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SC ruling over ‘compassionate appointment’

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Why is in news? In a judgment delivered recently, the Supreme Court rejected some applications for ‘compassionate appointment’ that were filed by the dependents of deceased government employees in West Bengal. A bench of Justice Krishna Murari and Justice BV Nagarathna underlined that compassionate appointment is not a vested right of such dependents of a deceased employee.

About compassionate appointments

The concept of compassionate appointments can be traced to the Indian Constitution’s Article 39, which is under the Directive Principles of State Policy and talks about the right to livelihood.

It aims to provide employment on compassionate grounds to the dependent family members of a government servant who dies in harness or retires on medical grounds, leaving the family without any source of sustenance.

Multiple factors are looked at while assessing a request for compassionate appointments, such as the financial condition of the family, the presence of earning members, family size, children’s ages, and the essential needs of the family.

According to the DoPT’s office memorandum dated January 16, 2023, these appointments can only be made for “Group ‘C’ posts against the direct recruitment quota.

Eligibility conditions for compassionate appointments

According to instructions on “Compassionate Appointment under Central Government” given by the DoPT, Ministry of Personnel, Public Grievances & Pensions on August 2, 2022, compassionate appointments can extend to dependent family members of a government servant who:

(a) Dies while in service (including death by suicide)

(b) Retired on medical grounds under Rule 2 of the CCS (Medical Examination) Rules 1957 or the corresponding provision in the Central Civil Service Regulations before 55 years of age (57 years for erstwhile Group ‘D’ Government servants);

(c) Retired on medical grounds under Rule 38 of the CCS(Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for erstwhile Group ‘D’ Government servants).

The measure can also extend to the family members of an Armed Forces employee who:

(a) Dies during service;

(b) Is killed in action; or

(c) Is medically boarded out and is unfit for civil employment.

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

However, the government servant must have been appointed on a “regular basis” and not on a daily wage, casual, apprentice, ad-hoc, contract, or reemployment basis.

Moreover, the deceased’s dependents can only be first-degree relations such as their spouse, son or daughter (including adopted ones), brother or sister in the case of an unmarried Government servant or member of the Armed Forces, who was wholly dependent on the government servant at the time of their death in harness or retirement on medical grounds.

To be eligible for this, the deceased’s family must be “indigent” or needy and deserving of “immediate assistance for relief from financial destitution”. The applicant should also be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

Power to make these appointments

Compassionate appointments are made by either the Joint Secretary in charge of administration in the Ministry or Department concerned or the “Head of the Department under the Supplementary Rule 2(10) in the case of attached and subordinate offices.”

They can also be made by the Secretary of a Ministry or Department in special cases.

SC ruling over the Compassionate appointment

The apex court set aside the judgment delivered by a Division Bench of the Calcutta High Court on September 30, 2019, restoring an earlier order passed by a single judge of the Calcutta High Court on July 5, 2018.

While the Division Bench had directed consideration of the applications for the compassionate appointment in light of circulars issued by the state government, the single-judge had rejected the applications due to delay and absence of state policy.

In its decision, the apex court cited its rulings from 2008 and 2014 in the cases of ‘Mumtaz Yunus Mulani vs. State of Maharashtra’ and ‘State Bank of India vs. Surya Narain Tripathi’ respectively, to say that “the existence of a policy issued by the State Government is a sine qua non for making appointments on compassionate basis.” Observing the absence of a policy governing compassionate appointments to posts under local authorities in West Bengal, the court refused to grant the same.

Moreover, the Court said that even if the policy existed, it would be of no use to consider the applications several years after they were filed.

The Court also referred to a slew of its rulings from 1989 and 1994 in ‘Sushma Gosain vs. Union of India’ and ‘Umesh Kumar Nagpal vs. State of Haryana’ respectively, to say that there shouldn’t be any delay in compassionate appointments and the same should be “provided immediately to redeem the family in distress”, provided that the government or public authority examines the financial condition of the deceased’s family and is satisfied that “but for the provision of employment, the family will not be able to meet the crisis.”

Conclusion

Compassionate appointment is not a matter of right, but is to enable the family to tide over an immediate crisis which may result from the death of the employee