

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18056 of 2015

Date of Decision: 28.08.2015

Gagandeep

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present: Mr. K.L. Arora, 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.

Compassionate appointments are not bounty. The petitioner is a bounty seeker. His father superannuated from service of the Punjab Government in the Department of Water Supply & Sanitation, Chandigarh. He served as a Pump Operator in the Fazilka Division. He was granted extension in service for a year. He was on his second extension after retirement when he died. The benefit of extension in service is provided to retiring Punjab Government employees by according relaxation by amendment and substitution in Rule 3.26 of Punjab Civil Services Rules, Volume-1, Part-1. The petitioner's father died on October 16, 2014. On his demise the petitioner applied for providing him compassionate appointment. His case has been rejected by return of original file to the Field Office that had sent his case to the superior authority with a favourable recommendation. The rejection is based on the ground that his father was

serving during the period of extension of service. A copy of the order dated March 30, 2015 has been endorsed to the petitioner by the Executive Engineer, Water Supply & Sanitation Division, Fazilka. The recommendations made by the field authority have been turned down. Today, his case rests on a specious plea that the father died in harness on October 16, 2014 and Punjab Government issued instructions on October 21, 2014 provide that dependents of deceased employees will not be considered for compassionate appointment if the employee dies during the extended period of service cannot be operated retrospectively while his case fell in the ex gratia policy formulated to accommodate compassionate appointments by relaxation of rule in appropriate cases in terms of the policy.

The instructions governing the subject of extension of service by one year post retirement have been considered by the Government and policy instructions dated October 08, 2012 in the manner provided. The benefit of promotion during the extended period of service has been granted to retiring employees if a promotional post is available and in case of promotion, an employee would be entitled to salary and fixation of pay in accordance with the prevalent service rules. Right to promotion is maintained in clause (c) of the instructions which are placed at P-8 with the petition. By Government letter dated September 20, 2013 the Governor of Punjab was pleased to accord approval for extension of another one year to employees across board to services in Group A to Group D applicable from November 01, 2013. It is argued that the instructions dated October 21, 2014 are prospective in nature and cannot take away valuable rights

available prior thereto. No doubt, the normal rule is that executive instructions operate prospectively if they create rights or take them away. The instructions dated October 08, 2012 and September 20, 2013 refer to substituted Rule 3.26 of the Punjab Civil Services Rules, Volume-1, Part-1 which provide extension in service. This does not mean that those instructions postpone the event of superannuation. It was only a concession given in special circumstances obtaining in the State of Punjab in the year 2012. Merely because promotional rights are conferred during the extended period of service does not *a fortiori* mean that date of retirement on reaching the age of superannuation is postponed, which remains static. Retirement on superannuation remains at the age 58 years and thereafter relief is concession based and of uniform application in the manner provided. The scope of compassionate appointments are to be read in the light of instructions which govern the subject of compassionate appointments and the case law rendered on the subject by courts of law. Foremost position in law is that compassionate appointments by descent are constitutionally impermissible, see **V. Sivamurthy v. State of A.P.**, (2008) 13 SCC 730 though death of government servant or medical invalidation serves as an exception to the general rule as per the scheme of compassionate appointments based on the factum of "sudden crisis" the family is left to face. The 'spoils system' stands on unlawful footing. The law on the subject has been largely explained and laid down by the Supreme Court in numerous rulings including in **Umesh Kumar Nagpal vs. State of Haryana and others**, (1994) 4 SCC 138 holding that compassionate appointments are not a source of recruitment and benefit can be given only

to “see the family through the economic calamity.” The “penury” and deprivation of “means of livelihood” tests are to be strictly applied to such appointments as they are not to be construed as distribution of largesse, cf. **SBI v. Jaspal Kaur**, (2007) 9 SCC 571.

In **LIC of India v. Asha Ramchandra Ambekar** (1994) 2 SCC 718 the Supreme Court ruled that High Courts and Tribunals cannot confer benediction impelled by sympathetic considerations to make compassionate appointments when the regulations framed in respect thereof do not contemplate such appointments. In the present case as discussed later the Punjab policies on compassionate appointments do not contemplate and never could have, the extraordinary situation created by the amendment to Rule 3.26 of Punjab Civil Services Rules, Volume-1, Part-1. What is not envisaged in executive instructions cannot be read in either by court or the administrator unless government addresses itself to the fresh subject and creates a policy which lies strictly in its domain.

