

Before Ajay Kumar Mittal & Manjari Nehru Kaul, JJ.

FOOD CORPORATION OF INDIA AND OTHERS—Appellants

versus

SMT. SURJIT—Respondent

LPA No.1795 of 2015

February 05, 2019

Clause X of Letters Patent—Constitution of India, 1950—Art. 226—Respondent had claimed compassionate appointment on account of the death of her husband on 23.04.2007 while he was still employed with FCI as Handling Labourer—After obtaining the income certificate, the respondent applied for compassionate appointment on 02.04.2008, well beyond the period of 6 months from death as stipulated in the policy circular dated 02.02.1977—Learned Single Judge allowed the claim of the respondent—In appeal filed by FCI, the LPA Bench held that in exercise of judicial review under Article 226, High Court cannot rewrite terms of policy—Compassionate appointment is not a matter of right, but is governed by the terms of the policy—Appeal allowed.

Held that, the Supreme Court in State of Himachal Pradesh and another v. Parkash Chand, Civil Appeal No. 977 of 2019 decided on 17.1.2019 had held that in the exercise of judicial review under Article 226 of the Constitution, the High Court cannot re-write the terms of the policy. The compassionate appointment was not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased Government employee.

(Para 8)

Further held that, the learned Single Judge was in error in directing the appellants to give compassionate appointment to the respondent as a Handling Labourer/Labourer in place of her husband in terms of policy/circular dated 2.2.1977 ignoring the six months time limit. Accordingly, the appeal is allowed and the order dated 14.9.2015 passed by the learned Single Judge is set aside. In consequence thereto, the writ petition filed by the respondent shall stand dismissed.

(Para 10)

K.K.Gupta, Advocate
for the appellants.

S.P. Soi, Advocate
for the respondent.

AJAY KUMAR MITTAL, J.

(1) Challenge in this Letters Patent Appeal is to the order dated 14.9.2015 passed by the learned Single Judge whereby CWP-1849-2014 filed by the respondent was allowed.

(2) A few facts necessary for adjudication of the instant appeal as narrated therein may be noticed. Shri Narender Kumar, husband of the respondent, was working as Handling Labourer in Gang No.5 in Food Storage Depot of the Food Corporation of India (FCI) at Nakodar. He expired on 23.4.2007 as is clear from the death certificate dated 23.4.2007 (Annexure P-1). The respondent being the widow of said Shri Narender Kumar submitted the required documents to get the terminal benefits and after obtaining the income certificate dated 31.3.2008 from the Tehsildar, Nakodar in pursuance to her application dated 28.3.2008 (Annexure P-4), applied for an appointment on compassionate ground vide application dated 2.4.2008 (Annexure P-5). Since, the respondent submitted her application beyond the stipulated period of six months as prescribed in the policy circular dated 2.2.1997, her case for appointment on compassionate ground vide application dated 2.4.2008 (Annexure P-5). Since, the respondent submitted her application beyond the stipulated period of six months as prescribed in the policy circular dated, her case for compassionate appointment was not considered. She filed CWP-20293-2013 and this Court vide order dated 13.9.2013 directed the respondents to consider the claim of the respondent and to take a final decision on the legal notice dated 19.8.2013 (Annexure P-13) strictly in accordance with law and in the light of the relevant policy/instructions issued on the subject within a period of three months. In pursuance thereto, the appellants vide order dated 31.12.2013 (Annexure P-15) rejected the claim of the respondent. Against the order, Annexure P-15, the respondent filed CWP-1849-2014. The said writ petition was contested by the appellants by filing written statement. In the written statement, the appellants had pleaded that since the respondent had applied for appointment on compassionate ground after a period of six months as prescribed in the circular dated 2.2.1977, her case was rightly rejected vide order dated 30.12.2013 (Annexure P-15). The respondent filed replication controverting the averments made in the written statement. The learned Single Judge vide order dated 14.9.2015 allowed the said writ petition and directed the appellants to give the regular appointment as a

Handling Labourer/Labourer to the respondent in place of her husband, on compassionate grounds in terms of policy/ circular dated 2.2.1977. Hence, the present Letters Patent Appeal.

(3) We have heard learned counsel for the parties.

