



# COMPASSIONATE APPOINTMENT IN PUBLIC EMPLOYMENT: AN ANALYSIS IN PRESENT SCENARIO

**Dr. Rakesh Kumar**

*Assistant Professor, Department of Law, Ch. Devi Lal University, Sirsa (Haryana) India*

## ABSTRACT

*The principles of consideration for compassionate appointment have been firmly settled and have been reiterated by the supreme court. The object of compassionate appointment is to enable the family of the deceased employees to tied over the sudden financial crisis due to death of the bread earner which has left the family in penury and without means of livelihood, it is an exception to the normal rule of public employment, it is a concession. The basic intention to grant compassionate appointment is that on the death of the employees, his family is not deprived of the means of livelihood, It can not be claimed by way of inheritance. Compassionate appointment cannot be treated as a Bonanza. It is not disbursement of gift. It is not sympathy syndrome. It is meant to provide minimum relief for meeting immediate hardship to save the bereaved family from sudden financial crisis due to death of sole bread earner. If employer finds that financial arrangement made for family subsequent to death of the employee is adequate members of the family can not insist for compassionate appointment. There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules.*

**KEYWORDS:-** Bonanza. Compassionate Appointment, Deceased Employees, Livelihood Public Employment, Sympathy Syndrome etc.

## INTRODUCTION

The provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which sub-serve the basic object and purpose which is sought to be achieved<sup>1</sup>. Compassionate appointment is not a vested right or an alternate mode of employment. It can be claimed only where a scheme or rules provide for such appointment. The basic purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tied over the immediate financial crisis caused by the death of the bread-earner. In determining as to whether the family is financial crisis, all relevant aspects must be borne in mind including the income of the family its liabilities, the terminal benefits received by the family the age, dependency and marital status of its members, together with the income from any other sources of employment. As per the law laid down by the apex court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Article 14 and 16 of the constitution. However, appointment on compassionate ground offered to a dependent

of a deceased employee is an exception to the said norms.<sup>2</sup> The compassionate ground is a concession and not a right. 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 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. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out. The norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

## JUDGEMENT RELIED

*In case Malaya Nanda Sethy v. State of Orissa and Ors.*<sup>3</sup> Recently the supreme court observed that Considering the object and purpose of appointment on compassionate grounds i.e. a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the

<sup>1</sup>Shiv Kumar Dubey and others v. State of U.P. and others, 2014(2) ADJ, 312

<sup>2</sup>N.C. Santosh v. State of Karnataka and Others(2020) 7 SCC 617

<sup>3</sup>Civil Appeal No.4103 of 2022 (Arising) out of S.L.P.(Civil) No.936/2022



employee while in service and the basis or policy is immediacy in rendering of financial assistance to the family of deceased consequent upon his untimely death, the authorities must consider and decide such applications for appointment on compassionate grounds as per the policy prevalent, at the earliest, but not beyond a period of six months from the date of submission of such completed applications.

**Mukesh kumar & anr v. Union of India ors.**<sup>4</sup>In this case the Supreme court held that a compassionate appointment policy cannot discriminate against a person only on the ground of descent by classifying children of the deceased employee as legitimate and illegitimate. Exclusion of one class of legitimate children would fail to meet the test of nexus with the object, and it would defeat the purpose of ensuring the dignity of the family of deceased employee.

**The Case of Union of India and others v. VR Tripathi**<sup>5</sup> was considered where the supreme court held that a child born out of second marriage is still a legitimate child and is entitled to compassionate appointment. Once section 16 of the Hindu Marriage Act, 1955 regards child born from a marriage entered into while the earlier marriage is subsisting to be legitimate, it would not be open to the state, consistent with Article 14 to exclude such a child from seeking the benefit of compassionate appointment. Such condition of exclusion is arbitrary and ultra vires.

**The State of Madhya Pradesh & Ors. v. Ashish Awasthi**<sup>6</sup> In this case the Supreme court has been held that the appointment on compassionate ground, the policy prevalent at the time of death of the deceased employee only is required to be considered and not the subsequent policy.

**Rajeshkumar Vishnuprasad Joshi v. State of Gujarat**<sup>7</sup>, In this case the Double bench of the Gujarat High Court has observed that the Policy of compassionate appointment is intended to give immediate relief to the family of the deceased upon death of the deceased. It is a one time succor when the family lunges into economic crises upon death of bread earner. While on one hand the compassionate benefit is not a matter of right and would offend the principle of equality in employment, on the other hand the passage of time would further negate the claim of a person to be given a compassionate benefit for the belated grant of benefit could not be justified as it would lose the very purpose against the compassionate appointment to be offered and the scheme for such appointments to be implemented.

