

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5565 of 2008(O&M)

Date of decision: July 03, 2015

Vijay Kumar

----Petitioner

Versus

State of Punjab and others

----Respondents

CORAM: HON'BLE MR.JUSTICE HARINDER SINGH SIDHU

Present: - Mr. C.M. Munjal, Advocate for the petitioner.

Mr. J.S. Sidhu, Advocate for the respondents.

HARINDER SINGH SIDHU, J.

This petition has been filed praying for quashing the order dated 10.03.2008 (Annexure P-11) issued by respondent No.1 whereby the competent authority in the respondent Board, after considering the case of the petitioner has decided that instead of giving employment on compassionate ground he would be given solatium of Rs.3,00,000/-.

The facts in brief are that the father of the petitioner Shri Suresh Kumar Kathuria while posted as UDC with the respondent No.1-Board died due to the accident on 07.10.1998 during duty hours. The petitioner being his son and legal heir, submitted application dated 29.12.1998 for grant of retiral benefits and also claimed service on compassionate ground. As no decision was taken on the aforesaid claim for some time, he filed CWP No. 1496 of 1999 praying for directions to the respondents to release him the retiral benefits and give him service on compassionate basis. The writ petition was disposed of vide order

dated 4.2.1999 and the respondents were directed to consider the claim of the petitioner within three months of the order. It was also directed that if there is any other claimant to the same relief, such claim be also considered. As the respondent Board had received two separate claims for the same relief, one from Shri Vijay Kumar, petitioner and another from Smt. Sunita Kathuria claiming to be the wife of the deceased, the respondent Board filed an interpleader suit under section 88 of the CPC before the Civil Court at Abohar requesting the Court to determine the rightful claimant for the purposes of receiving the retiral and other benefits of deceased Sh. Suresh Kumar Kathuria. The civil suit filed by the respondent Board was decreed on 04.03.2005 to the effect that the petitioner is the only legal heir of the deceased Suresh Kumar Kathuria, therefore, he is entitled to retiral and other benefits including compassionate appointment consequent on the death of Shri Suresh Kumar Kathuria. Smt. Sunita Kathuria, appealed against the said order, which was dismissed by the First Appellate Court on 08.09.2006. Thereafter, she alongwith her minor children filed Regular Second Appeal No. 626 of 2007 before this Court, which was also dismissed vide order dated 11.12.2007.

The controversy regarding entitled having being finally settled, the petitioner again requested the respondents to grant him the necessary benefits. In response thereto the petitioner was asked vide letter dated 22.2.2007 to submit fresh pension forms along with birth certificate, affidavit of legal heirs, certificate of unemployment etc. The petitioner in response submitted all the documents, as required vide his letter dated 24.4.2007. Thereafter, respondent No.2 forwarded the case

of the petitioner for pension as well as for employment on compassionate basis to Dy. Chief Engineer Muktsar alongwith the original documents vide letter dated 31.5.2007. There was some further communication inter-se the respondents. Finally the impugned order dated 10.03.2008 was passed whereby the petitioner was conveyed that instead of giving employment on compassionate ground he would be given solatium amount of Rs.3,00,000/-. It is this order that the petitioner has impugned in this petition.

In the written statement filed on behalf of respondents No.1 to 3, it has been stated that after the death of Shri Suresh Kumar Kathuria on 10.07.1998, the petitioner applied on 21.12.1998 claiming to be the only legal heir of the deceased. Before that Smt. Sunita Kathuria had submitted application on 22.2.1998 claiming to be the wife and legal heir of the deceased and thereby entitled to the retiral benefits. In view of there being two claimants, the Board filed inter-pleader suit which was decided on 04.03.2005 in favour of the petitioner by the trial court and ultimately, settled by the High Court on 10.02.2007 when the regular second appeal filed by Smt. Suresh Kathuria was dismissed. It is contended that it is only after the aforesaid decision that the claim of the petitioner came under the consideration zone. By then a new policy Annexure R-1 dated 23.11.2004 had been framed by the Board. As per this policy it had been decided to discontinue the earlier policy of providing compassionate employment to the wards/dependents of deceased Board employees as per Punjab Government Policy and instead alternative policy to grant lump-sum solatium to the family of the deceased employees was adopted. It is thus contended that though the

petitioner had applied in the year 1998 but at the time when his case came up for consideration after the decision of the inter-pleader suit in his favour, the earlier policy for providing compassionate appointment was no longer in existence and his case was to be considered in terms of the new policy which had been implemented w.e.f. 23.11.2004.

