. The petitioner was a married daughter and she needed to take care of her mother and sister and asked for a compassionate appointment with the *"non-objection certificate"* from her mother and sister. She was denied for compassionate appointment only on the ground that she was married. The Court advanced that *"the object of compassionate appointment is to support the family of the deceased government servant who died in harness and not by including married daughters in the sweep of the family, the object of the scheme cannot be achieved and further stated that a daughter remains to be a daughter even after marriage and thus, if a married son has a right to compassionate appointment, then the married daughter also stands on the same footing."*

B. Delay:

In Rajeshkumar Vishnuprasad Joshi v. the State of Gujarat,[6] the petitioner applied for a compassionate appointment after 5 years of the death of his father who was a government servant and in those 5 years the family of the petitioner survived and the Court held that the principle is that the policy of compassionate appointment is to provide immediate relief to the

[5] CWP NO. 3100 OF 2020

[6] C/LPA/568/2022

deceased family upon deceased's death. The compassionate benefit is not a matter of right. It will offend the principle of compassionate benefit, and the delay would invalidate the petitioner's claim for a compassionate appointment as it is an immediate consideration. It must be a matter of immediate relief when the deceased's family requires it and stated that the element of immediacy has to be *"sine qua non"* for such an appointment.

C. Role of Courts:

In Life Insurance Corporation of India v. Mrs. Asha Ramchandra Ambedkar,[7] the Hon'ble Supreme Court of India held that Administrative Tribunals and High Courts are permitted to give directions to the Competent Authority or the Concerned Departments for consideration of claim but are not allowed to give directions for appointment on compassionate grounds.

D. Divorced Daughter:

In State of Uttar Pradesh v. Noopur Srivastava,[8] the Court held that the "divorced daughter" is assumed in the expression of "unmarried daughter" and the divorced daughter is permitted a compassionate appointment if she was supported by the government servant or employee at the time of death and the marriage was lawfully dissolved either before or after the death of the bread-earner of the family and if she remains unmarried at the time of appointment.

E. Child from Second Marriage:

In Ramesh Chand v. Executive Engineer and Others,[9] it was argued that can a child born from the second marriage of a person during the subsistence of the first marriage, claim the right of compassionate appointment. Despite the fact, that a second marriage is invalid, during the lifetime of the first spouse, Section 16 of the Hindu Marriage Act, grants legitimacy to the children born from such marriage and they have equal rights as the children born from the valid marriage until there is any specific exception. The Court held that the petitioner is the legitimate child of the deceased employee under Sec. 16(1) of the Hindu Marriage Act.

F. Banking Sector:

In Punjab National Bank and Ors. V. Ashwini Kumar Taneja[10] the father of the respondent dies while he was working as a Class IV employee at

[7] 1994 AIR 2148, 1994 SCC (2) 718
[8] SPECIAL APPEAL DEFECTIVE NO. 673 OF 2018
[9] SPECIAL APPEAL NO. 1205 OF 2003
[10] CIVIL APPEAL NO. 5256 OF 2004

appellant's Bank and left behind the mother, widow and two sons, and one daughter. The compassionate appointment claimed by the respondent was denied by the bank on the ground that there was no financial crisis and the family was doing good as they received substantial amounts after the death of the job-holder. The Court gave directions to the bank to re-consider the case of the respondent for a compassionate appointment by stating that the benefits received by the family of the deceased employee cannot justify the rejection of a compassionate appointment. It was later held by the Supreme Court that *"appointment on compassionate grounds is not a source of recruitment but merely an exception to the requirement regarding appointments being made on the open invitation of application on merits and that basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood and that the object is to enable the family to get over the sudden financial crisis."*

V CONCLUSION

The execution of the scheme of compassionate appointment is explained so full of complexity or confusion that the Courts and tribunals have to be requested to resolve the inconsistency in appointments and this is the only reason for several contradictory judgments by the Courts. The State must take into consideration and take all the steps that are essential to prepare a consistent scheme to grant compassionate appointments so that repeated judgments by the Courts can be avoided if a uniform and transparent policy is expected in all the departments and organizations. Hence, providing this policy statutory backing will amend the inconsistency which exists in present times regarding this matter.

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