

**Judgment Reserved on 15.03.2024**

**Judgement Delivered on 19.04.2024**

**Neutral Citation No. - 2024:AHC:68121**

**AFR**

**Court No. - 35**

**Case :-** WRIT - A No. - 622 of 2022

**Petitioner :-** Saurabh Suchari

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Seemant Singh

**Counsel for Respondent :-** C.S.C.

**Hon'ble Prakash Padia,J.**

1. Heard Shri Seemant Singh, learned counsel for the petitioner and learned Standing Counsel for the State-respondents.

2. The present writ petition has been filed by the petitioner inter-alia with the prayer to quash the order dated 09.11.2020 passed by the District Commandant Home Guard, Kanpur Nagar / respondent no.4 whereby the compassionate appointment of the petitioner has been restricted to only on the post of Home Guard (Volunteer) in Home Guards Department. A further prayer has been made to consider the case of the petitioner for compassionate ground on the post of Honorary Company Commander in the Home Guard Department, pursuant to the Rules prevailing at the time of the death of the father of petitioner namely 18.10.2020.

3. Facts in brief as contained in the writ petition are that the father of the petitioner while working on the post of Honorary Company Commander in Home Guard Department died on 18.10.2020 leaving behind his wife and two children. Mother of the petitioner submitted an application on 20.10.2020 for giving compassionate appointment to the petitioner on the post of Honorary Company Commander. Along with the application form, an affidavit of the mother and sister of the petitioner was also submitted, stating therein that they have no objection in respect of appointment of the petitioner under dying-in-harness rules. The qualification of the petitioner is intermediate on the date of the application filed by the mother of the

petitioner namely on 20.10.2020 which is a requisite qualification as per the Government Order dated 01.09.2011.

4. Respondent no.4 issued a letter dated 20.10.2020 being Letter No. 2082 requiring the petitioner to send certain papers and documents. After the aforesaid papers and documents were submitted, the petitioner was subjected to medical examination by the Chief Medical Officer, Kanpur Nagar, where he was found medically fit. In the meanwhile, the Government Order dated 03.11.2020 was issued by the Additional Chief Secretary, Government of U.P. Lucknow, whereby the decision has been taken to appoint any person on compassionate ground only on the post of Home Guards (Volunteers). Copy of the aforesaid Government Order is appended as Annexure-6 to the writ petition.

5. Subsequent to the same, the order dated 09.11.2020 was passed by the respondent no.4 namely District Commandant, Home Guards, Kanpur Nagar, taking into consideration the aforesaid Government Order requiring the petitioner for his appointment on the post of Home Guards (Volunteers). By the aforesaid letter, the petitioner was directed to submit his consent for his appointment on the post of Home Guards (Volunteers).

6. It is argued that the order dated 09.11.2020 by which the petitioner was given appointment on the post of Home Guards (Volunteers) is absolutely illegal in the eyes of law specially in view of the letter dated 04.04.2013.

7. It is argued that the order impugned has been passed taking into consideration the Government Order dated 03.11.2020 but the same is not applicable in the case of petitioner since the case of the petitioner will be governed by the provisions of Government Order which was applicable at the time of the death of petitioner's father namely 18.10.2020. It is argued that at the time of death of the father of petitioner, the Government Order dated 04.04.2013 was in existence and hence the petitioner is entitled for the consideration of his case as per the aforesaid Government Order and the Government Order dated 03.11.2020 will not apply, insofar as the case of the petitioner is concerned. It is further argued that the Government Order dated 03.11.2020 came into force with immediate effect namely on 03.11.2020, hence the same will not apply with retrospective date namely on 18.10.2020 when the father of the petitioner died.

8. On the other hand, it is argued by the learned Standing Counsel that taking into consideration of all the relevant aspect of the matter as well as the Government Order dated 03.11.2020, the decision has been taken to appoint the petitioner on the post of Home Guard (Volunteers).

9. Heard counsel for the parties and perused the record.

10. From the perusal of the record, it transpires that father of the petitioner died while working on the post of Honorary Company Commander in Home Guard Department on 18.10.2020. The application form submitted by the mother of the petitioner for the appointment of his son (petitioner) was duly taken into consideration and thereafter a decision was taken by the respondent no.4 to provide the appointment to the petitioner on the post of Home Guard (Volunteers) vide order dated 09.11.2020.