Learned counsel for the petitioner has disputed the stand of the respondents. He states that it is settled law that the claim for compassionate appointment is to be decided in terms of the policy/rules prevalent at the time of the death of the employee and not the rules which are applicable when the claim is considered. Reliance has been placed on a decision of the Hon'ble Supreme Court **Abhishek Kumar v. State of Haryana, (2006) 12 SCC 44**, and some decisions of this court where the above decision has been relied upon to hold that the cases of compassionate appointment are to be decided as per the policy at the time of death. These decisions are **Sheela Devi Vs. State of Haryana and ors 2008(4) SCT 475** and **Parkasho Devi Vs. State of Haryana 2011(2) SLR 241 etc.**

On the other hand, learned counsel for the respondents has stated that the case of the petitioner is to be considered in terms of the new policy Annexure R-1 because by the time he was declared to be the legal heir entitled to all benefits on account of the death of the deceased, the earlier policy had been discontinued and a new policy was framed as per which only solatium was to be paid. He further states that the death had occurred in 1998. The whole object and purpose of compassionate appointment is to provide immediate relief to the family of the deceased to help it tide over the penurious situation consequent on

the sudden death of the bread winner. If the family has survived for about 16-17 years thereafter there is no justification in giving compassionate appointment at this late stage. To which the Ld. Counsel for the petitioner would reply by stating that he had applied immediately after the death in the year 1998 itself and if such a long time has been taken in deciding the claim due to peculiar circumstances, that should not be a ground to deny him his legitimate due.

Before proceeding further, it would be necessary to reproduce relevant extracts of the new policy Annexure R-1:-

“Memo NO.161283/162033/ ENBG-7(I)239/A dated 23.11.2004.
Subject: Compassionate appointments-2002-Policy Regarding

The Punjab State Electricity Board had so far been following policy instructions regarding grant of compassionate employment on priority basis to the wards/dependents of deceased Board employees, issued by Punjab Govt. Department of Personnel (Personnel Policies- II Branch) vide their Memo NO.11/16/94/PP- I/13533 dated 8.8.96 as amended from time to time. There instructions were issued by the Punjab Govt. on the basis of judgment by the Supreme Court of India in the case titled ‘Umesh Kumar Nagpal vs. State of Haryana and ors. (1994).

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2. From the Punjab Government instructions and Hon’ble Supreme Court Judgment, it was observed that the spirit behind providing compassionate appointment is to enable the family of the deceased employee to get over the immediate financial crisis. The Punjab State Electricity Regulatory Commission has directed PSEB to take some concrete steps

to reduce its manpower cost. They have time and again reiterated that the Board is highly overstaffed and refused to give the Board even the actual cost incurred in respect of the present employees. An analysis was done of the manpower being recruited through the channel of compassionate appointment and it was found that the majority of the incumbents were recruited in the cadres of Peons, Chowkidars RTMs. Only a handful were recruited in the clerical or technical cadres where there are large number of vacancies and there is a need for manpower. Further many of these appointees were illiterate and most of them, especially widows, were appointed after relaxation in qualifications prescribed by the Board, for posts of Peons, RTMs, LDCs etc. Being a commercial organization and with the establishment of the PSERC and its mandate, it was felt that PSEB could ill afford the burden of mediocre human resource which it was bound to recruit on account of policy of compassionate appointment. This directly affected the financial viability of the Board. It was desired that a policy be formulated whereby some lump-sum compensation may be given to the family in the event of the employees death or 100% disablement in complete settlement of the matter and the system of providing compassionate employment may be dispensed with. Therefore, as desired, a comprehensive policy was to be framed keeping in view the welfare of the employees and at the same time out compromising on commercial principles. In the meantime, the compassionate appointment cases were temporarily stopped in 4/2002 to be considered in light of the new policy.

