

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Order: 14th July, 2022**

+ **W.P.(C) 5538/2015**

MANJU DEVI Petitioner

Through: Mr. Vijay Datt Gahtori, Mr.
Ashok Kumar Arya and Mr.
Deepak Pandey, Advocates

versus

HINDUSTAN PETROLEUM CORPORATION LTD

..... Respondent

Through: Mr. Raj Birbal, Sr. Advocate
with Ms. Raavi Birbal,
Advocate

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking the following reliefs:

“A) direct the Respondent Corporation for consideration of the case of the son of the Petitioner, being dependant of the deceased employee, in terms of the binding settlement dated 13.4.1983 and Employees Superannuation Benefit

Scheme of the Respondent Corporation as applicable on the date of death of the Husband of the Petitioner i.e. 23.4.2008 and on the date of submitting option for employment to the son of the Petitioner i.e. on 5.5.2008, and

B) to quash the communication dated 22.7.2008 and 29.6.2012 made by the respondent Corporation to the petitioner and

C) direct the Respondent Corporation to grant pension to the Petitioner at the rate of 42.5 % of the Last Drawn Salary...”

2. The brief facts of the case are that:

- Petitioner is the wife of Sh. Mahinder Paswan, who was an employee of Hindustan Petroleum Corporation Ltd, Marketing Division and expired on 5th April 2008, while in service due to a Road accident.
- On 19th April 2008, the wife of deceased, applied for compassionate appointment of her son Ravinder Paswan.
- On 5th May 2008, the Petitioner gave an option letter to the Respondent Corporation, wherein out of three options available, she took an option under Rule 7(b) (ii)/ 8A of the “Hindustan Petroleum Corporation Ltd. Employee's Superannuation Benefit Fund Scheme” (hereinafter ‘the Scheme’) wherein she was entitled to the benefits as her deceased husband would have received had he superannuated.

- Vide letter dated 22nd July 2008, the Respondent Corporation informed the Petitioner that since 1998, they have not been offering employment to dependants of any of the deceased employees for compassionate employment.
- On 9th September 2008, the Respondent Corporation issued a letter to the petitioner advising her to change her Scheme Option from 7(b) (ii)/ 8A to either 7(a) or 7 (b)(i).
- On 29th June 2012, the Respondent Corporation informed the petitioner that the scheme for compassionate appointment to the dependant of the employee, in the event of death of his service has been withdrawn. Therefore, her request for compassionate appointment to her son could not be acceded to.
- On 29th November 2013, the Petitioner again made a representation to the Respondent Corporation for providing her son compassionate appointment in accordance with option taken by her.
- On 11th December 2013, the Respondent Corporation in their reply informed the petitioner that she was given hundred percent of last drawn salary as per the option taken by her under the Scheme and hence, her son is not entitled to the benefit for the compassionate employment.
- The petitioner is now before this court praying that her son's case may be considered for compassionate employment by the Respondent Corporation.

3. Learned Counsel appearing on behalf of the petitioner submitted that Respondent Corporation accepted the option taken by the petitioner and has accordingly been paying last drawn salary of her deceased husband to the petitioner till 31st January 2014. However, despite having accepted the option under Rule 7(b)(ii)/8A of the Scheme, the Respondent Corporation has failed to give appointment to the petitioner's son as envisaged under the aforesaid Rules.

4. It is submitted that Respondent Corporation is bound by Clause 24 of the settlement made between the corporation and its workmen represented by the unions, wherein the 'employment of workmen dependents' is mentioned and the petitioner's case falls within the ambit of said Clause.

5. It is submitted that the Respondent contrary to the written rules of the Scheme on the date of death, i.e. 5th April 2008, or the date of nomination for employment of petitioner's son, i.e. 20th May 2008, denied the employment to the son of the Petitioner after withholding, from April 2008 to 28th February 2014, statutory benefits of gross amount of Rs. 15,35,771/- under the pension scheme which had been released on 28th February 2014 without petitioner's consent.

6. It is submitted that on one hand Respondent corporation is selectively applying the provisions of option under rule 7(b)(ii)/8A under the scheme and to retain the money in the SBFS Trust as per the option, but on the other hand is declining the appointment to the family member of the deceased employee under the scheme, which is not permissible under the law.

7. It is submitted that despite explicit rule under clause 7(b)(ii)/8A of the Scheme, the respondent failed to give any reasonable cause for arbitrarily refusing the rights of the petitioner guaranteed under the Scheme. It is further submitted that there was no notice/circular/rule declaring the discontinuance of the employment policy under the Scheme neither at the time when the deceased husband of the petitioner entered into this employment scheme nor when the petitioner opted for availing the option under rule 7(b)(ii)/8A.