11. The aforesaid order was passed taking into consideration the Government Order dated 03.11.2020. It is admitted fact between the parties that the father of the petitioner died before 03.11.2020, the aforesaid Government Order came into force with immediate effect, hence the same will not apply retrospectively.

12. The Hon'ble Apex Court in the case of **Canara Bank and Another vs. M. Mahesh Kumar** reported in **2015 (7) SCC 412**, dealt with the question that whether the scheme which was into force in the year 2005 providing for ex-gratia payment or the scheme which was then in force in the year 1993 providing for compassionate appointment is applicable to the respondent. The relevant paragraphs of the aforesaid judgment namely paragraph nos. 11 and 13 reads as follows:-

*"11. The main question falling for consideration is whether the Scheme passed in 2005 providing for ex-gratia payment or the Scheme then in vogue in 1993 providing for compassionate appointment is applicable to the respondent. Appellant-bank has placed reliance upon the judgment of this Court in Jaspal Kaur's case (supra) to contend that the respondent's case cannot be considered on the basis of 'Dying in Harness Scheme 1993' when the new Scheme of 2005 providing for ex-gratia payment had been put in place. In Jaspal Kaur's case (supra), Sukhbir Inder Singh employee of State Bank of India, Record Assistant (Cash & Accounts) passed away on 1.08.1999. Widow of the employee applied for compassionate appointment in State Bank of India on 5.02.2000. On 7.01.2002, the competent authority of the bank rejected the application of Jaspal Kaur in view of the Scheme vis- a-vis the financial position of the family. Against that decision of the competent authority, the respondent filed writ petition before the Punjab and Haryana High Court which has directed to consider the case of Jaspal Kaur by applying the Scheme formulated on 4.08.2005 when her application was made in the year 2000. In that factual matrix, this Court has directed that dispute arising in the year 2000 cannot be decided on the basis of a Scheme that was put in place much after the dispute. By perusal of the judgment in Jaspal Kaur's case, it is apparent that the judgment specifically states that **claim of compassionate appointment***

***under a scheme of a particular year cannot be decided in the light of the subsequent scheme that came into force much after the claim.***

*13. Applying these principles to the case in hand, as discussed earlier, respondent's father died on 10.10.1998 while he was serving as a clerk in the appellant-bank and the respondent applied timely for compassionate appointment as per the scheme 'Dying in Harness Scheme' dated 8.05.1993 which was in force at that time. The appellant-bank rejected the respondent's claim on 30.06.1999 recording that there are no indigent circumstances for providing employment to the respondent. Again on 7.11.2001, the appellant-bank sought for particulars in connection with the issue of respondent's employment. In the light of the principles laid down in the above decisions, the cause of action to be considered for compassionate appointment arose when the Circular No.154/1993 dated 8.05.1993 was in force. Thus, as per the judgment referred in Jaspal Kaur's case, the claim cannot be decided as per 2005 Scheme providing for ex-gratia payment. The Circular dated 14.2.2005 being an administrative or executive order cannot have retrospective effect so as to take away the right accrued to the respondent as per circular of 1993."*

**13.** The same view was taken again by the Hon'ble Apex Court in the case of **Indian Bank & Others vs. Promila & Anr.** reported in **(2020) 2 SCC 729**. Paragraph-3, 4 and 5 reads as follows:-

*"3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank & Anr. v. M. Mahesh Kumar, Iqua what would be the cut-off date for application of such scheme.*

*4. It is trite to emphasise, based on 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.*

*5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for*

*providing employment assistance. The crucial aspect is to turn to the scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.”*

**14.** In this view of the matter, the Court is of the opinion that the claim for compassionate appointment under the scheme of particular year should be decided only on the basis of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively. In the present case the Government Order dated 03.11.2020 was issued after the death of the father of the petitioner namely 20.10.2020, and since the same was applied with immediate effect, the Court is of the opinion that the order dated 09.11.2020 passed by the respondent no.4 is liable to be set aside and is hereby set aside.

**15.** The respondent no.4 is directed to consider the claim of the petitioner a fresh taking into consideration the scheme which was in existence on the date of death of the father of the petitioner. The aforesaid decision be taken within a period of **three months** from the date of communication of this order before him.

**16.** With the aforesaid observation, the writ petition is **allowed**. No order as to costs.

**Order Date :- 19.04.2024**

Swati