**Pradip Kumar Sahoo v. Principal Secretary to Govt., School and Mass Education Dept. Ors.**<sup>8</sup>The Orissa High Court, held

<sup>4</sup>Civil Appeal No.1620/2022, decided on 24 Feb,2022

<sup>5</sup>AIR 2019 SC 666

<sup>6</sup>Civil Appeal No. 6903 of 2021, decided on 18 Nov.2021

<sup>7</sup>LPA No.568 of 2022 decided on 21 June,2022

<sup>8</sup>2022 LiveLaw (Ori.) 95

that it is highly improper to keep the cases of compassionate appointment pending for years, as the very purpose behind the same is to mitigate hardship of a bereaved family. While making orders for compassionate appointment in favour of two persons, a Single Judge Bench of **Justice Sanjeeb Kumar Panigrahi** observed, It is stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress."

Accordingly, the Bench ordered the authorities to provide the petitioners with compassionate appointments in accordance to the Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 within a period of three months from the date of the judgement.

**Deepika Sharma v. State of U.P. and Another**<sup>9</sup>The court taking account the facts of the case noted that prior to the death of the deceased, neither the father-in-law of the petitioner nor her brother-in-law had raised any grievance against the petitioner. With this, noting that the father and brother of the deceased do not want that the petitioner may be given a compassionate appointment, the Court observed thus; Their conduct is not uncommon since the majority of the parents, whose son dies untimely, blame his widow for his death and want to get rid of her by resorting to all means, fair and foul, to deprive her of the estate of her husband. This is one such case where after the death of the husband of the petitioner, her father-in-law and brother-in-law are bent upon depriving her of appointment on a compassionate basis on account of the untimely death of her husband in harness. Their conduct shows that they will not accept her and her minor daughter as their family members anymore. In such a situation the petitioner is absolutely helpless."

**The Court also underscored that section 2 (c) of the Rules does not include father-in-law or brother-in-law within the definition of family and therefore, they were not eligible for compassionate appointment.**

"The rule was framed to provide immediate relief by way of appointment of one member of the family of deceased so that the family may not be pushed towards starvation after loss of the sole breadwinner. In this case, about seven months have passed and respondent no.2 is lingering the decision because of frivolous objections from the persons who are not members of the family of the deceased as per the Rule and who cannot get a compassionate appointment at all on account of the death of the husband of the petitioner," the Court added as it directed the respondent no.2 to grant compassionate appointment to the petitioner on any suitable post, within 12 weeks.

<sup>9</sup>Writ-No.-5030 of 2022 decided on 29 April,2022 ( Allahabad High Court)



*In case Kalu Ram Jangid v. State of Rajasthan & Ors.*<sup>10</sup>, The Rajasthan High Court held that the married brother of a deceased government servant is not a 'dependent' and is not entitled for compassionate appointment.

*Sunita Devi v. State of Haryana and Another*<sup>11</sup>, In this case the Punjab and Haryana High Court has held that ordinarily, the Court would not have interfered in the matter of compassionate appointments in the absence of any policy qua the contractual employees which concededly the husband of the petitioner was at the time of his death. However, the Bench of **Justice Arun Monga** allowed writ petition by petitioner seeking for issuance of writ to quash the impugned order dated 18.12.2020 whereby neither service benefits on account of death of her husband have not been granted to her nor her request for the compassionate appointment is being considered. In this case, the petitioner's husband was working on a contract basis, with the respondent department and he died in harness on 02.06.2020.

Learned counsel for the petitioner relies on judgment of the High Court rendered in *Mamtesh v. State of Haryana and others*<sup>12</sup> in support of his arguments wherein it was held that even in the case of a temporary employee working for the State, in the event of death in harness, benefit of compassionate appointment to one of the family members can be extended. There fore, he argues that in the case of petitioner same benefit ought to be accorded. Her husband was admittedly a contractual employee but having served for nine years and was entitled for regularization of his services, qua which his case was pending at the time when he suddenly died in the road accident.

The Court held in this respect that ordinarily, this Court would not have interfered in the matter of compassionate appointments in the absence of any policy qua the contractual employee, which concededly the husband of the petitioner was at the time of his death.

"However, given the mitigating circumstances as more particularly stated in the petition and also the fact that deceased husband of the petitioner had served the respondents for nine years leaving behind young 33 years widow with four minor children to feed, it is expected of the respondents to have a compassionate outlook and try to accommodate the petitioner, subject of course to the requirement of services, on any suitable post in any class, on a similar arrangement of contract like her husband", added Court. Thus, Court directed a decision to be taken as expeditiously as possible, given that the petitioner and her four minor children continue live in penury caused by the sudden financial hardship due to the accidental death of her husband.

