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TILL DEATH AND THEREAFTER: A COMPREHENSIVE ANALYSIS ON COMPASSIONATE EMPLOYMENT

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ABSTRACT

We adopt the doctrine of Parens Patriae, making our State a parent to those who are unable to protect themselves. To offer refuge for the unsheltered in the manner that a parent would. Compassionate employment is one approach to ensure that this happens. Simply put, compassionate employment is employment provided to the dependents of those who are dying in harness (Dying whilst one is still on active duty) or retiring on medical reasons, leaving the family with no alternative means of income. However, just as parent is expected to be fair, we are thus confronted with a concern- How far must the principle be utilised in taking away employment positions meant for qualified members of society and distributing those opportunities to individuals in need, whether qualified or not? This paper aims to analyse the principles of compassionate employment, laid through the Constitution of India and the Honourable Apex Court of the Country.

INTRODUCTION

“....An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision. Care has, therefor, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provision, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds for the dependant of a deceased employee.”

*-Director of Education (Secondary) and Anr. v. Pashpendra Kumar and Ors.*¹

After years of being shunned from Administrative aspects of the State, our Forefathers, the drafters of the Constitution of India, inserted Articles 14² and 16³ in Part III of the Constitution, mandating equality of opportunity in public employment.

For an exception to this rule, to be constitutionally valid, must be implemented in such a manner that sub-serve the preliminary object and purpose sought to be achieved through it.

One such exception is Compassionate Employment. Compassionate employment refers to employment provided to enable the dependant members of a person dying in harness (dying during the course of his employment) or retiring on medical reasons.⁴ Such employment is provided in lieu of the fact that the person thus losing his livelihood was the primary bread-winner for the family and but for his employment, the family shall be left destitute.

Compassionate employment is not an inherent entitlement but is instead contingent upon the prevailing norms and regulations governing such employment, which vary from state to state.⁵

Several principles govern the provision of compassionate employment. One such principle is that delayed claims for employment by dependents are less likely to be successful. Compassionate employment is typically granted promptly, taking into account the financial situation of the family. This immediacy is crucial in addressing the urgent needs of the family members left without support due to the loss of a breadwinner.

Since there is no proper law that governs the matter of such employment, its scope is largely drawn from the Constitution of India or the principles laid down by the Judiciary. This paper seeks to trace the exception that is compassionate employment and explores various facets as to its implementation, both by Constitutional and Judicial norms.

¹ (1998) 5 SCC 192.

² INDIA CONST., art. 14.

³ INDIA CONST., art. 16.

⁴ Dr. Rakesh Kumar, *Compassionate Appointment in Public Employment: An Analysis in Present Scenario*, Vol.8, EPRA (IJMR), 236, 236-238, 2022.

⁵ Chemmalar S., *Compassionate Appointment: An Exclusive Social Security Scheme of Dependant Benefit in India*, SSRN, 1, 1-6, (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3813722&download=yes.

IN THE CONSTITUTION, WE TRUST

The majesty of death is that it is a great leveller for, it makes no distinction between the young and the old or the rich and the poor. Death being as a consequence of birth at some point of time is inevitable for every being. Thus, while death is certain, its timing is uncertain. Further, a deceased employee does not always leave behind valuable assets; he may at times leave behind poverty to be faced by the immediate members of his family. Therefore, what should be done to ensure that death of an individual does not mean economic death for his family? The State's obligation in this regard, confined to its employees who die in harness, has given rise to schemes and rules providing for compassionate appointment of an eligible member of his family as an instance of providing immediate succour to such a family.

*-The State of West Bengal v. Debabrata Tiwari and Ors. Etc. Etc.*⁶

The framers of the Constitution included specific articles aimed at ensuring equality across various aspects of a free India, with few exceptions. Below, we'll discuss some of these articles in the context of compassionate employment.

1.1 ARTICLE 14 AND ARTICLE 16

The historical evolution of the aforesaid Articles in the present Constitution is intriguing.