(4) Learned counsel for the appellants submitted that as per the circular dated 2.2.1977, the application for the appointment on compassionate ground was to be made within a period of six months from the date of death, but the respondent had made the application beyond the period of six months. She had applied for compassionate appointment vide application dated 2.4.2008 (Annexure P-5). According to the learned counsel, the respondent was not entitled for the appointment on compassionate ground.

(5) On the other hand, learned counsel for the respondent while supporting the judgment passed by the learned Single Judge has submitted that the respondent had initially made the application for the appointment on compassionate ground in May, 2007, i.e. well within the time as prescribed in the relevant policy/circular.

(6) For appointment on compassionate ground in respect of dependent of deceased department worker, the instructions issued vide circular dated 2.2.1977 (Annexure R-1) were applicable. As per said circular, the time limit for submitting applications was six months from the date of death/retirement on medical grounds and could not be extended. Relevant para 2 of the said circular reads thus:-

“Time limit for submitting applications will be six months from the date of death/retirement on medical grounds, and this in no case should be extended.”

(7) Admittedly, the husband of the respondent Shri Narinder Kumar was working as Handling Labourer in Gang No.5, in Food Storage Depot of the FCI at Nakodar who died on 23.4.2007. The respondent moved an application dated 28.3.2008 (Annexure P-4) to the Teshildar, Nakodar for issuance of income certificate. After obtaining the income certificate dated 31.3.2008, the respondent applied to the respondents for appointment on compassionate ground vide application dated 2.4.2008 (Annexure P-5). The factum of submission of the said application was confirmed by the respondent in her subsequent representation dated 14.01.2011, 24.12.2012 and the legal notice dated 19.8.2013 (Annexures P-11 to P-12, respectively). The application filed by the respondent for compassionate appointment on 2.4.2008 (Annexure P-4) was clearly beyond the period of six

months as prescribed in the Circular dated 2.2.1977. Though, the respondent had claimed that initially she submitted the application in May, 2007 but nowhere she had made reference of any previous application either in the application dated 2.4.2008 (Annexure P-5) or in the subsequent representations dated 14.1.2011, 24.12.2012 (Annexures P-11 and 12, respectively) and the legal notice dated 19.8.2013 (Annexure P-13). She only made a reference in CWP-1894-2014 that initially the application was moved in May, 2007 which fact remained unsubstantiated. The application for the appointment on compassionate ground of the respondent was rightly rejected by the appellants being beyond the stipulated period of six months as provided in the Circular dated 2.2.1977 (Annexure R-1).

(8) The Supreme Court in *State of Himachal Pradesh and another* versus *Parkash Chand*¹ decided on 17.1.2019 had held that in the exercise of judicial review under Article 226 of the Constitution, the High Court cannot re-write the terms of the policy. The compassionate appointment was not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased Government employee. The relevant observations of the Apex Court are as under:-

“In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to re-write the terms of the policy. It is well-settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. (*Umesh Kumar Nagpal* versus *State of Haryana, General Manager (D&PB)* versus *Kunti Tiwary*, *Punjab National Bank* versus *Ashwani Kumar Teneja*, *State Bank of India* versus *Somvir Singh*, *Mumtaz Yunus Mulani* versus *State of Maharashtra, Union of India* versus *Shashank Goswami*, *State Bank of India* versus *Surya Narain Tripathi and Canara Bank* versus *M. Mahesh Kumar*).

For the above reasons, we are of the view that the judgment of the High Court is unsustainable. The High Court has virtually re-written the terms of the policy and has issued a

¹ Civil Appeal No. 977 of 2019

direction to the State to consider applications which do not fulfill the terms of the policy. This is impermissible.”

(9) There is nothing on record to show that the application for compassionate appointment was filed by the respondent within a period of six months as provided in the Circular dated 2.2.1977.

(10) In view of the above, the learned Single Judge was in error in directing the appellants to give compassionate appointment to the respondent as a Handling Labourer/Labourer in place of her husband in terms of policy/circular dated 2.2.1977 ignoring the six months time limit. Accordingly, the appeal is allowed and the order dated 14.9.2015 passed by the learned Single Judge is set aside. In consequence thereto, the writ petition filed by the respondent shall stand dismissed.

(11) All the pending applications also stand disposed of.

(P.S.Bajwa)