Compassionate appointments cannot be given routinely and especially when the event of superannuation is in hindsight by which time an employee is expected to have organized the affairs of his family within his means since the date of retirement is written on the date of appointment. Therefore, the instructions dated October 21, 2014 to my mind have to be read in the context of the law on the subject and not in isolation. The instructions are not creative or destructive of rights they are only clarificatory in nature. They only make it known that compassionate appointments will not be offered when the employee dies during the extended period of service. It cannot be said that during extension period

when the death occurs it would give rise to a financial crisis for the family or they will be left destitute and in dire straits or undue hardship. He remains notionally on the saddle and his boots in the stirrups of service but it is not one and the same thing as being in service and in “harness” enjoying full-fledged status of the post held. The policy itself is an extraordinary measure to tide over a crisis resounding in the State exchequer and does not appear to remain in perpetual motion unless the age of retirement itself is extended by Government to all its employees.

Therefore, I am inclined to think that the instructions dated October 21, 2014 (P-7) do not take away a pre-existing right since none was created in the first instance in either of the instructions under consideration. They only declare and clarify the position that Government is not prepared to give compassionate appointments to anyone during the extended period of service. The extended period of service begins with the notification dated October 08, 2012. It seems to me that what has not been created cannot be taken away. Death can only follow birth. There is even a stronger reason to decline the writ at the threshold and that is for a simple reason that the scheme of compassionate appointments were laid down in policies framed prior to the scheme promulgated for the first time by notification dated October 08, 2012 granting extension in service to employees and thus those policies did not contemplate the situation arising out of the policy of extension in service. Government servant dying in service in the scheme of compassionate appointments did not mean dying during the extended period of service since the concept did not exist. The instructions dated October 21, 2014 (P-7) only declare that this position. They create nothing. They take

away nothing. There is nothing in the compassionate appointment policy/ies regarding rights arising during extended period of service. Even if these instructions did not exist the result would have been no different. Process of interpretation would still have yielded the same results.

I would, therefore, not entertain this petition and also would not accept the prayer of Mr. K.L. Arora, learned counsel that a direction still should go by a writ in the nature of mandamus to the State to consider the case of the petitioner. The petitioner was asked before approaching this court in the earlier petition to make a representation to the Government for its consideration but he has not abided and has come directly to this Court which is not a post office to forward his case to the Government mechanically. The basic function of this court is to declare rights of litigants and in this the court should not deviate. There is also no impugned order placed on record other than the letter dated November 13, 2014 returning the file of the petitioner to the Field Office. Ordinarily, a writ petition would not be entertained in the absence of an adverse order passed and communicated to the person affected or likely to be. There are exceptions to the normal rule where representations and legal notices have been directed to be decided where disputes and grievances are found worthy of consideration since precious rights and liabilities may be involved but in the present case, I do not find even a representation made after receiving the letter dated March 30, 2015 (P-6) which is challenged and a writ of certiorari sought for quashing the same principally on the ground that the instructions dated October 21, 2014 (P-7) are prospective in character.

I have already recorded reasons above which dissuade me from

treating the date of death five days before the instructions were issued as determinative of the rights of the petitioner. Compassionate appointments cannot be treated as a baton to pass on to the next generation in a country suffering from acute unemployment. There are far more needy people waiting for job opportunities in government service who have not the good fortune of their fathers having served government. A public post is not a heritable right as a right to ancestral property is. It is not based on rules or grammar of succession laws. There is not a word found from the record of the paper book or in the body of the petition that the petitioner has any special features to claim such appointment by reason of poverty, hardship, indigency or acute financial distress suffered on account of the death of the Hans Raj. His application for compassionate appointment reveals that he is presently 30 years of age. In the remarks column as to whether he is employed he has disclosed that he is doing “domestic work”. He is married. He has two married sisters elder than him and younger brother of 29 years of age. Financial dependency on his father's income has not been shown in the petition at the advanced age of 30 years.

On the materials on record it would be difficult to hold that the death of Hans Raj has suddenly left his heirs in a lurch and in a precarious and economically vulnerable position however benevolent the welfare scheme may be construed, which benevolence is not conferred on this Court even in its most creative jurisdiction in the remedy provided in Article 226 of the Constitution in writ proceedings. The petitioner has not disclosed whether his mother is in receipt of family pension which is a material fact in considering a case for compassionate appointment to meet sudden financial

crisis and which is not to confer status on the family. Moreover, strictly speaking such appointments cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution, cf. **Union of India v. Shashank Goswami**, (2012) 11 SCC 307.

I find no cogent reason to entertain this petition and would dismiss it in limine. Ordered accordingly.

(RAJIV NARAIN RAINA)
JUDGE

28.08.2015
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