



**HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JODHPUR**

D.B. Spl. Appl. Writ No. 1422/2014

1. Ajmer Vidyut Vitran Nigam Limited, Ajmer through its Managing Director, Ajmer.
2. The Secretary, Ajmer Vidyut Vitran Nigam Limited, Shahapura, District Bhilwara.
3. Assistant Engineer (O&M), Ajmer Vidyut Vitran Nigam Limited, Shahapura, District Bhilwara.

----Appellant

Versus

Mukesh Kumar Berwa s/o Shri Uma Shanker Berwa, r/o House No.E-209, Asava Colony, V&P Shahapura, District Bhilwara, Rajasthan.

----Respondent

For Appellant(s)	:	Mr. Vikram Choudhary
For Respondent(s)	:	Mr. Rajat Choudhary on behalf of Mr. Tirth Raj Singh Sodha

**HON'BLE DR. JUSTICE PUSHPENDRA SINGH BHATI
HON'BLE MR. JUSTICE MUNNURI LAXMAN**

Judgment

Reportable

Reserved on 15/01/2025

Pronounced on 28/02/2025

Per Dr. Pushpendra Singh Bhati, J:

1. The present Special Appeal has been preferred by the appellants (respondents in the writ petition) laying a challenge to the order dated 03.07.2014 passed by learned Single Judge of this Hon'ble Court in S.B. Civil Writ Petition No.4539/2014 (Mukesh Kumar Berwa vs Ajmer Vidhyut Vitaran Nigam Ltd. & Ors.), whereby the writ petition was disposed of, while giving liberty to the respondent (writ petitioner) to file representation, and directing the appellants to consider his case for compassionate appointment, within one month from the date of receipt of such representation, in terms of the orders, as referred in the impugned order.



2. The factual background, as presented by the learned Counsel for the appellants, is that the respondent was the son of the Late Shri Uma Shankar Berwa, who passed away on 17.02.2011, while serving as Helper Grade II with the appellants, at Shahpura. The respondent submitted an application before the Secretary, AVVN Ltd., praying for according compassionate appointment in the Department, in accordance with Rajasthan Compassionate Appointments of Dependents of Deceased Government Servant Rules, 1996 (*in short, 'Rules of 1996'*). However, the appellants had considered and rejected the respondent's application for compassionate appointment on 13.05.2014, citing the reason that the respondent had more than two children after the cut-off date of 01.06.2002, thus, violative of the eligibility criteria as prescribed, for the purpose in question, in the notification No.7(1)DOP/A-II/95/Pt.-II dated 24.02.2011 issued by the Government of Rajasthan, which had been duly adopted by the appellant-department vide Order no.AVVNL/CAO(R&C)/AAO (Rule)/F-25/OO/D-2432 dated 05.09.2011.

2.1. Aggrieved thereby, the respondent filed the aforementioned writ petition, which came to be disposed of vide the impugned order dated 03.07.2014, as mentioned above.

3. Learned counsel for the appellants (respondents in the writ petition) submitted that the impugned order was passed *ex parte*, against the appellants, without even affording the appellants an opportunity to show cause as to why the writ petition is not maintainable.



3.1. It was further contended that the appellants, in support of their stand, mainly relied on the notification dated 24.02.2011 issued by the Government of Rajasthan, which, as per them, duly addresses the aspect of 'non-eligibility' of candidates with more than two children born on or after 01.06.2002, for the purpose of appointments as well as promotions. Consequently, the rejection of the respondent's application for compassionate appointment by the appellants was made, while making due adherence to the said notification, and thus, does not suffer from any legal infirmity. Furthermore, as per learned counsel, the said notification, as reflected in the adoption order dated 05.09.2011, has been made applicable prospectively.

3.2. It was also submitted that in the present case, the respondent's application was submitted on 06.03.2012, which was significantly after the adoption of the notification dated 24.02.2011, by the appellant-department vide order dated 05.09.2011. Thus, the respondent is not entitled for compassionate appointment, as claimed by him.

3.3. It was further submitted by the learned counsel that the validity of the notification dated 24.02.2011 has not been questioned by the respondent in the writ petition, which was disposed of vide the impugned order. Rather, it challenges the rejection of the application seeking compassionate appointment on the ground of the respondent having more than 2 children on or after 01.06.2002. Furthermore, the action of the appellant-department in rejecting the respondent's application for compassionate appointment was in full compliance with the



notification of the Government of Rajasthan and the right of the employer to modify its scheme of employment with respect to appointment, including compassionate appointment.

