

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.17437 of 2015

Date of Decision: 06.10.2015

Dharminder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mohit Jaggi, Advocate,
for the petitioner.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest? Yes

RAJIV NARAIN RAINA, J.

1. The right to compassionate appointment is governed strictly by State policy as it is an exception to the general rule of recruitment to public service measured by standards as would not frustrate the equality and equal opportunity principles in Articles 14 and 16 of the Constitution of India and the constitutional scheme of public appointments.

2. The petitioner's father died in harness on September 28, 2011 while serving as a Patwari in the revenue department in District Kapurthala, Punjab. Minor son, the petitioner born on January 1, 1997, applied for benefit through his mother on December 12, 2012 of appointment as Patwari in Class III service.

3. The Deputy Commissioner, Kapurthala called for a report on the financial condition of the surviving family. The report dated August 4, 2014 was that the position is weak as the family possessed only 6 Kanals of

land but no action has been taken on the favourable report. Petitioner cited instance of one Prabhjot Singh whose father, a Patwari serving in the same district died on January 2, 2014 and was provided employment on May 30, 2014 after applying on January 22, 2014. Says he has been discriminated against in the matter of appointment while the case of Prabhjot has been fast tracked.

4. Dismayed by the delay in considering his case on a positive note, he came to court in CWP 5001 of 2015 claiming directions for appointment as a Patwari. The petition was disposed of on arch 19, 2015 with a direction to Deputy Commissioner, Kapurthala to consider his request within one month by passing a comprehensive order assigning reasons in support of the decision arrived at. An order has been passed on May 5, 2015 rejecting the request for appointment as Patwari, which is impugned in the present petition.

5. The impugned order dated May 5, 2015 reasons that the petitioner is not eligible anymore for the post of Patwari under the amended rules of service. The rules governing the post of Revenue Patwari are the Punjab Government Patwaris (Class III) Service Rules, 1966 as amended by notification dated October 28, 2014. Order impugned says he is eligible and qualified only for a Class IV post as per Govt. instructions. The petitioner is not a Graduate which degree from a recognized University or institution the amended rules demand as compulsory.

6. According to the Deputy Commissioner, Kapurthala who is the appointing authority of a Revenue Patwari, the amended rule has come into force and would also govern a case of compassionate appointment.

Moreover, Punjab Government instructions dated November 21, 2002 are cited where minimum age for appointment on compassionate grounds under the Scheme, 2002 for Class III post is 18 years. On the date of application the petitioner had not attained the minimum age requirement. Today, essential educational qualification stands amended to read Graduation, which condition the petitioner does not fulfill as yet. However, the Deputy Commissioner, Kapurthala endorses the report of the Sub Divisional Magistrate, Bholath that the financial condition of the family is weak and offers an appointment letter as per eligibility. The petitioner can thus look forward to a Government job as per his entitlement and eligibility in Class IV service in District Administration in the near future but not to a Class III post as requested by him.

7. It is a trite law that educational qualifications laid down in rules cannot be relaxed.

8. The question that looms large for judgment is as to whether his right of consideration for the Class III post of Patwari is to be pegged down to the date of death of the father on September 28, 2011 when he was 4 months short of 15 years; or to the date of attaining majority on January 1, 2015 when he turned 18 years of age.

9. In **Krishna Kumari v. State of Haryana & Ors** 2012 (2) SCT 736 the Full Bench, of which I was a member, held that the right accrues on the date of death of the Government employee from where right of consideration for compassionate appointment is claimed. There are, however, two yardsticks to contend with in this behalf; One, is the policy instructions extant on the date of death while the other is the position in the

rules of service. In Krishna Kumari this Court was not called upon to decide the issue as to what happens when policy exists but the rule is wholly altered which dislodges the claim by amendment to the rules post death of the government employee making claimant ineligible for the post aspired for. The Full Bench observed: "In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed." There is a difference between "rules" and policy "instructions" as would be clear from the observations of the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana & Ors**, (1994) 4 SCC 138 in paragraph 7: "It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned." [underlined for emphasis].

10. The source of rule making lies in Proviso to Article 309 while executive instructions are issued under Article 162 of the Constitution. The first is in exercise of legislative power whilst the other is in the province of subordinate or delegated legislation because the executive power of the State extends to its legislative power guaranteed by the *suprema lex*. But it is not possible to mix the two concepts in the Constitution and make them one whole hybrid thing which possesses different hues. In Krishna Kumari case the question of amended rules was not involved or in issue, which might tend to result in making an eligible person ineligible for the post claimed, as has happened in this case. Therefore, when we spoke of "rules"

I think we really meant by necessary implication "policy" or "policies" of

compassionate appointments framed by the welfare State which were available at the time of death of the Government servant. Compassionate appointments fall in the nature of direct recruitment since they cannot be classified or fitted into any other mode of recruitment of which the other are promotion, deputation or by transfer of a person already in service of the State or Central Government or other authorities in Article 226 or State in Article 12 of the Constitution.

