

A STATE OF HARYANA AND ORS.
v.
SHRI SURAJ BHAN.

OCTOBER 30, 1996.

B [K. RAMASWAMY AND G.B. PATTANAİK, JJ.]

Service Law :

C *Compassionate appointment—Driver declared unfit to drive heavy vehicles—After retirement sought appointment of his son on compassionate grounds—High Court directing appointment—On appeal, held, Rules of compassionate appointment not applicable. Son of disabled driver cannot be appointed on this basis—He may apply in response to advertisement for recruitment—If age-barred, time spent in the service of the appellant-State would be considered for relaxation.*

D *State of Haryana v. Hawa Singh, [1995] 2 SCALE 77 and State of Haryana and Ors. v. Surjeet Singh, [1996] 5 SCALE 493, relied on.*

E *Anand Bihari and Ors. v. RSRTC, Jaipur, [1991] 1 SCC 371; referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No.14583 of 1996.

F From the Judgment and Order dated 16.8.94 of the Punjab and Haryana High Court in C.W.P. No. 6291 of 1993.

Prem Malhotra for the Appellants.

Ugra Shankar Prasad and R.P.A. Jaiswal for the Respondent.

G The following Order of the Court was delivered

Delay condoned.

H Leave granted.

We have heard learned counsel on both sides.

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The respondent was appointed as a Driver on November 1, 1970 with the appellant-Corporation. By proceedings dated August 7, 1992, he was declared unfit to drive heavy vehicles. It appears that he was given extension of service and he retired from service on 16.10.1995. In the meanwhile, he had applied for appointment of his son on compassionate grounds, he being an implied employee. Since the appellant had not appointed him, he filed Writ Petition No. 6291/93. The High Court of Punjab and Haryana by its judgment dated August 16, 1995 directed the appellant to appoint his son on compassionate grounds. Thus, this appeal, by special leave.

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In *State of Haryana v. Hawa. Singh*, [1995] (2) SCALE 77, a Bench of three Judges of this Court had considered a similar question. The respondent therein, also, was declared medically unfit for driving heavy vehicles by the District Medical Officer due to defect in his eye sight. On the basis of the medical report, the respondent retired from service of the appellant-Corporation. Then he had applied for appointment of his son on compassionate grounds. This Court, after noticing another judgment of this Court in *Anand Bihari and Ors. v. RSRTC Jaipur*, [1991] 1 SCC 371, had held that the scheme for appointment on compassionate grounds has no application to the persons who retired from service on medical unfitness to drive heavy vehicles. This Court had explained the ratio in *Anand Bihari's* case in paragraph 6 and held that the High Court was not justified in that case in directing that one of the defendants-respondent therein, be given a suitable job commensurate with the educational qualifications possessed by them. Thus, the approach in *Anand Bihari's* case was not approved of and it was held that only in exceptional circumstance, where it is not possible to adjust them in any alternative job, the driver who is declared medically unfit may be paid compensation as indicated in *Anand Bihari's* case but not to make appointment on compassionate grounds.

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In *State of Haryana and Ors. v. Surjeet Singh*, [1996] 5 SCALE 493, this Court had considered the very same question and held that the rules of compassioante appointment are inapplicable to a driver who was disabled in sight to drive heavy vehicles and that, therefore, compassioante appointment to the son of such disabled driver cannot be made.

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Learned counsel for the respondent sought reliance on para 6 of the judgment wherein this Court had held that the order issued by the High

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- A Court was not to be interfered with pursuant to the concession made by the counsel for the appellant that the case of the respondent's son therein would be considered. Pursuant thereto, his case was considered and appointment was made and, therefore, the same benefit may be given to the respondent's son herein also. *Hawa Singh's* case was not brought to the notice of this Court in *Surjeet Singh's* case. In *Surjeet Singh's case* (supra), this Court had specifically laid down the law that since the law was laid down for the first time, in that case it was held that the direction issued for non-interference in that case would not be construed to be a precedent. Under those circumstances, it is difficult to give acceptance to the contention of the learned counsel for the respondent to allow his son appointed due to the impugned direction, to remain in service.

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The appeal is accordingly allowed. The order of the High Court stands set aside. It is open to the respondent's son to apply for any of the appointments, if and when an advertisement is made for recruitment. In that behalf, if and when he seeks selection in accordance with the rules, if he is barred by age by that time, the time spent in the service of the appellant would be considered for relaxation. No costs. Appeal allowed.

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G.N.

Appeal allowed.