3. In the meantime, some of the applicants for compassionate appointments approached the Hon'ble Punjab & Haryana High Court, Chandigarh seeking directions to the Board to issue them appointment letters. In one such cases titled 'Jagsir Singh v. PSEB, CWP No. 1678/04, the

Division Bench issued directions on 23.3.04 to the PSEB to take decision in the pending cases within two months from that day, which was subsequently extended to 5 months.

4. That Board in its meeting held on 16.08.04, has considered the whole matter in its entirety and has decided to discontinue the policy of providing compassionate employment to the wards/dependents of deceased Board employees as per Punjab Govt. Policy and has decided to adopt its own alternate policy, as under, in lieu of compassionate employment to help the family of the deceased Board employee to tide over the financial crisis which, the family had to face due to sudden demise of the bread-winner:-

i) To grant lump-sum compensation i.e. solatium on the following scale;

40% of Basic Pay of the deceased employee (drawn on the date of death) to be multiplied by 6.21 (one time multiplying factor to be applied to all categories of employees) x 12 (with a minimum of Rs.3 lacs and a maximum of Rs.5 lacs). Solatium shall be in addition to other payments admissible under the existing rules.

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ii) And in addition to the grant of solatium as hereinbefore provided, a special pension equal to the last pay (basic) drawn along with dearness relief sanctioned from time to time, shall be granted till the date of his/her superannuation and shall be payable to the legal heirs as defined by the Pb. Govt. Deptt. Of Finance (Finance Personnel-III Branch) notification 1/7/98-I FP-3/8709 dated 16.7.98 adopted by the Board vide Secretary./Fin. Circular No. 36/98 dated 4.9.98 as amended from time to time. Thereafter, the pension will be admissible in accordance with the normal family pension

rules. In case death occurred after 1.1.96, the basic pay shall be converted as Special Pension however, if death had occurred prior to 1.1.96, last basic pay drawn shall be notionally fixed as on 1.1.96 in terms of Pb. Govt. Deptt. Of Finance Notification No. 1/7/98/IFP/III/8825 dated 21 July/18th August., 1998 adopted vide Secy. Finance Section Circular No. 36/98 dated 4.9.98. The arrears shall be payable (i) w.e.f. 10.4.02 (the date from which the Board stopped giving priority employment) or (ii) the date of death whichever is later, on the basis of decision taken by the O/O of the Secretary/ENG-II, PSEB, Patiala.

5. New Policy shall be uniformly applicable to all regular employees who are on the rolls of PSEB without any distinction and irrespective of their financial status. The work charged employees are not covered under the existing pension scheme and as such, the work charged employees having 5 years or more of service (including daily wage) and who die while in service/100% disabled by electrocution shall be entitled only to solatium.

xxx	xxx	xxx	xxx	xxx	xxx
xxx	xxx	xxx	xxx	xxx	xxx

8. The above policy instructions shall be applicable from the date of issue of instructions. The cases, where compassionate employment has not been given due to discontinuance of the earlier policy since 4/2002, shall also be considered and requisite relief, in lieu of compassionate employment, shall be granted as per above policy instructions.”

The main issue that needs to be decided is whether the case of the petitioner is required to be considered as per the policy at the time of death of his late father in 1998 or the later policy Annexure R-1 which

was in place when the petitioner's case was actually considered after the decision in his favour in the inter-pleader suit.

I have gone through the judgments relied upon by the Ld. Counsel for petitioner.

In ***Abhishek Kumar's case*** (*supra*), the facts were that 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 by the appellant within about two weeks of the death of his father. 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 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.