3.4. In support of such submissions, learned counsel relied upon the following judgments:

- (i) *Chagan Lal Nenama vs State of Rajasthan & Ors. (D.B. Civil Writ Petition No. 7061/2017, decided on 06.04.2022)*
- (ii) *Ramdev vs State of Rajasthan (D.B. Spl. Appl. Writ No. 261/2020, decided on 30.07.2020)*
- (iii) *N.C. Santhosh vs State of Karnataka & Ors. (Civil Appeal Nos. 9280-9281 of 2014, decided on 04.03.2020)*
- (iv) *Bank of Baroda & Ors. Vs Baljit Singh (Civil Appeal No. 624 of 2017, decided on 21.06.2023)*
- (v) *Shankar Lal Meena vs State of Rajasthan & Ors. (S.B. Civil Writ Petition No. 7256/2021, decided on 20.07.2021).*

4. Per contra, learned counsel appearing for the respondent (writ petitioner) vehemently opposed the aforementioned submissions made on behalf of the appellants and emphatically supported the impugned order.

4.1. It was submitted that the respondent has been unjustly denied the compassionate appointment in question, on the count of his having more than two children on or after 01.06.2002. It was further contended that neither the rules governing compassionate appointments in the appellant department nor Rules of 1996 impose any such restriction, and therefore, the respondent's application could not have been rejected on this ground.



4.2. It was further argued that the notification relied upon by the appellant-department was issued by the State Government and adopted by the appellant-department after the death of the respondent's father's i.e. on 17.02.2011. Thus, at the time of the employee's death, no such prescription was in existence. In this context, applying the prescriptions of the notification retrospectively to deny the respondent's case for compassionate appointment, runs contrary to the legal principles, as retrospective application of laws or rules is generally not permitted, especially when it negatively impacts rights or claims that arose prior to their coming into force.

4.3. It was further submitted that despite the respondent making multiple requests to the appellant department, including a written request dated 29.04.2013 for the grant of compassionate appointment, the department has failed to respond to such legitimate requests. The only communication received from the appellants was a letter dated 13.05.2014, which merely assigned the reason for such rejection on count of the respondent having more than two children on or after 01.06.2002.

4.4. In support of such submissions, learned counsel relied upon the following judgments:

(i) *Mukesh Kumar vs Union of Indian General Manager (SLP© No. 18571/2018, decided on 24.02.2022)*

(ii) *Smt. Durga Devi Mairda vs State of Rajasthan & Ors. (D.B. Spl. Appl. Writ No. 1119/2022, decided on 02.01.2024)*

5. Heard learned counsel for the parties as well as perused the record of the case, alongwith the judgments cited at the Bar.



6. This Court observes that the appellants have contested the relief awarded to the respondent in S.B. Civil Writ Petition No. 4539/2014, wherein the respondent (writ petitioner) sought compassionate appointment in the appellant-department following the demise of his father on 17.02.2011, who was an employee of the appellant-department at the time of his death.

6.1. Upon reviewing the record, the Court further observes that the respondent (writ petitioner) submitted an application for compassionate appointment in the appellant-department on 06.03.2012. This application was considered and subsequently rejected on 13.05.2014. The rejection was made in pursuance with the notification dated 24.02.2011 issued by the Government of Rajasthan, which was adopted by the appellant-department on 05.09.2011. The basis for the rejection was that the respondent had more than two children born after the cut-off date of 01.06.2002.

7. This Court is conscious that the concept of compassionate appointment to tide over the immediate crisis as derived from the Right to Livelihood under Article 21, read in conjunction with Article 39(a) of the Constitution of India.

7.1. This Court is also conscious of the legal precedents indicating that the concept of compassionate appointment emerged in 1970s and gained significant traction in the subsequent decade. The Hon'ble Supreme Court has, over time, laid down guidelines for the grant of compassionate appointment to one of the dependent family members of the government servants who either died while in service or have become permanently incapacitated, thus



rendering them unable to continue in their employment, leaving their families in a state of destitution.

7.2. At this juncture, this Court considers it appropriate to reproduce the relevant portion of the judgment rendered by the Hon'ble Supreme Court in the case of **Haryana State Electricity Board v. Hakim Singh (1997) 8 SCC 85**, as hereunder:

"8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

8. This Court is also conscious of the judgment rendered by a three-Judge Bench of the Hon'ble Supreme Court, in the case of **N.C. Santhosh vs. State of Karnataka & Ors. (2020) 7 SCC 617**, and as relied upon by the appellants, which encapsulates the governing principles for the grant of compassionate appointments as follows:

"(i) Compassionate appointment constitutes an exception to the general rule of recruitment.

