

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**CWP No. 23838 of 2015**  
**Date of decision: 06.11.2015**

Deepak Sharma

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

**CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA**

Present: Mr. O.P. Gabba, Advocate,  
for the petitioner.

**G.S.SANDHAWALIA, J. (Oral)**

The petitioner seeks setting aside of the letter dated 04.08.2015 (Annexure P-9) issued by respondent no. 3, The District and Sessions Judge, Sri Muktsar Sahib and the letter dated 11.09.2015 (Annexure P-10) issued by the Registrar of this Court wherein, the petitioner's claim for compassionate appointment has been declined.

The case has a chequered history. The petitioner's father namely Sat Narain Sharma, was working as an Ahlmad in the Court of the Civil Judge (Senior Division), Sri Muktsar Sahib and he went missing from duty w.e.f. 03.04.2004. Accordingly, he was charge sheeted on the ground of remaining absent without intimation and an inquiry officer was appointed. Initially, he was dismissed on 30.09.2010 by the District and Sessions, Judge. The said dismissal order was challenged by filing CWP No. 10591 of 2011 before this Court. Civil suit was also filed by the legal representatives of the deceased-employee that a declaration be granted that the said employee was presumed to be dead not having been heard alive for

the last more than 7 years. The suit was decreed on 03.01.2013 (Annexure P-2). In view of the declaration given by the Civil Court, this Court in the above said writ petition, converted the dismissal order into an order of compulsory retirement from 30.09.2010 and denied the benefit of salary from 03.04.2004 till 30.09.2010 vide order dated 23.08.2013 (Annexure P-1). On the strength of the declaration given by the Civil Court, the petitioner filed an application for compassionate appointment in view of the instructions of the Government dated 21.11.2002, which was duly forwarded to this Court by the District and Sessions Judge, Shri Muktsar Sahib.

Counsel for the petitioner has submitted that even the Civil Judge, (Sr. Divn.), Sri Muktsar Sahib has recommended in favour of the petitioner for compassionate appointment. A subsequent report dated 04.08.2015 (Annexure P-9) was received from the Additional District and Sessions Judge that the policy of compassionate appointment would be applicable only to employees who died during the course of their service and the employee had been compulsory retired and was not entitled to any compassionate appointment. Resultantly, the relief has been declined vide communication dated 11.09.2015.

It is not in dispute that the petitioner's father has gone missing since 03.04.2004. It is the pleaded case of the petitioner himself that only after the declaration granted by the Court on 03.01.2013, the application for giving appointment on compassionate grounds was moved. The declaration of death by the Civil Court necessarily takes the date of death to be from the time the deceased went missing and there is a legal fiction to the said act. It is in that view that the benefit was granted to the legal representatives of the

deceased-employee and the order of dismissal was converted into an order of compulsory retirement. However, the fact remains that prior to that, the petitioner could not have applied for compassionate appointment in the absence of any finding that the employee had died.

In the interim period, much water has flown and the period of over a decade has passed since the employee had been missing. The hurdle of delay and the extreme distress and financial difficulties which were faced by the family, which is the purpose of giving compassionate appointment, has, thus, been to a large extent tided over. That is the principle of law laid down by the Apex Court in ***Umesh Kumar Nagpal Vs. State of Haryana & others (1994) 4 SCC 138*** wherein, it was specifically held that the object of compassionate appointment was not to create another source of employment and only for the purpose to tide over financial crisis. The same reads as under:-

*“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.*

*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. The employment cannot be offered by an individual functionary on an ad hoc basis.”*

In ***Haryana State Electricity Board v. Naresh Tanwar and Another (1996)8 Supreme Court Cases 23***, the direction to appoint on compassionate ground, issued by this Court, was set aside by noting that the the purpose of compassionate appointment was an exception and the consideration for such appointment could not be kept pending for years. Relevant observations read as under:

*“9. It has been indicated in the decision of Umesh Kumar Nagpal (Supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad 's case, it has been also indicated that the very object of appointment of dependent of deceased-employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.*

*10. It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decisions of the High Court therefore can not be sustained.”*

Similarly, in ***Shreejith L. v. Deputy Director (Education) Kerala and Others (2012)7 Supreme Court Cases 248***, it was held that the application for compassionate appointment has to be made within a reasonable time claiming the benefit of scheme of compassionate

appointment. The deficiencies and defects, if any, ought to be removed within a reasonable time and an adverse inference is to be drawn against a person in default. The relevant observations read as under:-

*“28. Learned counsel argued that there was no obligation on the part of the Manager of the school to go in search of the legal heirs left behind by an employee who had died in harness. It was submitted, if an employee of the school died in harness and his legal representatives required any assistance in the form of compassionate appointment it is for them to approach the school in that regard by making an application in the manner prescribed. If the legal heirs did not do so, the Manager could reasonably assume that they were not in need of any assistance for otherwise they would ask for the same. There is merit in that contention. We do not see any obligation on the part of the institution or the Manager to go in search of the legal heirs of deceased employees or educate them about their right to seek an appointment under the scheme. If a person is eligible for a benefit under the scheme he can and indeed should on his own approach the institution and seek such an appointment. The view expressed by the High Court in **Baiju Kumar v. D.E.O., Trivandrum (2003) 3 KLT 240**, to which a reference has been made in the judgment, appears to be unreasonable albeit in favour of the legal heirs of the employee. Having said that, we have no manner of doubt that in case an application is made by legal heirs of a deceased employee claiming the benefit of the scheme for compassionate appointment, the deficiencies and defects, if any, in the said application ought to be pointed out to the concerned to enable him to remove the same within a reasonable time. But if the defects are*

*not removed within the time granted, an adverse inference could be drawn against the person in default. On the contrary, where an application is filed, entertained and eventually declined for a reason other than the form in which the same ought to have been filed, the rejection cannot be supported before the higher authority or in the Court on the ground that application was non-est as the same was not in the prescribed form. The application for appointment filed on behalf of the respondent could not therefore have been rejected on the ground that the same was not in the prescribed form.”*

In such circumstances, the claim of the petitioner as such for compassionate appointment has been rightly declined and no ground is made out for interference and the present writ petition is accordingly dismissed.

06.11.2015  
shivani

(G.S. SANDHAWALIA)  
JUDGE