

**(2013) 04 AHC CK 0316**

**Allahabad High Court**

**Case No:** C.M.W.P. No. 17353 of 2013

Seema Devi

APPELLANT

Vs

State of U.P.

RESPONDENT

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**Date of Decision:** April 2, 2013

**Citation:** (2013) 98 ALR 184

**Hon'ble Judges:** A.P. Sahi, J

**Bench:** Single Bench

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### **Judgement**

A.P. Sahi, J.

This petition has been filed by Smt. Seema Devi claiming herself to be the wife of late one Arvind Kumar Saroj who died in harness in an Inter College while working as an L.T. Grade Teacher. According to Regulations 101 to 107 of Chapter III of the Regulations framed under the U.P. Intermediate Education Act, 1921 compassionate appointment can be claimed by the dependant of the family of a deceased-employee. The respondent No. 6 Rekha Devi who also claims herself to be the lawfully wedded wife of Arvind Kumar Saroj has been extended the benefit of compassionate appointment. This order has been passed by the District Inspector of Schools on 3rd of November, 2012 which has been challenged by the petitioner Smt. Seema Devi on the ground that it is she who is the lawfully wedded wife entitled to get the appointment and is a dependant of the family of the deceased-employee.

2. Sri P.N. Tripathi, learned Counsel has put in appearance on behalf of the respondent No. 6. He contends that the petitioner is the second wife of late Arvind Kumar Saroj and therefore the respondent No. 6 being the elder wife has been rightly offered appointment. Learned Counsel for the petitioner, Sri Ram Surat Saroj submits that the respondent No. 6 is not the lawfully wedded wife of Arvind Kumar Saroj and therefore it is only the petitioner who is entitled to seek appointment.

3. There is a third dimension to this case which now requires to be considered in view of the change of policy recently reflected by the State Government for appointment on compassionate basis under similar parallel rules for Government servants namely, Uttar Pradesh, Recruitment of Dependents of Government Servant Dying-in-Harness Rules, 1974. Even though the said rules provide for extension of benefit on compassionate ground to only one member of the family of the deceased-employee, yet the State Government has offered appointment to two persons of the same family and has offered appointments of a status in order to extend benefit under the said rules. Judicial notice can be taken of the appointment order dated 8th of March, 2013 of Smt. Parveen Azad w/o late Ziaulhaq and Sri Sohrab Ali brother of late Ziaulhaq, issued by the State Government on compassionate basis due to the unfortunate demise of a police officer while on duty.

4. The rules presently involved are *pari materia* with the 1974 Rules which say that only one member of the family who is a dependant, is entitled for appointment on compassionate basis. However, if the State Government has altered its policy under the 1974 Rules or otherwise then it has to explain as to under what authority of law has that been done, and if it is lawful then why such hostile discrimination is being practised in relation to other departments including educational institutions that have similar rules.

5. The present is a case where *prima facie*, if the petitioner No. 1 and respondent No. 6 are the wives of an employee, then the State Government has to explain why the second benefit should not be extended to the petitioner. The illustration hereinabove invites the answer to Articles 14 and 16 of the Constitution.

6. Compassion is a feeling that is generated by sympathy and when enacted, is merciful, primarily meant to alleviate suffering. This emanates usually on somebody's affliction and the heart becomes clement. It flows out of kindness and benevolence. A compassionate act obliges, someone, who needs sympathy. The act itself shares somebody else's sufferings. It is generous and charitable.

7. Compassion in law is mercy or clemency. A provision for compassionate appointment under law obliges the executive to show compassion when an employee dies in harness. This obligation is to be discharged to help the members of the bread-winner's family to tide away with immediate difficulties. It is for this reason that our judicial interpretation has kept out such appointments from the scope of challenge under Article 16 of the Constitution of India. It is an affirmative act allowed by law within permissible limits and saved from being struck down by the force of the equality clause enshrined under Article 14 of the Constitution. This is however subject to some limitations that have been laid down as a matter of law by the Apex Court and the High Courts of our country.

8. A compassionate claim is thus to be entertained within the precincts of law. It is protected under law but is subject to law. It is not a wish or a grant that looses legal

significance merely because it arises out of compassion. The authority while exercising any statutory power has to act within the parameters defined for exercise of such powers. The authority is not presiding over a prize-distribution ceremony nor is it offering a gift. It is acting lawfully for a noble cause with a judicious discretion. It is not a free distribution of State responsibilities. It is a conscious conferment for a legally recognized purpose.