Article 14, which currently reads as follows: “*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India*”⁷ was not a standalone provision when it was drafted. It was included in the present-day Article 21 of the Constitution of India (Draft Article 15) which read:

*‘Protection of life and liberty and equality before law – No person shall be deprived of his life or liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the law within the territory of India.’*⁸

On the 3rd of November 1949, this Article was separated from Draft Article 15 and made Article

⁶ Supreme Court, Civil Appeal Nos. 8842-8855 of 2022.

⁷ INDIA CONST., art. 14.

⁸ Constitution of India, <https://www.constitutionofindia.net/articles/article-14-equality-before-law/#:~:text=In%20its%20letter%20to%20the,article%20dealing%20with%20equality%20before>, (Last Visited May 4, 2024).

14 of the Constitution of India.⁹

Similarly, Article 16 was originally Draft Article 10 in the Constitution, calling for equality of opportunity in all forms of government employment further allowing the State to make reservations in such employment for the people belonging to the backward classes.¹⁰

Three main contentions were laid before the Assembly when Reservations were discussed under the Article:

1. ***An Equality of Opportunity***: No one who is qualified for a particular post should be barred from it on the basis of his race, sex, caste, religion, descent, place of birth or residence.
2. ***The principle of equality should be bereft of any class or community***: Everyone must be on equal footing in the contention for the Public Services.
3. Lastly, in a view shared by even the Chairman of the Drafting Committee, the State was allowed to make reservations for certain communities as it was thought that equality was a utopian principle but there still ***must be a provision for communities kept outside the purview of the administration in the past.***¹¹

HOW THIS CONNECTS TO COMPASSIONATE EMPLOYMENT:

In the case of *N.C. Santhosh v. State of Karnataka and Ors.*,¹² the Court has observed some principles regarding Compassionate Employment which are as follows:

1. That the appointments to public posts being made in accordance with Articles 14 and 16 of the Constitution is the rule and compassionate employment, its exception.
2. Dependants of government employees do not have a vested right to employment.
3. Such employments are to be made only in accordance with the norms set by the different State Governments in this regard.
4. If the State Government's norms are amended (as happened in the present case), the Applicant's appointment will be considered as part and parcel of the new norms. He is disentitled to seek any consideration of his application based on the norms applicable on the date of death of the government employee.

⁹ *Ibid.* 8.

¹⁰ Constitution of India, [https://www.constitutionofindia.net/articles/article-16-equality-of-opportunity-in-matters-of-public-employment/#:~:text=Draft%20Article%2010%20\(Article%2016,or%20residence%20for%20government%20employment](https://www.constitutionofindia.net/articles/article-16-equality-of-opportunity-in-matters-of-public-employment/#:~:text=Draft%20Article%2010%20(Article%2016,or%20residence%20for%20government%20employment), (Last Visited May 4, 2024)

¹¹ *Ibid.* 10.

¹² (2020) 7 SCC 617.

These principles, derived from the constitutional inquiry regarding Articles 14 and 16, have established a definitive standard for compassionate employment matters for the foreseeable future.

2.1 THE DIRECTIVE PRINCIPLES OF STATE POLICY

Directive Principles of State Policy are non-justiciable, non-enforceable rights granted under Part IV of the Constitution of India. Simply put, these are a set of objectives to be kept in mind by the State before formulating any policy for the citizens.

Article 38 and 39 of the Directive Principles of State Policy state:

38. (1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.¹³

Similarly, Article 39 provides for an adequate means of livelihood for all. The Policy of compassionate employment is thus, less a right and more of a scheme formed under the objectives listed in these Directive Principles.¹⁴

Thus, it must be noted that compassionate employment is not mentioned in the Constitution, but has been carved out as one of the many exceptions to the same.

PARENS PATRIAE: WHAT DOES THE APEX COURT SAY?

Thus, the Constitutional Courts may also act as Parens Patriae so as to meet the ends of justice.