In the writ petition filed by the petitioner the respondents raised the contention that 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" and as per Rule 9 thereof appointments under the Rules shall be made only on regular basis and that too only, if regular posts meant for that purpose are available.

The High Court dismissed the petition relying on the 2003 Rules. It was in that context that the Hon'ble Supreme Court allowing the appeal filed by the appellant observed as under:

“5. The appellant herein had sought for appointment on compassionate grounds at a point of time when the 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, in the State of Haryana a Statewise 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 in the way and refused to provide for the post.

7. When a Statewise list is prepared, it does not lie in the mouth of a authority-in-charge, 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.”

Thus, in this case the appellant had been offered an appointment by the State as per the Statewise list maintained by the State of Haryana. It was only the District Magistrate Karnal, who objected on the ground that there was no post available in Karnal. The Hon’ble Supreme Court held that once the State wise list had been prepared, it was not open to the District Magistrate to disobey the order.

Evidently in this case, the appellant’s case had been considered in terms of the then existing policy, a state wise list prepared in accordance therewith and he was offered appointment, which was

denied by the District Magistrate Karnal on the ground that there was no vacancy in Karnal. The Hon'ble Supreme Court held if post was not available in Karnal, there is no dispute that such a post would be available elsewhere as otherwise he would not have been offered such appointment. It was only in the aforesaid context that the Hon'ble Supreme Court made the observations about the earlier policy being applicable.

The question was, however, squarely raised before the Hon'ble Supreme Court in a later case **SBI v. Raj Kumar, (2010) 11 SCC 661, at page 663.**

The facts in this case were that the respondent's father employed as a Messenger in the appellant Bank, died on 1-10-2004. The respondent's mother made applications dated 6-6-2005 and 14-6-2005 requesting for his appointment on compassionate grounds. When the applications were being processed and verified, the Compassionate Appointment Scheme was substituted by the "SBI Scheme for payment of ex gratia lump sum amount" with effect from 4-8-2005. The new Scheme abolished the old Scheme for compassionate appointments and instead provided for payment of an ex gratia lump sum amount as per its terms.

Clauses 14 and 15 of the new Scheme which are relevant for our purpose are extracted below:

"14. Date of effect of the Scheme and disposal of pending applications.—... Applications pending under the Compassionate Appointment Scheme as on the date on which this new Scheme is approved by the Executive Committee of the Central Board will be dealt with in

accordance with the new Scheme for payment of ex gratia lump sum amount provided they fulfil all the terms and conditions of this Scheme.

15. Miscellaneous provisions of the Scheme

* * *

(vi) With effect from the date the 'SBI Scheme for payment of ex gratia lump sum amount' comes into force the Bank's Scheme of compassionate appointments shall be deemed abolished/withdrawn and no request for compassionate appointment shall be entertained or considered by the Bank under any circumstance."

As after the abolishing of the old Scheme there was no provision for compassionate appointment. The Bank on 31-1-2006 asked the family of the deceased to make an application under the new Scheme for ex gratia payment. Feeling aggrieved, the respondent filed a writ petition before the Allahabad High Court. The learned Single Judge directed the appellant to reconsider the case of the respondent for appointment on compassionate grounds, holding that the old Scheme applied and the new Scheme was only prospective in operation. The said order was affirmed by the Division Bench. The Bank filed an appeal before the Supreme Court.

Thus, the Hon'ble Supreme Court was called upon to decide as to which scheme was to be applied, the one in operation when the death occurred or the new one which had been formulated during the time when the claim was being processed. The Hon'ble Court held as under:

"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.

9. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply.