*In Iqbal Khan v. The State of U.P. And 2 Others*<sup>13</sup> case the Allahabad High Court Observed that 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. The whole object of granting compassionate employment is to enable the family to tide over the sudden financial crisis.

*N.C. Santosh v. State of Karnataka and Others*<sup>14</sup> In this case the supreme court held that appointment on compassionate basis to be offered to the dependent of the deceased employee is an exception to norms that all vacancies in the government department should be filled in terms of tenets of Articles 14 and 16 of the constitution.

*In case Smt. Shobha Devi v. Jodhpur Vidhyut Nigam Limited, Jodhpur Through its Chairman Cum Managing Director*<sup>15</sup>, the Rajasthan High Court ruled that the married daughter of a deceased employee falls within the definition of dependent for compassionate appointment. The perception of the daughter, after marriage no longer being a part of her father's household and becoming an exclusive part of husband's household, is outdated mindset .If a daughter is unmarried or single, she is eligible to seek appointment on the grounds of compassion; and if she is widowed or divorced, then too she is eligible for the same. She then must not be devoid of the same right, to seek compassionate appointment, only when she is married.

*Apex Court in the case of Umesh Kumar Nagpal v. State of Haryana*<sup>16</sup> has held that 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 merit. No other mode of appointment nor any other consideration is permissible. 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 humanitarian 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 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 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.

<sup>10</sup>S.B. Civil Writ Petition No.3660/2019 decided on 20 April,2022

<sup>11</sup>CWP-7405-2022 decided on 07April,2022

<sup>12</sup>2019(4) SCT 116

<sup>13</sup>Special Appeal No. 148 of 2022

<sup>14</sup>(2020) 7 SCC 617

<sup>15</sup> S.B. Civil Writ Petition No. 11993/2017 of High Court of Judicature for Rajasthan at Jodhpur

<sup>16</sup>(1994) 4 SCC 138



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 favorable treatment given to such dependant 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 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. The aforesaid enunciation of law with regard to compassionate appointment is reiterated by the Apex Court in line of judgments up to this date. Thus, the law with regard to compassionate appointment is by now too well settled that it is not a matter of right and not an alternate source of recruitment.

## CONCLUSION

It is trite to emphasise, based on the above mentioned numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away. It is well settled that for all government vacancies equal opportunity should be provided to all aspirants as is mandated under Articles 14 and 16 of the Constitution. However appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said norms. The principle of the policy of compassionate appointment is intended to give immediate relief to the family of the deceased upon death of the deceased. It is a one time succor when the family lunges into economic crises upon death of bread earner. While on one hand the compassionate benefit is not a matter of right and would offend the principle of equality in employment, on the other hand the passage of time would further negate the claim of a person to be given a compassionate benefit, for, the belated grant of benefit could not be justified as

it would lose the very purpose against the compassionate appointment to be offered and the scheme for such appointments to be implemented. The compassionate appointment is always an immediate consideration and has to be a matter of urgent relief when the family of the deceased employee would have needed it. Element of immediacy has to be a sine qua non for such kind of appointment. In view of the above discussion that there is no general or vested right to compassionate appointment except where a scheme or rules provide for such appointment.

## REFERENCES

1. M.P. Jain, *Indian Constitutional Law*, ( Lexis Nexis 8<sup>th</sup> edition) 2018
2. K. Dey Roy, *A Comprehensive Manual on Compassionate Appointment* ( Jain Book Depot 1st edition) ISBN: 8188734314, 2010
3. Prof.Kumar Narender, *Constitutional Law of India*(Allahabad Law Agency 9<sup>th</sup> edition Reprint 2021)
4. Takwani C.K. *Lectures on Administrative Law* (Eastern Book Agency 7<sup>th</sup> edition 2021)
5. Sathe S.P. *Administrative Law* (Lexis Nexis 7<sup>th</sup> edition 2004)
6. Massey I.P. *Administrative Law* (Eastern Book Agency 10<sup>th</sup> edition 2022)
7. Wade H.W.R. & Forsyth C.F. *Administrative Law* (Oxford Press 11<sup>th</sup> edition 2014) Upadhyaya J.J.R. *Administrative Law* (Central Law Agency 2019)

## WEBOGRAPHY

1. <https://timesofindia.indiatimes.com>
2. <https://www.tribuneindia.com>
3. <https://indianexpress.com>
4. <https://main.sci.gov.in>
5. <https://mphc.gov.in>
6. <https://gujarathighcourt.nic.in>
7. <https://www.livelaw.in>
8. <https://highcourtchd.gov.in>
9. <https://hcraj.nic.in>
10. <https://highcourt.cg.gov.in>
11. <https://www.orissahighcourt.nic.in>
12. <https://www.allahabadhighcourt.in>
13. <https://www.barandbench.com>