

A M/S. EASTERN COALFIELDS LTD.

v.

ANIL BADYAKAR & ORS.  
(Civil Appeal No. 3597 of 2009)

MAY 15, 2009

B [TARUN CHATTERJEE AND H.L. DATTU, JJ.]

*Service Law – Compassionate appointment – Claim for  
– Delay in, of 12 years – Held: Compassionate appointment  
C rightly denied, in view of object and purpose thereof.*

The question for consideration in the present appeal  
was, whether or not in the facts and circumstances of the  
case, the appointment made in respect of respondent  
D (son-in-law of the deceased employee) after 12 years,  
would negate the very object of compassionate  
appointment.

Allowing the appeal, the Court

E HELD: The compassionate appointment is not a  
vested right which can be exercised at any time in future.  
The compassionate employment cannot be claimed and  
offered after a lapse of time and after the crisis is over. In  
the instant case, the employee died in harness in the year  
F 1981 and after a long squabble by the dependents of the  
deceased, they arrived at a settlement that the son-in-law  
i.e. husband of the second daughter, who is unemployed  
may request for appointment on compassionate grounds.  
The request so made was accepted by the Personal  
G Manager of the Company subject to the approval of the  
Director of the Company. The Director (P) , who is the  
competent authority for post facto approval, keeping in  
view the object and purpose of providing compassionate  
appointment has rightly cancelled the provisional

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**appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. [Para 19] [489-B-E]**

*Umesh Kumar Nagpal vs. State of Haryana (1994) 4 SCC 138; Jagdish Prasad vs. State of Bihar (1996) 1 SCC 301; MMTC Ltd. vs. Pramoda Dei (1997) 11 SCC 390; S. Mohan vs. Government of T.N., (1998) 9 SCC 485; Director of Education (Secondary) vs. Pushpendra Kumar (1998) 5 SCC 192; Sanjay Kumar vs. State of Bihar (2000) 7 SCC 192; Punjab National Bank vs. Ashwini Kumar Taneja (2004) 7 SCC 265; Union of India vs. Bhagwan Singh (1995) 6 SCC 436; State of U.P. vs. Paras Nath (1998) 2 SCC 412; Haryana State Electricity Board vs. Naresh Tanwar (1996) 8 SCC 23; Haryana SEB vs. Krishna Devi (2002) 10 SCC 246; National Hydroelectric Power Corpn. vs. Nanak Chand (2004) 12 SCC 487 and State of J&K vs. Sajad Ahmed Mir (2006) 5 SCC 766, relied on.*

**Case Law Reference:**

|                          |                   |                |
|--------------------------|-------------------|----------------|
| <b>(1994) 4 SCC 138</b>  | <b>Relied on.</b> | <b>Para 6</b>  |
| <b>(1996) 1 SCC 301</b>  | <b>Relied on.</b> | <b>Para 7</b>  |
| <b>(1997) 11 SCC 390</b> | <b>Relied on.</b> | <b>Para 8</b>  |
| <b>(1998) 9 SCC 485</b>  | <b>Relied on.</b> | <b>Para 9</b>  |
| <b>(1998) 5 SCC 192</b>  | <b>Relied on.</b> | <b>Para 10</b> |
| <b>(2000) 7 SCC 192</b>  | <b>Relied on.</b> | <b>Para 11</b> |
| <b>(2004) 7 SCC 265</b>  | <b>Relied on.</b> | <b>Para 12</b> |
| <b>(1995) 6 SCC 436</b>  | <b>Relied on.</b> | <b>Para 13</b> |
| <b>(1996) 8 SCC 23</b>   | <b>Relied on.</b> | <b>Para 14</b> |
| <b>(1998) 2 SCC 412</b>  | <b>Relied on</b>  | <b>Para 15</b> |

- A (2002) 10 SCC 246 Relied on. Para 16  
(2004) 12 SCC 487 Relied on. Para 17  
(2006) 5 SCC 766 Relied on. Para 18

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3597 of 2009.

From the Judgment & Order dated 4.5.2007 of the High Court of Calcutta in MAT No. 721 of 2005 and MAT No. 763 of 2005.

C Anip Sachthey and Shree Pal Singh for the appearing parties.

The Order of the Court was delivered by

D **ORDER**

H.L. DATTU, J. 1. Leave granted.

E 2. Challenge in this appeal is to the judgment of a Division Bench of High Court of Calcutta rejecting the appeals filed by the appellant and thereby confirming the order passed by learned Single Judge in Writ Petition No. 16515 of 1994 dated 14.8.2003.

F 3. The issue that would arise for our consideration is, whether or not in the facts and circumstances of the case, the appointment made in respect of respondent, who is the son-in-law of the deceased after 12 years, would negates the very object of compassionate appointment.

