

A HIMACHAL ROAD TRANSPORT CORPORATION

v.

SH. DINESH KUMAR

MAY 7, 1996

B [B.P. JEEVAN REDDY AND K.S. PARIPOORNAN, JJ.]

Service Law :

C *Compassionate appointment—Children of deceased employees—State Administrative Tribunal directed appointment under 'kith and kin' policy—employer expressed inability to grant appointment due to non-availability of vacant posts—Held : it was not open to Administrative Tribunal to direct appointment of eligible person to a post or to create supernumerary post to accommodate claimant—Proper course for Tribunal was to direct appropriate authority to consider each case in light of relevant rules and subject to availability of post.*

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The respondents children of deceased employees of the appellant-Corporation—had applied for appointment in the Corporation under 'kith and kin' policy. As there was no vacancy in the appellant—Corporation, respondent 1 was given a part-time job and respondent 2 was placed in the waiting panel.

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The respondents filed a petition in the State Administrative Tribunal for appointment as clerks on regular basis with immediate effect. The Tribunal allowed the petition. Being aggrieved, the appellant-Corporation preferred the present appeal.

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Allowing the appeal, this Court

G **HELD : 1.** In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of

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the relevant rules and subject to the availability of the post. It is not open A
to the Tribunal either to direct the appointment of any person to a post
or direct the concerned authorities to create a supernumerary post and
then appoint a person to such a post. [459-H, 460-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7844 of B
1996.

From the Judgment and Order dated 27.3.95 of the Himachal
Pradesh Administrative Tribunal, Shimla in O.A. No. 423 of 1995.

J.S. Attri and L. R. Rathi for the Appellant. C

Arvind Minocha, C.K. Mahajan, S.L. Bisaria, S.K. Bisaria, for the
Respondents.

The Judgment of the Court was delivered by D

PARIPOORNAN, J. Special leave granted.

2. The Himachal Pradesh Road Transport Corporation is the appel-
lant in both the appeals. One Shri Dinesh Kumar is the respondent in the
appeal filed against Special Leave Petition (C) No. 15998 of 1955 and one E
Ms. Parveen Kumari is the respondent in the appeal filed against Special
Leave Petition (C) No. 16027 of 1995. In this judgment the appellant will
be referred to as the 'Corporation', and the respondents will be mentioned
by their names.

3. The Corporation has filed the appeals against the order of F
Himachal Pradesh Administrative Tribunal in O.A. No. 423/95 dated
27.3.1995 in the case of Shri Dinesh Kumar and against the order passed
in O.A. No. 3320/94 dated 6.3.1995 in the case of Ms. Parveen Kumari.
Both the appeals are connected. They involve consideration of a common
question, namely, whether the respondents are entitled to be appointed as G
clerks on regular basis forthwith under the 'kith and kin policy'. We should
hasten to add that the validity of kith and kin policy was not questioned
before us. So, we are not adjudicating the larger aspect in these appeals.

4. We heard counsel. The minimal facts necessary for the disposal of H
the appeals are as follows :

A The respondents in both the appeals applied for appointment as clerks under "kith and kin policy" in the Corporation. Shri Dinesh Kumar is son of late Shri Hari Krishan who was serving as an Accountant in the Corporation. Shri Hari Krishan died on 14.4.1990, leaving behind him his wife and three sons. The Corporation has settled and paid all dues to the family by way of family pension, gratuity, provident fund, leave encashment, etc. In addition thereto one of the dependents of deceased Shri Hari Krishan, Shri Dinesh Kumar, the respondent, was provided with a part-time job on Rs. 600 per month in Bilaspur. Earlier, he was offered the post of a conductor on *regular basis*, but he declined to accept the same. Since there was no vacancy in the clerical post Shri Dinesh Kumar was appointed on contract basis as a clerk. He moved the Administrative Tribunal and prayed for his appointment as clerk on regular basis with immediate effect. The Tribunal granted the prayer with a condition that the applicant should qualify the typing test within one year. The order of the Tribunal is dated 27.3.1995.

D The respondent Ms. Parveen Kumari is the daughter of late Shri Om Prakash, who was serving as a driver in the Corporation. He died on 2.11.1991. The respondent submitted application seeking employment under kith and kin policy. The deceased left behind him his wife and daughter. The Corporation settled the monetary compensation due to the deceased by way of family pension, gratuity, provident fund, leave encashment, etc. Under the scheme of appointment for kith and kins of deceased the Corporation took a lenient view and approved the case of the respondent for employment for the post of clerk on 27.5.1993. Her name was included in the waiting panel.