(ii) There exists no inherent entitlement or right for any individual to secure a compassionate appointment.



(iii) *Appointments to public posts within the service of the State must adhere to the principles of equality and equal opportunity, as enshrined in Articles 14 and 16 of the Constitution of India.*

(iv) *A compassionate appointment can only be granted if the applicant satisfies the criteria outlined in the relevant State policy and meets the eligibility requirements prescribed therein.*

(v) *The norms applicable at the time of the consideration of the application shall be the governing criteria for evaluating claims for compassionate appointment.*

9. This Court further notes that, within six months of the ruling in **N.C. Santhosh (supra)**, came another decision of another three-Judge Bench in **State of Madhya Pradesh v. Amit Shrivastava (2020) 10 SCC 496** wherein it was held that:

*"16. It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succour to a needy family. **This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made applicable retrospectively.** ..."*

10. This Court is also conscious of the latest judgment of the Hon'ble Supreme Court in the case of **Canara Bank vs Ajithkumar G.K.** (Civil Appeal No. 255 of 2025, decided on 11.02.2025), wherein the concept and judicial precedents relating to compassionate appointment have been discussed in detail.

11. In light of the aforementioned judgments and the chronology of the present case, this Court observes that the policy of the Government of Rajasthan (dated 24.02.2011) disabling the candidates with more than two children born on or



after the cut-off date of 01.06.2002, for appointment on compassionate grounds, was adopted by the appellant-department on 05.09.2011, long time after the death of the respondent's father, the deceased- employee on 17.02.2011.

11.1. This Court adheres to the view of the Hon'ble Apex Court in the case of ***Bhawani Prasad Sonkar v. Union of India*** ((2011) 4 SCC 209) and also in ***Ajithkumar G.K.*** (*supra*), wherein it was held that the scheme/policy has to be strictly construed and confined only to the purpose it seeks to achieve.

11.2. This Court further observes that **in the present case, neither the policy was in existence on the date of death of the employee nor anything in the scheme/policy in question was mentioned which bars the candidature of the respondent on the aforesaid ground, so also nothing has been mentioned therein with regard to its retrospective applicability. In absence of the same, this Court considers it appropriate to strictly apply the law prevailing on the date of death of the employee,** and not apply the said notification retrospectively, more particularly, in absence of any express stipulation with regard to its retrospective application.

12. This Court thus observes that the rejection of the candidature for the appointment on compassionate grounds in such circumstance, would violate the objective of the law intended to enable the family members in distress, of a



deceased or an incapacitated employee to tide over the sudden financial crisis.

13. This Court further notes that the aforementioned notification, which forms the basis of the present controversy and imposes "non-eligibility" on the ground of having more than two children on or after the specified cut-off date, has not been contested in the instant appeal. There was no necessity to challenge the said notification as the cause of action which arose on the date of death of employee, i.e., on 17.02.2011, whereas the notification regarding two children was issued thereafter on 24.02.2011 and thus, the same cannot be applied retrospectively. Therefore, the issue of assessing the validity of such notification remains unexamined.

13.1. It is also kept in consideration by this Court that the Right of Compassionate Appointment in the present case is backed by statutory rights arising out of the Rajasthan Compassionate Appointments of Dependents of Deceased Government Servant Rules, 1996, which being a state law has been duly adopted by the appellant-department.

14. In view of the above, this Court does not find it a fit case so as to warrant any interference in the impugned judgment dated 03.07.2014 of the learned Single Judge in S.B. Civil Writ Petition No. 4539/2014 (Mukesh Kumar Berwa vs Ajmer Vidhyut Vitaran Nigam Ltd. & Ors.), which was passed while relying on the judgment of **Gyan Chand vs State of Rajasthan** (S.B. Civil Writ Petition No. 1697/2013, decided on 03.02.2014).



15. This Court further observes that the cases relied upon by the appellant-department do not render any assistance to their case in the present factual matrix.

16. In the present case, the denial of compassionate appointment by the appellant-department without any just cause, coupled with the fact that litigation has been going on for over a decade, shows the that on the one hand, the family has been under bereavement due to sad demise of the family member, who was rather the sole breadwinner of the family, while on the other hand, the inaction on the part of the appellant-department, while declining the compassionate appointment in question, deprived the family of the means of coming out of the penurious state.

17. For the foregoing observations, this Court does not find it a fit case so as to grant any relief to the appellants in the instant appeal.

18. Consequently, the present special appeal is ***dismissed***.

(MUNNURI LAXMAN),J

(DR. PUSHPENDRA SINGH BHATI),J

SKant/-