10. *On the other hand, if a scheme provides that on the death of an employee, 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 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. But such schemes are rare and in fact, virtually nil.*

11. *Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.*

12. *Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the*

scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

14. In this context we may usefully refer to the decision of this Court in Union of India v. R. Padmanabhan wherein this Court observed: (SCC pp. 278-79, para 8)

“8. ... That apart, being ex gratia, no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the guidelines and policy in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the scheme itself. The line of decisions in relation to vested rights accrued being protected from any subsequent amendments may not be relevant for such a situation and it would be apposite to advert to State of T.N. v. Hind Stone. That was a case wherein this Court had to consider the claims of lessees for renewal of their leases or for grant of fresh leases under the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the applications filed for lease or renewal for a long time and then dispose them of on the basis of a rule which had come into force later. This Court, while reversing such a view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay, if any, involved although it is desirable to dispose of the applications, expeditiously.

16. In this case the employee died in October 2004, the application was made only in June 2005. The application was not even by the respondent, but by his mother. Therefore, it was necessary to ascertain whether the respondent really wanted the appointment, whether he possessed the eligibility, and whether any post was available. Within two months of the application, the new Scheme came into force and the old Scheme was abolished. The new Scheme specifically provided that all pending applications will be considered under the new Scheme. Therefore it has to be held that the new Scheme which came into force on 4-8-2005 alone will apply even in respect of pending applications.”

The Hon'ble Court specifically explained and distinguished an earlier case which was relied upon by the respondents to contend that the scheme/ policy at the time of death is to be considered:

“17. The respondent relied upon the following observations in SBI v. Jaspal Kaur to contend that he was entitled to be considered under the old Scheme which was in force at the time of the application by his mother: (SCC pp. 578-79, para 26)

“26. Finally in the fact situation of this case, Shri Sukhbir Inder Singh (late), Record Assistant (Cash & Accounts) on 1-8-1999, in the Dhab Wasti Ram, Amritsar Branch, passed away. The respondent, widow of Shri Sukhbir Inder Singh applied for compassionate appointment in the appellant Bank on 5-2-2000 under the scheme which was formulated in 2005. The High Court also erred in deciding the matter in favour of the respondent applying the scheme formulated on 4-8-2005, when her application was made in 2000. A dispute arising in 2000 cannot be decided on the basis of a scheme that came into place much after the dispute arose, in the present matter in 2005. Therefore, the claim of the respondent that the income of the family of the deceased is Rs 5855 only, which is less than 40% of

the salary last drawn by late Shri Sukhbir Inder Singh, in contradiction to the 2005 Scheme does not hold water.”

18. *The said observations are read out of the context by the respondent. In that case the Bank employee died on 1-8-1999. Application was filed by the widow on 5-2-2000. The case of the widow was considered twice and the request for appointment on compassionate grounds was declined by taking into consideration the financial position/capacity of the family. The High Court allowed the writ petition filed by the widow in 2004 on the ground that the terminal benefits of Rs 4,57,607 received by the family were not sufficient for the sustenance of the family. In an appeal by the Bank, it was contended before this Court that in addition to Rs 4,57,607 paid as terminal benefits, the widow was getting Rs 2055 per month as family pension and that was not considered by the High Court. During the hearing before this Court, the widow relied upon the new Scheme dated 4-8-2005 and sought additional payment in terms of the scheme.*

19. *The above observations were made in the context of rejecting the widow's request for additional payment under the 2005 Scheme. In fact, this Court allowed the Bank's appeal and dismissed the writ petition filed by the widow for additional benefits. The said observations, cannot therefore be of any assistance to consider the applicability of the old Scheme for compassionate appointment vis-à-vis the new Scheme for ex gratia payment.”*

Like in the above case, the amended policy in the present case specifically provides in paragraph 8 that the instructions shall be applicable from the date of issue of instructions. It is specifically provided

that the cases, where compassionate employment has not been given due to discontinuance of the earlier policy since 4/2002, shall also be considered and requisite relief, in lieu of compassionate employment, shall be granted as per above policy instructions.

Thus, as per the ratio of the aforesaid decision of the Hon'ble Supreme Court, the case of the petitioner has been rightly considered as per the amended policy Annexure R-1.