9. The exercise of such power has to be guided and bridled by a policy broadly spelling out the basics according to which such power has to be exercised. The action should be in conformity with the same and should not appear to be a piped-vision narrow minded transaction for some ulterior gain like a commercial advertisement "Buy one, get one free". Compassionate appointments should not be offered in a manner that it appears to be the death wish of last wish of an employee. It is to be offered when death is sudden and it come as a shock. It is a stage of some helplessness when succour is needed and deserves to be provided. It should not be undeserving nor should it spillover the opulence of the family. It should not appear like overeating and give a feeling of vomit or indigestion to others. The action should relieve distress and not create a counter-productive atmosphere.

10. The exercise of the power should be no doubt quick and within a reasonable time but it should not be the outcome of over-zealousness like getting inside an Air-conditioned compartment even if the deceased-employee was holding a second-class ticket. It should be not in a hurry nor should it appear like a tailored suit from Paris. It should be designed for a soothing legal effect. An overflowing compassion for lesser gains or some other motive can be prejudicial to the cause itself and also invite unnecessary criticism. Compassion is not just to make somebody happy, like a child who obstinately succeeds in his demands of a lollipop, but it is for making one feel comfortable in times of distress. This gets more diluted when the claimant starts compelling choices. This reflects of taking undue advantage which makes the whole thing look undeserving and at times unsavoury.

11. This, if attempted, would not be for the welfare of the people but a farewell to law. Neither the policy nor the action can afford to be above the law or the Constitution or else it would depict an out-law. The State or its authorities cannot afford to be pretentious or absurd in its approach, nor can any action be acknowledged rightful if it extends to a level of lunacy or insanity. This would be beyond the constitution and the laws.

12. It is said that one of the ways to bring the world to size, is to exaggerate everything into outrageous proportions and show that everything is a little ridiculous. The law therefore cannot be ridiculed by disproportionate action so as to bring it within the fold of arbitrariness. Its application, that too even on sound rational principles, has to be uniform so as not to offend the equal protection clause within the class itself. Discrimination, much less hostile discrimination in the application of such laws has to be legally checked. The implementation cannot be

more favourable to one and less favourable to another within the same class. Any act that is at variance with prescribed or reasonable norms, can be termed as distorted and would oppose the noble intent underlying compassion. The exercise of the power should not result in abhorrence and its legal perception should not show disrespect to logic and rationality. If it does, it would do the greatest damage by loss of faith in the system on the part of those who have reposed trust in the law makers.

13. The law of compassionate appointments has been groomed to the likeness of our people who perceive it as a miracle of goodness. It should therefore be implemented to fulfil such ideals. There are innumerable waiting in the queue to receive their due with a forlorn hope of early attention, so much so, that the State Government has issued instructions for finalizing all such claims within a specified time in relation to Basic Schools vide G.O. dated 11.2.2013. There are many who have been disappointed, like the present case, and have knocked the doors of this Court to wake up the "giant" to grant the wishes of law. It is therefore a volcanic situation which requires immediate attention. Any performance of a parody depicting action will not improve the situation.

14. The judiciary in this background will have to enforce the law uniformly. It cannot be oblivious to the rule and majesty of law. The Constitution commands it to discharge its obligation of upholding the rule of law and suppress any attempt of arbitrariness or discrimination. The ultimate arbiter of laws is the judiciary and cannot be blamed for overreaching itself or transgressing barriers when it comes to the proper interpretation and implementation of laws. The fundamental rights guaranteed under the Constitution are to be enforced by the Judicial Wing under the Constitution and to be protected when violated, that includes Articles 14 and 16 of the Constitution. The Legislature and the executive cannot defy this separation of powers so long as the Constitution stands. The Constitution to the extent of its basic structure is impregnable, even by the Legislature as declared in the celebrated Keshvananda Bharti's case. The judiciary cannot be and should not be criticised for its actions authorised under the Constitution involving the fundamental and legal rights protected under the Constitution.

15. It would therefore be necessary at this stage to remember what the judicial pronouncements say and how they have contributed to the growth of this branch of jurisprudence of compassionate appointments.