8. It is further submitted that the discontinuance of policy of employment did not exist at all before 2013 and the denial of employment to petitioner's son was borne out of reasons extraneous to the stipulations contained in clause 7(b)/8A of the Scheme and are also in direct violation of Article 14 and Article 21 of the Constitution of India.

9. It is submitted that the Respondent vide letter no HRD:ABP:DED dated 22nd July 2008 informed the petitioner that HPCL has not offered employment to any of the dependents of the deceased employees since 1998, whereas, it is pertinent to mention that the beneficiaries under the said policy have been an arbitrary choice of HPCL and is in violation of Article 14 of the Indian Constitution.

10. In support of his arguments learned Counsel appearing on behalf of the Petitioner has relied on the following judgments:

- a. **State Bank of India & Anr vs Raj Kumar (2010) 11 SCC 661**, wherein the Hon'ble Supreme Court of India held:

"On other hand if a scheme provides that on the death of an employee, if a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the scheme that was in force at the time when the application for compassionate appointment was filed, will apply"

b. **Director of Education (Secondary) v Pushendra Kumar (1998) 5 SCC 192**), wherein the Hon'ble Supreme Court of India observed that:

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment..."

11. It is therefore prayed that, in light of above facts and circumstances, the communication dated 22nd July 2008 and 29th June 2012 be quashed and Respondent Corporation shall be directed to consider the case of the petitioner's son for the purpose of providing compassionate employment in terms of binding settlement and the Scheme.

12. *Per Contra*, Learned Senior Counsel appearing on behalf of the respondent submitted that the petitioner has already been given all the benefits, as opted by her and the present petition has been filed only as an afterthought.

13. It is submitted that the petitioner had submitted option letter dated 5th May 2008 to the Respondent Corporation wherein she took an option under "Rule 7(b)(ii)/ 8A (100% benefit till employment is given)" of the 'Hindustan Petroleum Corporation Ltd. Employee's Superannuation Benefit Fund Scheme'. It is vehemently submitted that an amount of Rs. 58,88,990/- (including EPF, Gratuity, Annuity, Pension GPAI Etc.) was given by the Respondent Corporation to the Petitioner in lieu of the option letter submitted.

14. It is submitted that as far as consideration of the case of the son of the petitioner for compassionate appointment in terms of the settlement dated 13th April 1983 and under old Scheme of HPCL is concerned, HPCL/ Respondent Corporation has withdrawn the scheme of providing appointment on compassionate grounds in August, 2004 itself. Respondent Corporation has no such Scheme in place to provide employment to spouse/dependent family members on compassionate grounds, on death of an employee while in service.

15. It is submitted that petitioner has applied for compassionate employment of her son on 19th April 2008 and vide various communications, the petitioner has been duly intimated that as a matter of policy, the option of compassionate employment in the Respondent Corporation of an eligible dependent – spouse/son/

daughter in the event of the death of an employee while in the service has been withdrawn with effect from August 2004.

16. It is vehemently submitted that the claim of petitioner with regard to employment under the clause 24.1 of the Settlement dated 13th April 1983 and under clause “B” of settlement dated 27th June 1984 has lost its validity as it has been duly communicated by the Corporation to the petitioner that the above mentioned settlements have been superseded vide Memorandum of Settlement dated 11th January 1989 (effective from May, 1988) wherein the Scheme had been formulated.

17. It is further submitted that just by opting for the appointment under compassionate grounds of benefit under the old “HPCL Employees SBFS” which was a result of settlement between the Management and All India Unions, petitioner is not entitled to claim benefits under the Settlement of 1983 and 1984, which stood impliedly superseded. However, despite of having no provision practically available for the appointment on compassionate grounds, the Respondent Corporation gave just and proper response to her claims.

18. In support of his arguments, learned Senior Counsel appearing on behalf of the Respondent has relied on the judgment of Hon’ble Supreme Court in the case of **State Bank of India & Ors. Vs. Raj Kumar, (2010) 11 SCC 661**, wherein it was observed that:

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public

services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/ withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.”

19. It is submitted that there are no illegalities or error in the communications dated 22nd July 2008 and 29th June 2012 and therefore, the instant petitioner is devoid of any merits and is to be dismissed.