G 4. The facts in brief are :-

One Kalo Dome, the father-in-law of the petitioner, while he was in service of Samla Colliery, ECL, under coal India Limited, died on 31st December, 1981. After the death of said

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Kalo Dome, his wife submitted an application for employment on compassionate grounds. Subsequently, on March 7, 1983, the elder daughter of Kalo Dome also made an application for compassionate appointment. Ultimately, the dispute among the heirs was settled and all the heirs of Kalo Dome submitted "No Objection" in favour of the respondent for employment on compassionate grounds. It was not out of place to mention that the respondent is the husband of the second daughter of Kalo Dome. After the submission of such "No Objection", the personal manager of the Company started processing the file for employment on compassionate grounds and the respondent complied with such requirements. The matter was referred to the Superintendent of Police, Burdwan, for verification, and after compliance of all the formalities a letter of appointment on compassionate grounds was issued in favour of the petitioner on 10th May, 1993, by Personal Manager of the Company. Pursuant to such appointment letter, the respondent joined service, but after four months, the Director (P) vide his order dated 23rd September, 1993 cancelled the provisional letter of appointment issued, on the ground that such appointment was a belated one having been given after a lapse of 12 years from the date of death of Kalo Dome.

5. Being dissatisfied with the order, the respondent had filed writ petition before the High Court. The learned Single Judge has allowed the writ petition and has directed the appellants to allow the respondent to join service pursuant to provisional order of appointment. The appeal filed by the appellants is rejected by the Division Bench.

6. So far as the question of nature and object of appointment on compassionate ground, it is relevant to take note of what is stated by this court in the case of *Umesh Kumar Nagpal vs. State of Haryana*, (1994) 4 SCC 138 : -

"The compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not

- A a vested right which can be exercised at any time in future.  
The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over." (Para 6)
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7. In the case of *Jagdish Prasad vs. State of Bihar*, (1996) 1 SCC 301, it was observed that :-

- C "The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family." (Para 3)

- D 8. In *MMTC Ltd. vs. Pramoda Dei*, (1997) 11 SCC 390, it is observed by the court :-

- E "As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment." (Para 4)

- F 9. In the case of *S. Mohan vs. Government of T.N.*, (1998) 9 SCC 485, the court stated that :-

- G "The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over." (Para 4)

10. This court has observed in *Director of Education (Secondary) vs. Pushpendra Kumar*, (1998) 5 SCC 192 :-

- H "The object underlying a provision for grant of

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compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana* this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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." (Para 8)

11. In the case of *Sanjay Kumar vs. State of Bihar*, (2000)

A 7 SCC 192, the court has stated that :-

B "This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the breadearner who had left the family in penury and without any means of livelihood." (Para 3)

C 12. In the case of *Punjab National Bank vs. Ashwini Kumar Taneja*, (2004) 7 SCC 265, it was observed by the court that :-

D "It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis." (Para 4)

E 13. In so far as delay in approaching the authorities for such appointment is considered by this court in the case of *Union of India vs. Bhagwan Singh*, (1995) 6 SCC 436, it was held as follows :

F "It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on 12-9-1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly

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without jurisdiction in directing the Authorities to consider A  
the case of the respondent for appointment on  
compassionate grounds and to provide him with an  
appointment, if he is found suitable." (Para 8)

14. In the case of *Haryana State Electricity Board vs.* B  
*Naresh Tanwar*, (1996) 8 SCC 23, it was stated that :-

"It has been indicated in the decision of Umesh Kumar  
Nagpal that compassionate appointment cannot be  
granted after a long lapse of reasonable period and the  
very purpose of compassionate appointment, as an C  
exception to the general rule of open recruitment, is  
intended to meet the immediate financial problem being  
suffered by the members of the family of the deceased  
employee. In the other decision of this Court in Jagdish  
Prasad case, it has been also indicated that the very object D  
of appointment of dependent of deceased employee who  
died in harness is to relieve immediate hardship and  
distress caused to the family by sudden demise of the  
earning member of the family and such consideration  
cannot be kept binding for years." (Para 9) E

15. In the case of *State of U.P. vs. Paras Nath*, (1998) 2  
SCC 412, the court has held that :-

"The purpose of providing employment to a dependant of  
a government servant dying in harness in preference to F  
anybody else, is to mitigate the hardship caused to the  
family of the employee on account of his unexpected death  
while still in service. To alleviate the distress of the family,  
such appointments are permissible on compassionate  
grounds provided there are Rules providing for such G  
appointment. The purpose is to provide immediate  
financial assistance to the family of a deceased  
government servant. None of these considerations can  
operate when the application is made after a long period  
of time such as seventeen years in the present case." H

A (Para 5)

16. In the case of *Haryana SEB vs. Krishna Devi*, (2002) 10 SCC 246, the court has observed that :-

B "As the application for employment of her son on compassionate ground was made by the respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court." (Para 7)

C 17) In the case of *National Hydroelectric Power Corpn. vs. Nanak Chand*, (2004) 12 SCC 487, the court has stated that :-

D "It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises." (Para 5)

E 18. In the case of *State of J&K vs. Sajad Ahmed Mir*, F (2006) 5 SCC 766, the court has held that :-

G "Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. H Once it is proved that in spite of the death of the

breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution." (Para 11)

19. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependents of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personal Manager of the Company subject to the approval of the Director of the Company. The Director (P) , who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so called dependent of the deceased employee. In our considered view, the decision of the employer was in consonance with Umesh Kumar Nagpal's case and the same should not have been interfered with by the High Court.

20. Accordingly, we allow this appeal and set aside the orders passed by the High Court. There will be no order as to costs.

K.K.T.

Appeal allowed.