- *Shafin Jahan v. Asokan K.M. and Ors.*¹⁵

Over time, Courts have laid down principles that aid in implementation of the rules of compassionate employment. It is important to note that there are multiple facets to the claim of

¹³ INDIA CONST., art. 38.

¹⁴ INDIA CONST., art. 39.

¹⁵ Supreme Court, Crl. Appeal No. 366 of 2018.

compassionate appointment and this paper seeks to discuss some note-worthy judgements that have been given by the Courts over the course of many years.

1. *Umesh Kumar Nagpal v. State of Haryana*¹⁶

This judgement is one of the crucial judgements in the context of compassionate employment, responsible for initiating a discourse on the rationale behind such appointments and the criteria for consideration. The Honourable Apex Court held as follows:

- a) Appointments within public services must adhere strictly to an open invitation of applications and merit-based selection. No alternative method of appointment or other considerations are permissible. Neither governmental bodies nor public authorities have the discretion to deviate from prescribed procedures or lower the qualifications set forth for the position.
- b) The primary purpose of offering compassionate employment is to assist the family in overcoming an unexpected crisis.
- c) The mere demise of an employee during active service does not automatically qualify their family for compassionate employment. The relevant government or public authority is required to assess the financial situation of the deceased employee's family. Only if it determines that without employment, the family would struggle to overcome the crisis, can a job be extended to an eligible family member.
- d) The preferential treatment accorded to dependents of deceased employees in these positions is logically connected to the intended goal, which is to provide relief from destitution. Public authorities are not obligated or expected to allocate other positions for this purpose. It is important to note that while considering the destitute family of the deceased, there are countless other families equally or even more destitute.
- e) The exception granted to the family of the deceased employee is based on the services provided by the employee, their legitimate expectations, and the significant impact on the family's status and circumstances resulting from the former employment, which are abruptly altered.

2. *Malaya Nanda Sethy v State of Orissa and Ors.*¹⁷

In the post-N.C. Santhosh¹⁸ scenario, this judgement holds that The rationale for appointing on

¹⁶ (1994) 4 SCC 138.

¹⁷ 2022 SCC OnLine SC 684.

¹⁸ (2020) 7 SCC 617.

compassionate grounds is to aid the family of a deceased employee who may face financial challenges due to the employee's untimely demise while in service. The underlying policy emphasizes providing immediate financial support to such families following the employee's passing. Authorities must evaluate and decide on these compassionate appointment applications according to the prevailing policy within six months of receiving the completed applications.

When considering compassionate employment on par with family pensions or any other benefits, the Honourable Apex Court has held the following in a variety of judgements:

1. *State of Himachal Pradesh and Ors. v. Shashi Kumar*¹⁹

If the policy mandated considering family pension and death gratuity when evaluating a family's financial situation, it could be deemed appropriate. However, this policy did not prevent dependents of a deceased employee from being eligible for compassionate appointment solely on the basis of receiving family pension.

2. *Canara Bank and Ors. v. M. Mahesh Kumar*²⁰

The provision of family pension or terminal benefits should not be seen as a replacement for offering employment assistance.

Thus, it can be seen that the receipt of family pensions and other benefits does not exclude dependants of the employee from the consideration for the grant of compassionate employment.

On the delay of application of compassionate employment:

Vigilantibus, non dormientibus, jura subveniunt is a Latin maxim which means that the **law only helps those who are vigilant, not those who sleep over their rights**. When confronted with a delay in the application of compassionate appointment, the Courts hold thus:

In the case of *Fertilizers and Chemicals Travancore Ltd. and Ors. v. Anusree K.B.*²¹, The respondent's claim for compassionate appointment following her father's death in 1995 was denied, as it had been 24 years since his passing. Granting compassionate appointment in such a prolonged timeframe would go against the intended purpose of this provision, which was to

¹⁹ (2019) 3 SCC 653.

²⁰ (2015) 7 SCC 412.

²¹ AIR 2022 SC 4766.

weather immediate financial crisis.