16. Compassionate appointments are a class within themselves. They do not offend Articles 14 and 16 of the Constitution of India. Reference be had to the decision in the case of [Raj Kumar Jaiswal Vs. Punjab National Bank and Branch Manager, Punjab National Bank, U.P. Stock Exchange Branch](#),

17. Compassionate appointment cannot be in disregard to rules and a mandamus to disobey law cannot be issued. This law has been clearly expounded in [Life Insurance](#)

[Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another](#), The question here to can the State Government discriminate while applying its policy and rules that are placed at par and treat its citizens differently.

18. While proceeding to consider such claims the financial condition of the family of the deceased is a relevant factor. The law on this issue has been explained in the case of [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), The same was followed by framing of schemes recommended by the Indian Banks Association in the case of Bank Employees in the decision of [General Manager \(D and PB\) and Others Vs. Kunti Tiwary and Another](#),

19. A compassionate appointment claim cannot be claimed as a matter of right against a particular post. The idea is to grant immediate relief from conditions of penury and not to grant a status. The Full Bench of our Court in the case of [Prashant Kumar Katiyar Vs. State of U.P. and Others](#), has shed light on this issue.

20. Given the aforesaid parameters has the State been able to remove the plight of the claimants? The agony, officially expressed, is contained in the instructions issued by the State to wrap up all claims in Basic Schools at the earliest vide order dated 11.2.2013. Thus an honest approach appears to have been attempted. The outcome thereof is better known to the State and its authorities of various departments as, so far as this Court is concerned, it is flooded with such pending claims either undecided, or decided wrongly or unable to receive any attention due to backlog of cases. The difficulty arises when a legal challenge is raised alleging delay and discrimination.

21. What adds to this explosive situation is an out of turn consideration bypassing the long queue in all departments of the State or State - aided instrumentalities. This haste turns into an act of hostile discrimination by overlooking waiting justified claims. Within the class of compassionate claimants an equal treatment and equal protection in entertaining and disposing off claims deserves to be observed. Death by any means does bring about remorse. The fact of death levels all scores. That is why death is said to be a great leveller. The consequences are different depending the stage of life of the employee, his status and the status of his family. The law is however to be applied uniformly as far as possible and without deviation or special favour. The recipients of such benefits survive under a secular constitution. A suited favour to one and an ordinary treatment to another cannot be justified, except for any rational, reasonable and exceptional reason. An undue favour that appears to be unjust and a denial that is outrageous, both send rude shocks to the conscience. Even affirmative action, that is emergent, should conform to the equality clause as all similarly placed deserve equal treatment. After all dependants of a deceased employee, whether of the State Government or in an instrumentality aided by the State Government, all suffer the loss of the bread-winner and are victims of the same circumstances of death. They all belong to the same class of compassionate claimants. The rule of compassionate appointment in whatever department has the

same underlying principle of providing succour to the bereaved family in a crisis. The dependants therefore are all of the same class of victims and recipients. Their plight is based on a common happening, namely death of an employee in harness. The question is, can the State afford to have different policies in different departments for the same contingency. At times delay caused brings further destitution and frustration instead of relief to the dependants. It breaks their hearts and shatters their hopes when discrimination or special treatment is nakedly exhibited. An open display of sympathy for selected people channels an artificial differentia surmounting all barriers of legally permissible discriminations.

22. In the aforesaid circumstances, since this is a matter of a uniform wider policy, it is hereby directed that the petitioner shall implead the Principal Secretary, Appointment and Karmik, Government of Uttar Pradesh as respondent No. 7 in the present writ petition. The said respondent shall stand impleaded on whose behalf notice has been accepted by the learned Chief Standing Counsel. Notice is hereby issued to the respondent No. 7 to file his affidavit explaining the aforesaid policy and the uniformity that the State Government may like to implement in such matters and the facts indicated above.

23. The response shall be shown within three weeks by the respondent Nos. 1 to 3 and the respondent No. 7 represented by the learned Standing Counsel.

24. The respondent No. 7 while filing his affidavit shall bring on record all documents and deliberations with regard to such appointments which have been made keeping in view the directions of the Government that have been reflected in the Government Order dated 11th February, 2013.

25. Issue notice to the respondents 4 and 5, returnable at an early date.

26. Steps within a week.

27. Sri Tripathi for the respondent No. 6 shall also file a response within the same period.

28. List on 24th of April, 2013. A copy of the order shall be given to the learned Standing Counsel Sri Upendra Singh free of charges for communicating it to the respondent No. 7 for prompt action.