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CONCEPT OF COMPASSIONATE APPOINTMENT

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I. ABSTRACT

Every sector is governed under some law prevailing in our country and employees who are employed under those sectors are also bound to work within the boundaries of those laws. Being employed at some place doesn't mean to break the boundaries and stepped out from that without complying the particular procedures established by law. There are certain policies which are formulated by the government of different states to keep the employer-employee relationship healthy and welfare of the employee after their death. Most of the posts are constituted to do some particular work and here comes the eligibility of individuals, employers who are working under different sectors either government, semi-government or private sector has some rights including liabilities and duties towards their service. Employer is also bound to maintain the status of his employee either mentally or financially even if some unfortunate circumstances happen. Considering all these issues, the government has formulated certain policies regarding the services of the employees which include compassionate appointment.

II. KEYWORDS:

Compassionate Appointment, Family Support, Employee Benefits, Dependents, Family Welfare

III. INTRODUCTION

A person who has cleared the eligibility criteria and appointed as government servant on a post declared by the government of any state or by the central government has some rights to claim the benefits given to him and his family. Although, the family of that government employee has some rights regarding family pension, ex-gratia,

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compassionate appointment or any other claim after the death of that government employee. Those claims are governed by the policies which occasionally formulates by the government of different states for their employees who render their services for them. The meaning of compassionate appointment is to provide the post to one of the dependent of the deceased government employee after having requisite eligibility for that post or any other post prevailing vacant in the concerned department. The object of the compassionate appointment is thus to enable the family to tide over the sudden crises and also it is to be seen while granting compassionate appointment that the financial condition of the family of the deceased, and it is only if satisfied that family of the deceased will not be able to meet the crises that a job is to be offered to the eligible member of the family. That if a dependent family member wants to apply for a compassionate appointment then it is necessary that the deceased employee was employed on regular basis and not on a contractual basis. The object of the compassionate appointment is discussed in the case titled *Nakka Prasuma versus Vice Chairman and MD A.P.S.R.T.C.*¹ the Hon'ble Apex Court has observed that the object of the compassionate appointment to give appointment to one of the dependents of the deceased to mitigate the immediate hardship.

It is already settled law that the appointment to any government post/ vacancy is always to be made in accordance with Article 14 and Article 16 of the Constitution of India and the exception to this general rule is the Compassionate Appointment and the same was emphasized by the present Chief Justice of India, Dr. Justice D.Y. Chandrachud in the case of *N.C. Santosh versus State of Karnataka and others*².

IV. RELEVANT CASE LAWS ON VARIOUS ISSUES

One question regarding whether the grandson will be considered as a dependent as per instructions issued by the Government of Punjab dated 21.11.2021, it was discussed and clarified that the grandson is not to be considered as per the said instructions and the same was observed in the case titled *Varinder Singh versus State of Punjab*³.

It is settled law that the compassionate appointment cannot be claimed as a matter of course or in posts above class III and IV. The Hon'ble Apex Court in case titled **Umesh Kumar Nagpal versus State of Haryana**,⁴ has held that i) Compassionate employment cannot be made in the absence of rules or regulations issued by the government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and to make compassionate appointment de hors the scheme, ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time, iii) an appointment on compassionate ground is to meet the sudden crises occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate appointment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/ incapacitated employee's family at the time of his death or incapacity, as the case may be, iv) compassionate employment is permissible only to one of the dependants of the deceased of the deceased/ incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

In another case titled **Bank of Baroda versus Baljit Singh**,⁵ the Hon'ble Supreme Court has observed that appointment of candidate on compassionate grounds doesn't create any vested right and that it is only when a candidate is covered under all clauses of the scheme applicable at the relevant point of time so that he/she could be considered for compassionate appointment.

The application for compassionate appointment can be moved by the family member of the deceased government employee within a reasonable time frame which is mostly around three years. Otherwise, if that family member will demand such appointment after a period of several years then the sole purpose of giving such appointment nullifies and serves no justice for which such scheme was formulated i.e. immediate relief for those family members who left in lurch due to sudden crises. The Hon'ble Madras High Court in the case titled **Sanjay Chouhan versus State of Madhya Pradesh**⁶ and **Tinku versus State of Haryana**,⁷ held that the right to claim compassionate appointment was available only for a period of three years. In another case titled **State of Maharashtra versus Smt. Rehana Akbar Shaikh**,⁸ in which the compassionate appointment to such person was denied as petitioner

has himself delayed to apply for compassionate appointment and that delay was unjustified. Hence, the compassionate appointment was denied on the ground of voluntarily delay.

In the absence of any scheme for compassionate appointment, the family member of the deceased government employee cannot claim such appointment and this issue was raised in the case titled *State of West Bengal versus Debarata Tiwari and others* ⁹. Although, it is very clear that if a particular thing is not governed under any law prevailing at that relevant point of time then such claim against that thing also doesn't lie.

Furthermore, it is relevant to mention that in the case of *Indian Bank versus Promila* ¹⁰ it was observed that option of compassionate appointment was available only if the full amount of gratuity was not taken and although having the full amount of gratuity, the option of compassionate appointment will not be available.

It is clarified that compassionate appointment is not a vested right and rather it depends upon the policies formulated by the governments. Suppose if policy is specifically made for the mother in case of compassionate appointment then only mother of that deceased government employee is eligible for that particular scheme. In case title *Nishant Kumar vs State of Himachal Pradesh*, ¹¹ Hon'ble Court held that if policy is clear to give compassionate appointment only to mother, then compassionate appointment to any other person can't be given i.e son or daughter.

There are various cases in which the meaning of dependent is discussed and only those members will be included in the definition of dependents who were solely depended upon that deceased. The question arises that whether unmarried daughter is also included within the definition of dependent, the answer is yes, the unmarried daughter who was previously married but has legally divorced at the time of filing of application under the scheme for compassionate appointment will be considered as dependent. In the case of *State of Rajasthan versus Deepika Sharma*,¹² it was observed that any other interpretation to this contrary to Article 14 of Constitution of India like the unmarried daughter was previously married and she is not entitled for Compassionate appointment is not in the interest of justice.

Compassionate appointment can only be come into existence when there is any rule or provision for particular category. Suppose, if a person works as a daily wager and if there is any rule or policy regarding the Compassionate appointment for daily wager then only such person can apply under the scheme for compassionate appointment. In *Sourabh Sharma versus State of Madhya Pradesh*,¹³ in this case Hon'ble Madhya Pradesh High Court has observed that there is no such provision or rule in the scheme, so, no such appointment can be given to him but he is entitled for claim regarding ex-gratia of Rs. 2 lakhs.

The compassionate appointment cannot be treated to the equivalent to the family benefit scheme, one situation was raised in the case titled *Balbir Kaur versus Steel Authority of India Ltd. and others*,¹⁴ Hon'ble Court has observed that when application was made by the widow for employment on the ground of the Compassionate appointment applicable to Steel Authority of India and contention was raised that since she is entitled to get the benefit under the Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to.

V. CONCLUSION

The policy regarding compassionate appointment is formulated for the welfare of the family members who lost the bread-earner of their family upon whom they were depend and it is duty of the state to make such policies for the family member of the deceased government employee who has served throughout his life for the State Government or Central Government. The dependent must also be vigilant for his rights as it is not the duty of the government to grant the compassionate appointment but it is also the duty of the dependent to apply under the scheme as soon as possible after the unfortunate incident and claim such family welfare benefits within the prescribed period.

Just be vigilant for your rights!

VI. REFERENCES

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