F 5. The Corporation has filed Annexure-I showing details of the candidates waiting for appointment under kith and kin policy for the post of clerk. Shri Dinesh Kumar is serial number 27 and Ms. Parveen Kumari is serial number 45. According to the Corporation, due to high incidents of bus accidents in the hill roads, the death rate in the Corporation is very high whereas the availability of posts are comparatively lesser. It is further stated that list of dependents and claimants for appointment on kith and kin policy are very large. Since there are only limited posts the Corporation is not in a position to accommodate all of them in the permanent posts. It takes some time to provide the persons, who are entitled under the kith and kin policy, with suitable jobs. It is stated with reference to Annexure-I

that serial numbers 1 to 11 were absorbed as clerk-cum-typists during 1994 on regular basis. 20 candidates, appearing at serial numbers 12, 13, 15, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 28, 30, 31, 32, 33, 34 and Shri Dinesh Kumar were absorbed on contract basis as clerk-cum-typists in 1995. Shri Dinesh Kumar did not accept the post of a regular conductor offered to him earlier on 31.12.1994. So he was appointed on part-time basis as clerk-cum-typist. According to the Corporation Shri Dinesh Kumar will have priority number 16 for appointment on regular basis.

6. Ms. Parveen Kumari is in waiting panel of kith and kin candidates awaiting employment. In the waiting list her serial number is 45. As many as 35 candidates in waiting panel have been absorbed on contract basis. Ms. Parveen Kumari is serial number 10 in the waiting panel. She has to wait for her chance. She applied to the Tribunal for appointment as a clerk. The corporation pleaded that since there is no vacancy and her place is number 10 in the waiting list for being appointed even on part-time basis, she has to wait. The Tribunal, by order dated 6.3.1995, held that even if there is no suitable post for appointment, a supernumerary post will be created to appoint the applicant and the respondent Ms. Parveen Kumari should be appointed against that post.

7. In both the cases the Tribunal has directed the Corporation to appoint the respondents as clerks on regular basis. According to the Corporation, no vacant post is available to absorb the respondents immediately on permanent basis. Shri Dinesh Kumar is working on contract basis and his priority number to be appointed on regular basis is 16. Ms. Parveen Kumari is in waiting list, to be appointed on contract basis, and her serial number is 10 in that list. Counsel for the Corporation submitted that in the absence of available posts the Administrative Tribunal acted illegally in directing that the respondents should be appointed on permanent basis forthwith. In the case of Ms. Parveen Kumari the Tribunal has gone further and has stated that a supernumerary post may be created to accommodate her to be appointed as a clerk.

8. We are of the view that the Himachal Pradesh Administrative Tribunal acted illegally and without jurisdiction in passing the orders dated 27.3.1995 and 6.3.1995 and in directing that the respondents be appointed in the regular clerical posts forthwith. In the absence of a vacancy it is not open to the Corporation to appoint a person to any post. It will be a gross

- A abuse of the powers of a public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the Tribunal finds that a person is qualified to be appointed to a post under the kith and kin policy, the Tribunal should only give a direction to the appropriate authority to consider the case of the particular applicant, in the light of the relevant rules and subject to the availability of the post. It is not open to the Tribunal either to direct the appointment of any person to a post or direct the concerned authorities to create a supernumerary post and then appoint a person to such a post. We are of the view that directions given by the Administrative Tribunal, in these two appeals, are totally unauthorised and illegal. We are, therefore, constrained to set aside the orders appealed against. We hereby do so and allow the appeals. There shall be no order as to costs.

9. Before concluding, we should record the factual position conceded by the counsel appearing for the Corporation. It is stated that Shri Dinesh Kumar is serial number 16 in the priority list for regular appointment as clerk and that Ms. Parveen Kumari is serial number 10 for appointment in the waiting panel for the post of clerk on contract basis. As and when vacancies arise for appointment to such posts, the Corporation shall conform to the priorities mentioned hereinabove in the matter of filling up the posts, subject to the fulfilment of necessary qualifications by the candidates concerned.

V.S.S.

Appeal allowed.