Furthermore, in the case of *Jagdish Prasad v. State of Bihar*²², the Court held that a significant delay of 20 years renders any claim for compassionate appointment invalid, as the purpose of such appointments is to alleviate immediate financial hardships resulting from the sudden loss of the family's primary breadwinner. Additionally, in cases where an individual was a minor at the time of the government servant's death, it cannot be justified to grant them appointment after they have reached adulthood, as it would essentially introduce an alternative recruitment method for dependents of deceased government servants, which is not in line with established practices.

Lastly, in the case of *Sushma Gosain v. Union of India*²³, the Apex Court held as under:

*"... in all claims for appointment on compassionate grounds, there should not be any delay in appointment the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress."*²⁴

Therefore, not only is unnecessary delay not an encouraged practice for seeking compassionate employment, the defence of minority at the time of death of the deceased is also not a sustainable defence in the Court of Law.

The point is to establish the importance of maintaining fairness by striking a balance between candidates seeking compassionate employment and others equally qualified for the same position.

Another key aspect for consideration that has been laid before the Court has been that whether the past misconduct of the deceased employee affects the appointment of the Dependant is discussed in the case of *General Manager, State Bank of India v. Anju Jain*²⁵. In the present case, The Supreme Court, in affirming a specific clause within the compassionate appointment policy, upheld the denial of appointment to dependents of an employee whose service record included disciplinary actions against them. This decision reversed the High Court's ruling, which had deemed an employee's past misconduct irrelevant in considering compassionate

²² (1996) 1 SCC 301.

²³ (1989) 4 SCC 468.

²⁴ *Ibid.* 23.

²⁵ (2008) 8 SCC 475.

appointments for the deceased employee's dependents.

Thus, an application for compassionate employment must:

- a) Be strictly as per the prescribed parameters and norms at the time.
- b) Be granted to meet the immediate financial commitments of the family and to alleviate the pain of the loss of the sole breadwinner
- c) Minors may not apply for compassionate employment as they are then being exposed to an alternative employment option which goes against the Constitutional Ideals.
- d) There should not be any unnecessary delay in the application, whether it be the submission or the consideration of the same.

CONCLUSION

AUTHOR'S ANALYSIS

Compassionate employment is an approach based on empathy and social welfare concepts that seeks to reduce the immediate financial burden of a family member's death. However, like any policy, compassionate employment requires a careful examination to determine its efficacy, fairness, and unintended repercussions.

One of the fundamental arguments in favour of compassionate employment is its humanitarian relevance. Losing a loved one can be emotionally painful, and the potential monetary burden can worsen the sorrow. The Government expresses their commitment to aiding families in times of need by providing job opportunities to eligible family members. This not only relieves immediate financial constraints, but also improves the general well-being and stability of afflicted families.

Furthermore, compassionate employment is frequently viewed as a way to recognise the departed employee's services. It recognises their efforts to the organisation and expresses gratitude by assisting their family members with earning a living. This recognition can increase employee loyalty and organisational morale, resulting in a more positive work environment.

However, despite its noble objectives, compassionate employment has certain difficulties and obstacles. It is frequently argued that the subjective nature of compassionate appointments may result in unfair practices, with deserving candidates being disregarded in favour of individuals in need of compassionate employment. This emphasises the need of a clear and merit-based selection standards in ensuring justice and equity throughout the process.

Another issue is the viability of compassionate employment schemes. While providing immediate aid to families in distress is critical, long-term sustainability and fiscal discipline must also be considered. The government must establish a balance between addressing immediate needs and ensuring the viability of their personnel and financial resources in the long run.

In conclusion, compassionate employment provides a crucial safety net for families dealing with a loved one's passing. It provides a lifeline to individuals in need and represents the values of social justice and compassion. However, ongoing assessment, transparency, and commitment to merit-based standards are necessary to guarantee its efficacy and justice. Achieving this balance will enable compassionate employment to carry out its admirable mission of supporting and comforting families in their hour of greatest need.

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