20. Heard learned counsel for the parties and perused the record.

21. Before going into the merits of the instant case, it is relevant to mention the relevant rules of HPCL Employees' Superannuation Benefit Fund Scheme, which are reproduced herein under:

“7. Benefits on death while in service:

(a) *On death of a member while in service, the beneficiary will be entitled to benefit at the maximum rate of 40% of last drawn salary of the member as if the deceased member had not died but had superannuated with 32 years of reckonable service; the benefit being payable from the month following the date of the death of the member for 15 years certain or the lifetime of the beneficiary whichever is later. If the beneficiary dies within the said period of 15 years certain mentioned above, the benefit will be payable to the nominee of the beneficiary till the completion of the said period of 15 years.*

(b) *On the death of a married member while in service the beneficiary or if there are more beneficiaries than one, all the beneficiaries together*

** if none of the beneficiaries shall be in the employment of the Corporation and if the beneficiary or all the beneficiaries so nominated shall also be the beneficiary/beneficiaries nominated by the member to receive benefits of the Provident Fund, Gratuity, Leave Encashment and payments under Group Insurance Scheme may, as an alternative to sub-rule (a) above and not later than 180 days of the death of the member, exercise in writing irrevocably any one of the following options:*

(i) *to receive an amount equal to the last drawn salary of the deceased member from the month following the date of the death of the member till the notional date (as hereinafter defined) upon the beneficiary making over to the Corporation as being entitled to do so the following payments due*

to the deceased member at the date of his death, viz.

- (aa) the full Provident Fund standing to the credit of the deceased employee;*
- (bb) the full Gratuity due to the deceased employee;*
- (cc) all payments on account of Leave Encashment standing to the credit of the deceased employee;*
- (dd) all payments under the Group Insurance Scheme, with instructions to the Corporation.*
- (ee) to hold the same on Fixed Deposit;*
- (ff) to transfer to the Superannuation Benefit Fund the net amount of all interest accruing from time to time on the fixed deposit until the notional date after deducting at source Income-tax as applicable on such interest and deposit such tax in Government Treasury;*
- (gg) to hand over to the beneficiary the full corpus (without interest) standing in the Fixed Deposit Account on the notional date; and upon the beneficiary/all, the beneficiaries consenting to the Corporation making over to the Trustees any other payment which under the Corporation policy is payable by reason of the death of the employee. Thereafter on and from the notional date the Trustees shall pay to the beneficiary benefit as if the deceased member had not died but has superannuated based upon his actual years of reckonable service, such benefit being payable for fifteen years certain or for the lifetime of the beneficiary, whichever is later, If the beneficiary dies within the said period of fifteen years certain, the benefits will be payable to be nominee of the beneficiary till the completion of the said period of fifteen years.*

(ii) *Opting for employment in the Corporation of Eligible, dependent spouse/son/daughter of the deceased member fulfilling the required recruitment criteria at the entry level vacancy, sub employment to be provided by the Corporation within 3 years from the date of such option being exercised and to receive benefit under the Scheme as if the deceased member had not died but had superannuated, based upon his actual years of reckonable service, such benefits being payable from the month following the date of the death of the member for fifteen years certain or the lifetime of the beneficiary whichever is later, If the beneficiary dies within the said period of fifteen years certain, the benefit will be payable to the nominee of the beneficiary till the completion of the said period of fifteen years.*

c) *On the death of a married member while in service, no benefit shall be paid/made over to the beneficiary/ beneficiaries until the beneficiary or if there are more beneficiaries than one beneficiary, all the beneficiaries shall have tint irrevocably exercised in writing the option mentioned in sub-rule (a) & (b) above*

PROVIDED HOWEVER that upon the exercise of such option the benefits shall be paid but without interest/made available to the beneficiary/beneficiaries as if the option had been exercised on the date of the death of the deceased member PROVIDED FURTHER that if the beneficiary /all the beneficiaries shall not exercise such option in writing within 180 days of the date of the death of the married member, the beneficiary/beneficiaries shall be deemed to have

irrevocably opted for the benefits mentioned in sub-rule (a) above.

(d) The notional date referred to in this rule shall mean the date on which the deceased employee would have superannuated if his earlier death had not intervened.

(e) For the purpose of this rule the provisions of sub-rule (b) of Rule (6) shall not apply.

8. (A) At the time of death of an employee, not having an employable dependent member, the beneficiary will be permitted to exercise option as provided in Rule-7(b) and in the event employment is provided to dependent member subsequently, the provisions of Rule-7(b) will cease to operate and the beneficiary will be governed by Rule- 7(2).”

22. In the case of *Treasuries in Karnataka v. V. Somyashree*, (2021) SCC OnLine SC 704, the Hon’ble Supreme Court has laid down the principle for granting appointment on compassionate grounds, which are as follows:

“17. ... It is further observed that the dependent of the deceased Government employee are made eligible by virtue of the policy on compassionate appointment and they must fulfill the norms laid down by the State's policy. It is further observed and held that the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim of compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee,

can only demand consideration of his/her application. It is further observed he/she is, however, entitled to seek consideration in accordance with the norms as applicable on the day of death of the Government employee. The law laid down by this Court in the aforesaid decision on grant of appointment on compassionate ground can be summarized as under:

- (i) that the compassionate appointment is an exception to the general rule;*
- (ii) that no aspirant has a right to compassionate appointment;*
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;*
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;*
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment."*

In cases where dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood, a provision is being made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The object behind granting compassionate employment is thus to enable the family to tide over sudden crisis.