Moreover, one cannot lose sight of the legal position repeatedly stressed by the Hon'ble Supreme that the whole object and purpose of compassionate appointment is to provide immediate relief to the family to tide over the financial difficulties faced on account of death of the bread winner and it cannot be claimed after a lapse of time. It is not a mode of recruitment.

In **Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138, at page 139** the object and purpose of compassionate appointment has been explained thus:

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved

out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or

required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

No doubt in the present case, the petitioner had applied for compassionate almost immediately after the death of his father. But the matter got embroiled in a legal dispute because of a rival claim being filed. By the time a final resolution of the issue was achieved, the policy of compassionate appointment had been withdrawn and the new policy Annexure R-1 framed which provided only for a lump sum solatium instead of compassionate appointment. By now about 17 years have passed since the death of the father of the petitioner. The plight of the petitioner who has waited all these years, in the hope and expectation of a job, can only be imagined. If there had been no rival claim and his case had been considered at the time he had applied, he may have got

the job. Alternatively, if he had tried and competed for a job in the open market, without waiting for the compassionate appointment to fructify, he may well have succeeded. And thereby hangs a tale which all applicants for compassionate appointment ought to take note of. Pursue your cases by all means, if you will, but simultaneously, do not give up on your effort to compete for a job on your own merit and capability.

Though painful, but in these circumstances there is no option but to deny relief to the petitioner because a Court of law is to decide as per law. In this regard I am mindful of the admonition of the Hon'ble the Supreme Court in **LIC v. Asha Ramchandra Ambekar, (1994) 2 SCC 718**, where the Hon'ble Court observed :

“10. Of late, this Court is coming across many cases in which appointment on compassionate ground is directed by judicial authorities. Hence, we would like to lay down the law in this regard. The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration. No doubt Shakespeare said in “Merchant of Venice”:

*“The quality of mercy is not strain'd;
It droppeth, as the gentle rain from heaven
Upon the place beneath it is twice bless'd;
It blesseth him that gives, and him that takes;”*

These words will not apply to all situations. Yielding to instinct will tend to ignore the cold logic of law. It should be remembered that “law is the embodiment of all Wisdom”. Justice according to law is a principle as old as the hills. The courts are to administer law as they find it, however, inconvenient it may be.

11. At this juncture we may usefully refer to Martin Burn Ltd. v. Corporation of Calcutta at page 535 of the Report the following observations are found:

“A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what

it considers a distress resulting from its operation. A statute must of course be given effect to whether a Court likes the result or not.”

The courts should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, hard the case may be, it should never be done. In the very case itself, there are regulations and instructions which we have extracted above. The court below has not even examined whether a case falls within the scope of these statutory provisions. Clause 2 of sub-clause (iii) of Instructions makes it clear that relaxation could be given only when none of the members of the family is gainfully employed. Clause 4 of the circular dated January 20, 1987 interdicts such an appointment on compassionate grounds. The appellant Corporation being a statutory Corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and Instructions. They cannot be put aside and compassionate appointment be ordered.

12. *Further it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law. In Brij Mohan Parihar v. M.P.S.R.T. Corpn. it is stated as under:*

“The provisions of the Motor Vehicles Act and in particular Sections 42 and 59 clearly debar all holders of permits including the State Road Transport Corporation from indulging in unauthorised trafficking in permits. Therefore the agreement entered into by the petitioner, unemployed graduate, with the State Road Transport Corporation to ply his bus as nominee of the Corporation on the route in respect of which the permit was issued in favour of the Corporation for a period of five years, was clearly contrary to the Act and cannot, therefore, be enforced. In the circumstances, the petitioner would not be entitled to the issue of a writ in the nature of mandamus to the Corporation to allow him to operate his motor vehicle as a stage carriage under the permit obtained by the Corporation as its nominee.”

13. It is true that there may be pitiable situations but on that score, the statutory provisions cannot be put aside.”

Thus, the writ petition is dismissed.

July 03, 2015
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(HARINDER SINGH SIDHU)
JUDGE