11. Existing vacancies in a cadre prior to amendment of rule of recruitment when filled by direct recruitment are not governed by the principle of old vacancies old rules. The principle in **Y.V Rangaiah v. J. Sreenivas Rao**, 1983 (2) SLR 789 was evolved and applied in the context of prevalent rules in a department of Government in the State of Andhra Pradesh and the mechanism in *Rangaiah* has been explained by the Division Bench of this Court of which I was the member author in letter Patent Appeal in case **Vinod Kumar and others vs. State of Punjab and others**, 2012 (4) SCT 545; 2013 (2) SLR 175; 2013 (1) RSJ 556 in the following words contained in para.9 of the judgment:-

“9. We also do not think that the ratio of law laid down in Y.V.Rangaiah case, supra would apply to the facts of this case as suggested and pressed by the learned counsel. In Y.V.Rangaiah, the statutory service rules considered were Rule 4 (a) (1) (i), Rule 34 and amended Rule 5 of the Andhra Pradesh Registration and Subordinate Service Rules, which required drawing up a list of approved candidates for promotion and such list was to be prepared in the month of September every year so as to remain in force until the list of approved candidates for the succeeding year was prepared. The purpose of preparing the said list was to satisfy claims of promotion of as many eligible candidates as such authority considered necessary

during the currency of the list. The rules examined in that case further enjoined that the list of approved candidates would be drawn in such number as are approximately equal to the number of vacancies expected to arise during the currency of that list. This legitimate expectation based on approved list formed the basis of the direction issued that in the circumstances old rules would govern old vacancies and the amendment could not take away those rights. We, however, find no such rule in this case which gives an accrued right to the petitioners by way of a panel position or select list involving some process of selection which cannot be taken away by amendment and that too before filling in the existing vacancies. In the present case, we repeat, no panel or select list has been prepared in which names of the petitioners find mention after screening before they can be heard to urge that they have an accrued or vested right to promotion against old vacancies. Y.V.Rangaiah case is, therefore, clearly distinguishable on facts and would not help the petitioners to stop the onward march of the new group as their cadre mates. Besides, no factual foundation has been laid in the petition to raise the argument with respect to vacancies existing prior to the amendment of the rules. Therefore, in any case it is not possible to return any finding thereon."

12. Therefore, even in promotion cases, the principle in *Rangaiah* case cannot be applied in situations other than where panels and select list are drawn before hand against anticipated vacancies and promotions made on turn from the select panel during one year of its future operation. The principles of direct recruitment do not accommodate the principles in *Y.V Rangaiah* and the vacant post by the very nature of things known to service jurisprudence have to be filled by the prevailing law as exists on the date of recruitment or appointment. The result of this would be a restraint against the petitioner to claim the post of Patwari in Class-III when he is not qualified after the amendment to the rule of recruitment has come into force

which prescribes higher qualification of a degree in Graduation to be the essential qualification required to be possessed by a candidate for the post of Patwari whether he is direct recruit candidate or a seeker of compassionate appointment. This is unlike in promotion cases where the relevant date is the date of occurrence of vacancy and when rule is amended it may give rise to claim for retroactive promotion from the date when the vacancy arises even if the rule is subsequently amended since the the rule of prospective application requiring the pre-amendment vacancies to be considered under the unamended rule is firmly embedded in the law, but this is not the factual position in the present case. The legal position in promotion when principle in *Rangaiah* does not apply has been explained by the Supreme Court in **Deepak Aggarwal & Anr. v. State of Uttar Pradesh & ors**, (2011) 6 SCC 725 Direct recruitment is a different ball game. Normally service rules are prospective in nature unless rule is made retrospectively. Recruitment is usually vacancy based just as promotion. In appointment cases and seniority issues the date of consideration rules the roost, cf. **Union of India v. S.S.Uppal**, (1996) 2 SCC 168 and **Rajasthan Public Service Commission v. Chanan Ram**, (1998) 4 SCC 202. Compassionate appointments are also dependent on availability of vacancies in the cadre and rule governing service. An appointment is not to be made de hors rules in the name of compassion. No one has a fundamental right to appointment. There is only a right of consideration. There is nothing on record to suggest that vacancies in cadre of Patwaris existed after death of the government servant and before the rule was amended. The vacancy position is not known. Neither had a recruitment process been initiated to

fill up vacant posts of Patwaris during the interregnum. If there was no ongoing process it is difficult to pin the hopes of the petitioner to the date of death of his father.

13. For the foregoing reasons there is no merit found in this petition as far as the claim is for appointment as a Patwari.

14. However, this order will have no bearing on the claim of the petitioner to Class-IV post which has already been offered to him by the Department. In case, he is willing to accept the offer, the I am sure the Deputy Commissioner, Kapurthala would appoint him by sticking to the decision in the impugned order itself.

15. The petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

06.10.2015
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