23. The letter dated 7th August 2008 issued by the General Manager Hindustan Petroleum to the Under Secretary, Government of India, Ministry of Petroleum & Natural Gas, is reproduced herein as under:

“The Under Secretary

August 7,2008,

*Government of India
VIP Cell,
Ministry of Petroleum & Natural Gas
Shastri Bhawan
New Delhi 110001*

*Sub: VIP Ref. No.200801063/Dy. No. 7837 dated
27/6/2008 - Request for employment on compassionate
grounds- Shri Ravinder, Son of late Shri Mahender
Paswan (Emp. No. 993734)*

Dear Sir,

*This has reference to letter dated 24/6/2008 from the
Hon'ble Member of Parliament, Shri Sajjan Kumar
addressed to Shri Murli Deora, Hon'ble Minister of
Petroleum & Natural Gas, enclosing representation from
Smt. Manju Devi regarding employment of her son, Shri
Ravinder, on compassionate grounds.*

*In this regard, we wish to clarify that as a matter of
policy, the option of compassionate employment in the
Corporation of an eligible dependent - spouse/son/
daughter, in the event of the death of an employee, while
in service has been withdrawn, with effect from August
2004, keeping in view, the surplus manpower position
and the need to improve productivity levels in an
increasingly competitive market. In fact, in the Marketing
Division of the Corporation, there has been no*

recruitment in the non-management/Workmen category, in the last few years.

The above position has been explained to Smt. Manju Devi by the company officials at Shakurbasti/New Delhi and she has also been advised to exercise other available options as per the Rules of the Corporation.

In view of the above, we regret our inability to consider the request of Smt. Manju Devi, for employment of her son, in the Corporation.

Very truly yours,

*Sandeep Joseph
General Manager-IR”*

24. The letter dated 29th June 2012 issued by Respondent to the petitioner, also reiterated the fact that the Scheme for compassionate employment has been withdrawn.

25. In the instant case, the petitioner is seeking compassionate employment for her son under the Rule 7(b)(ii)/8A of the Scheme. The petitioner sought the benefits of the scheme in the year 2008, after her husband expired, however, the scheme was withdrawn and discontinued by the respondent corporation in the year 2004. The fact of the discontinuation of the scheme was duly intimated to the petitioner vide letters dated 7th August 2008 and 29th June 2012. Despite the communications, the petitioner sought to avail the benefits of the scheme which in fact did not exist at that time.

26. Moreover, the petitioner was given an option to choose from the three Schemes of the Respondent Corporation when she first

approached it after her husband expired and she, with her own will and volition, opted for the benefits under Rule 7(b)(ii)/8A of the Scheme. By virtue of the Scheme opted by her, she was entitled to 100 per cent benefit as her husband would have received, had he superannuated. Accordingly, the petitioner had received a sum of over Rs. 58 lakhs. It was only after having opted for benefits under Rule 7(b)(ii)/8A of the Scheme, that she approached Respondent Corporation seeking compassionate employment for her son. It is found that after waiving the other options as given to her by the Respondent Corporation, she could not have sought to avail the benefit at a later stage.

27. The whole object behind granting compassionate employment is to enable the family to tide over the sudden crisis. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession and not a right. The petitioner had availed the monetary benefits, under the scheme opted by her, to the tune of Rs. 58 lakhs. Having received such benefits, the family of the deceased service man would have survived and revived from the crisis that took upon them by surprise. After the effects of such crisis mitigated by the reason of her opting the scheme under Rule 7(b)(ii)/8A, the petitioner did not have the entitlement to approach under the Scheme of compassionate employment since the very purpose of the scheme was surpassed.

29. In light of the arguments advanced, material perused as well as the fact that the respondent has withdrawn the scheme under which the

petitioner is seeking benefit and that she, with her own free will, chose to avail benefits of another scheme, by which she has received a sum of over Rs. 58 lakhs, this Court does not find any cogent reason or ground to allow the instant petition and grant the relief as prayed for by the petitioner. The Respondent Corporation after computation has already paid the petitioner Rs. 58,88,990/-, including last drawn salary from May 2008 to January 2014, EPF, Gratuity, Annuity, Pension GPAI etc., and no further benefit remains to be reaped by the petitioner from the Respondent Corporation.

30. Keeping in view the aforesaid discussions, the instant petition is dismissed for being devoid of any merit.

31. Pending application, if any, also stands disposed of.

CHANDRA DHARI SINGH, J

JULY 14, 2022

Aj/ct