

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

C. W. P. No. 12771 of 2015 (O&M)

Date of Decision : August 10, 2015

Sunil Kumar Petitioner

Vs.

State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Arun Takhi, Advocate
for the petitioner.

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DEEPAK SIBAL, J. :

C. M. No. 8254 of 2015 :

Through this application, filed on behalf of the applicant-petitioner, Annexure A-19 is sought to be placed on the record of the case.

Allowed as prayed for.

The application stands disposed of.

Main Case :

Through the present writ petition, the petitioner seeks

appointment on compassionate grounds. It is not disputed that the father of the petitioner died in harness on 25.01.1996 i.e. over 19 years ago. It is further not disputed that the petitioner had applied for seeking compassionate appointment after over seven years of the death of his father i.e. on 16.05.2003 and that while processing the application of the petitioner, vide order dated 04.07.2003, the petitioner was asked to submit certain documents, which were submitted by the petitioner after nine years i.e. in the year 2012.

In view of the undisputed delay on the part of the petitioner, he cannot be granted the relief of appointment on compassionate basis as the same would go against the very objects of the such appointment, which is to provide immediate succour to the family, which may suddenly find itself in penury on account of the death of its sole bread winner.

The relief claimed by the petitioner is also barred under the policy for appointment on compassionate basis dated 08.05.1995 of the respondent State of Haryana, which was applicable at the time of the death of the petitioner's father. As per the policy, no application for compassionate appointment was to be entertained after three years of the death of an employee. There is no challenge to such clause in the policy. It has merely been stated that in a subsequent policy of the State of Haryana dated 31.08.1995 (Annexure P-15), there was no limitation clause. A perusal of the policy dated 31.08.1995 shows that it only clarifies the

earlier policy dated 08.05.1995 on certain issues and is not in supersession thereof. As in the subsequent clarification, there is no clarification on the issue of limitation, the bar to entertain an application seeking appointment on compassionate basis after three years of the death of the employee, as contained in the main policy dated 08.05.1995, would continue to apply.

It is well settled by the Apex Court that appointments on compassionate basis should not be directed to be made, where there is delay in making the application for such appointment. In this regard, a judgment of the Apex Court in the case of **Commissioner of Public Instructions and others v. K. R. Vishwanath** reported as **(2005) 7 Supreme Court Cases 206** can usefully be referred to, relevant portion of which is as under :-

“10. In Smt. Sushma Gosain and Ors. v. Union of India and Ors. (1989 (4) SCC 468), it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided

immediately to redeem the family in distress.

The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in [Phoolwati \(Smt.\) v. Union of India and Ors. \(1991 Supp \(2\) SCC 689\)](#), and [Union of India and Ors. v. Bhagwan Singh \(1995 \(6\) SCC 476\)](#). [In Director of Education \(Secondary\) and Anr. v. Pushpendra Kumar and Ors. \(1998 \(5\) SCC 192\)](#), it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely 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, provisions are made for giving appointment to one of the dependants of the deceased

who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased-employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision.

11. In State of U.P. and Ors. v. Paras Nath (1998 (2) SCC 412), it was held that the purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody

else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments.

12. *The ratio in Life Insurance Corporation of India's case (supra) is fully applicable to the present case.*

13. *Above being the position, the Tribunal and the High Court were not justified in directing that the respondent's case be considered for appointment in terms of the Rules without taking note of the limitation prescribed. The judgments are set aside. The appeal is allowed without any order as to costs. Our interference shall not stand on the way of the respondent's case being considered on the basis of applicable existing or future Rules as may be applicable. ”*

To the same effect are the following observations of the Apex Court in the case of **Local Administration Department and another vs. M. Selvanayagam alias Kumaravelu** reported as **(2011) 13 Supreme Court Cases 42**, in which it has been held as under :-

“11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased employee would be directly in conflict with Articles 14

& 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.”

In view of the facts of the case in hand and the settled position of law, as referred to above, the present petition, being devoid of any merits, is ordered to be dismissed.

No costs.

(DEEPAK SIBAL)
JUDGE

August 10, 2015
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