

ABHISHEK KUMAR  
v.  
STATE OF HARYANA AND ORS.

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DECEMBER 4, 2006

[S.B. SINHA AND MARKANDEY KATJU, JJ.]

B

*Service Law:*

*Appointment on compassionate grounds—Offered by State Government but declined by District Magistrate stating that no vacancy existed in the District—Held, the candidate was entitled to appointment as per the Rules existing prior to coming into force of the 2003 Rules—State Government directed to issue an appointment letter to the candidate on any post within the State as per his original seniority—Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003.*

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- Appellant applied for appointment on compassionate grounds as his father died in harness in February, 2001. The District Magistrate denied him the appointment on the ground that there existed no vacancy in the District. The appellant's writ petition was dismissed by the High Court in view of Rule 9 of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 and he was directed to be paid some *ex-gratia* amount under the Rules. Aggrieved, the appellant filed the present appeal.

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Allowing the appeal, the Court

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**HELD:** The appellant had sought for appointment on compassionate grounds at a point of time when 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules which were in existence in the year 2001. Evidently, a State-wise list is maintained. In terms of the said list, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the State. But the District Magistrate refused to provide for the post. When a State-wise list is prepared, it does not lie in the mouth of an authority in-charge, be it a District Magistrate or any other officer, to disobey the order passed by a higher authority. The High Court failed to consider this aspect of the matter.

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**A** The Department of Personnel, State of Haryana is directed to issue an appointment letter posting the appellant within the State of as per his original seniority. [39-C-D; E, H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5657 of 2006.

**B** From the final Judgment/Order dated 26.9.2005 of the High Court of Punjab and Haryana at Chandigarh in C.W.P. No. 7957/2004.

P.N. Puri and Dhiraj for the Appellant.

Ajay Siwach, Manjit Singh and T.V. George for the Respondents.

**C** The Judgment of the Court was delivered by

**S.B. SINHA, J.** Leave granted.

**D** The appellant's father expired on 10.2.2001 while in office. In terms of the Rule, as it was existing then, the appellant was entitled to be appointed on compassionate grounds. An application for such an appointment was filed within two weeks by the appellant from the date of his father's death. Not only the appellant was denied appointment in District Yamuna Nagar although his deceased father had been employed as a Kanungo in District Yamuna Nagar, when he was sought to be appointed in the District of Karnal, the same was denied to him by the District Magistrate, Karnal *inter alia* on the plea that there does not exist any vacancy.

**E** The appellant filed a writ petition before the Punjab and Haryana High Court. Before the said Court, the respondents raised a contention that in the meanwhile the State of Haryana had issued a notification on 28.2.2003 known as "the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003". Rule 9 of the same reads as under:

**F** "9.(a) Appointments under these Rules shall be made only on regular basis and that too only, if regular posts meant for that purpose are available.

**G** (b) Appointments under these rules can be made up to a maximum of 5% of sanctioned posts (falling under direct recruitment quota) in Group C & D categories to be determined by the Head of the Department on the 31st March of each year. The appointing authority may hold back upto 5% of posts in the aforesaid categories to be filled by direct recruitment through Staff Selection Commission or

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otherwise, so as to fill such posts by appointment on compassionate grounds. A

(c) A Person selected for appointment on *ex-gratia* basis shall be adjusted in the recruitment roster against the appropriate category viz. Scheduled Caste/Scheduled Tribe/Backward Classes/General depending upon the category to which he/She belongs.” B

The High Court relying on and on the basis of the said Rule dismissed the writ petition filed by the appellant directing the respondents to make the payment of *ex-gratia* amount under the Rules.

Appellant herein had sought for appointment on compassionate grounds at a point of time when 2003 Rules were not in existence. His case, therefore, was required to be considered in terms of the Rules Which were in existence in the in the year 2001. Evidently, in the State of Haryana a State wise list is maintained. In terms of the said list so maintained by the State of Haryana, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the State. It was the District Magistrate who came on the way and refused to provide for the post. C D

The High Court unfortunately failed to consider this aspect of the matter.

When a Statewise list is prepared, it does not lie in the mouth of a authority incharge, be it a District Magistrate or any other officer, to disobey the order passed by a higher Authority. Furthermore, there might not be any post available at Karnal but there cannot be any doubt or dispute that such a post would be available in some other district within the State of Haryana as otherwise such an appointment could not have been made. The appellant in his written statement has categorically stated that he is ready and willing to join anywhere in the State of Haryana. E F

Before us the State has not filed any counter affidavit. The District Magistrate of Karnal has done so and before us also only the pleas which were raised before the High Court have been raised.

For the reasons aforementioned, we are not inclined to accept the said pleas of respondent No. 4. We, therefore, allow this appeal and set aside the judgment of the High Court. The Department of Personnel, State of Haryana is directed to issue an appointment letter posting the appellant to any post within the State of Haryana as per his original seniority within four weeks from the date of receipt of copy of this order. G

R.P.

Appeal allowed. H