

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. _____ OF 2024
(ARISING OUT OF SLP (CIVIL) NO. _____ OF 2024)
(DIARY NO. 37920 OF 2023)

THE STATE OF HIMACHAL PRADESH & ORS. Appellant(s)

VERSUS

ABHISHEK KUMAR Respondent(s)

O R D E R

Delay condoned.

2. Leave granted.

3. Heard Mr. Ketan Paul, learned counsel appearing for the State of Himachal Pradesh (appellants).

4. The office report dated 31.01.2024 indicates that service was effected on the sole respondent but none has entered appearance on his behalf.

5. The respondent's father Kuldeep Kumar passed away on 14.09.2017, while serving as a Grade-IV employee in the Civil Health Centre, Kangra. The respondent applied for compassionate appointment but the same was rejected by the authorities on the ground that the applicant exceeds the income criteria, specified in the 2019 Policy of the State Government.

6. In the resultant challenge, the Division Bench of the High Court however observed that the application for compassionate appointment should have been considered as per the prevalent

policy, at the time of the death of the employee on 14.09.2017. With such a finding, the rejection order (dated 18.07.2020) issued by the Director Health Services was set aside and direction was issued to consider afresh, the claim for compassionate appointment of the respondent.

7. The learned counsel for the appellants would refer to the status report filed on 31.01.2024 to indicate that fresh consideration was made by the Director Health Services, Himachal Pradesh on 16.10.2023 under the policy prevalent in the year 2017. However, even under the earlier 2017 policy, the respondent's claim for compassionate appointment was found to be unmerited since the employee at the time of his death on 14.09.2017, was aged over 50 years and the income criteria was exceeded.

8. A three Judges Bench of this Court in *N.C. Santhosh v. State of Karnataka & Ors.* reported in (2020) 7 SCC 617 [authored by one of us], after considering various earlier judgments opined that the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment. The following ratio is extracted for ready reference:

"19. Applying the law governing compassionate appointment culled out from the abovesaid judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependant of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is, however, disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee."

9. The consideration of the respondent's claim for compassionate appointment under the 2019 policy applicable at the time of consideration of the application is consistent with the above ratio in *N.C. Santhosh* (supra). The fresh consideration made on 16.10.2023, also resulted in rejection of the claim for compassionate appointment but the same was considered under the policy prevalent at the time of the death of the respondent's father on 14.09.2017. Such consideration is found to be made by wrongly applying the earlier norms without adherence to the ratio in *N.C. Santhosh* (supra). As noticed the impugned decision of the High Court is contrary to the law laid down by the three Judges Bench of this Court. The same is accordingly set aside.

10. With the above order, the appeal stands allowed.

11. Pending application(s), if any, shall stand closed.

.....J.
(HRISHIKESH ROY)

.....J.
(PRASHANT KUMAR MISHRA)

NEW DELHI;
FEBRUARY 20, 2024.

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGSSPECIAL LEAVE PETITION (CIVIL) Diary No(s). 37920/2023

(Arising out of impugned judgment and order dated 22-11-2022 in CWP No. 3526/2020 passed by the High Court of Himachal Pradesh at Shimla)

THE STATE OF HIMACHAL PRADESH & ORS.

Petitioner(s)

VERSUS

ABHISHEK KUMAR

Respondent(s)

(IA No. 216235/2023 - CONDONATION OF DELAY IN FILING)

Date : 20-02-2024 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE HRISHIKESH ROY
HON'BLE MR. JUSTICE PRASHANT KUMAR MISHRAFor Petitioner(s) Mr. Ketan Paul, AOR
Ms. Chakshu Purohit, Adv.
Ms. Shubhi Pandey, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following

O R D E R

Delay condoned.

Leave granted.

The appeal stands allowed in terms of the signed order.

Pending application(s), if any, shall stand closed.

(NITIN TALREJA)
ASTT. REGISTRAR-cum-PS(KAMLESH RAWAT)
ASSISTANT REGISTRAR

(Signed order is placed on the file)