

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5019 of 2014 (O&M)

Date of Decision: 10.08.2015

Amandeep Kaur

.... Petitioner

Versus

State of Punjab and others

.... Respondents

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

Present: Mr. S.L. Chander Shekhar, Advocate,
for the petitioner.

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

RAJIV NARAIN RAINA, J.

1. The petitioner has approached this court claiming a direction to the respondents to provide her compassionate appointment in any of the Departments of the Government of Punjab including her late father's parent department. Her father had served as a constable in the Punjab Police and died of illness in the year 1986 when she was two years of age. The petitioner attained the age of majority in 2003 when her mother made an application to the Head of the Police Department that her daughter's case be considered for ex-gratia employment in terms of the then existing scheme. That request made on November 21, 2002 was considered and vide an order passed by the Director General of Police, Punjab addressed to the Additional Director General of Police, P.A.P., Jalandhar Cantt. with the copy endorsed to the petitioner her case was rejected. It is not the case either before the Government or in the present petition that the petitioner

was not communicated the order adverse to her interest. There is a printing error in the petition which the counsel is not able to reconcile as the date of the order rejecting the case of the petitioner has been appended as Annexure P-3 with the date December 24, 2003 but the index records the date December 22, 2007. The difference is hardly of any significance in the determination of the case.

2. The present petition has been filed in 2014 on the strength of a policy circular dated July 03, 2008 which provides as follows:-

“I am directed to refer to the Punjab Government letters issued vide No.11/105/98-4PPH/14420, dated 21.11.2002 and No.11/99/2002-4PP2/18086 dated 28.12.2005 on the subject cited above and to inform that the State Government decided to add following proviso below para 13 (a) of these policy instructions:-

“Provided that in the case where the deceased Government employee leaves behind his/her minor children, who are studying at the time of death of the employee and are not qualified for an employment in the government and the spouse is not in a position to join the Government job, a dependent child may be allowed to apply for compassionate appointment by the competent authority within a period of one year from the date of attaining the age and educational qualifications for a Group 'C' or 'D' appointment in government.”

2. *On humanitarian considerations, it has been decided as a special one time measure to extend this benefit to all old deserving cases in such cases, an application for employment may be made within six months from the date of issue of these instructions, if not already made. The Administrative Department should complete the process of giving employment within a period of nine months from the date of issuance of these instructions. No further relaxation shall be allowed under any circumstances.*

3. *This change in the policy instructions may kindly be brought to the notice of all concerned for meticulous*

compliance.”

3. This circular appears to revive rights of minor children who were studying at the time of death of the employee and were not qualified for employment but gained the conditions precedent with the passage of time. In such cases, a dependent child could be allowed to apply for compassionate appointment provided the request was within a period of one year from the date of attaining majority. The other advantage given was a special one time measure to extend the benefit “to all old deserving cases”. The circular conferred a right to the two categories deserving persons which received the attention of the Government in policy making provided applications are filed within six months from the date of issue of instructions i.e. till about the end of 2008. It is not the case of the petitioner in this petition that a fresh application was made by her or on her behalf within six months of the circulation of the policy decision-2008 and, therefore, it is not possible to conceive of any retroactive rights emerging from the policy circular dated July 03, 2008 (P-6).

4. So far as the question of delay and laches is concerned in approaching this court belatedly, I would only say that though the application was made without delay on attaining the age of majority but Government rejected the request either on December 24, 2003 or December 22, 2007 and even when either of the dates is taken as the cause of action even then limitation to bring a suit expired at about the end of the year 2010. The adverse order has been challenged in this petition in the year 2014 for the first time. The Supreme Court has guided courts that where limitation to bring a suit has run out then ordinarily a writ petition would

not be entertained. This is the view of the Constitution Bench in **State of M.P. vs. Bhailal Bhai and others**, 1964 AIR (SC) 1006. **The Supreme Court held:** “It may however be stated as a general rule that if there has been unreasonable delay the court ought not ordinarily to lend its aid to a party by this extraordinary remedy of mandamus.” And further: “Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art. 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Art. 226 can be measured. The Court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy. but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable.”

5. In view of this legal position, it is not possible to entertain this petition at this distance of time and to pass favourable orders thereon on either of the two counts, namely, of limitation prescribed under the Limitation Act, 1963 or on the principles of delay and laches well recognized in exercise of extraordinary writ jurisdiction as fetters in entertaining writs.

6. Mr. Shekhar relies on a recent decision of the Supreme Court in **Canara Bank and another vs. M Mahesh Kumar**, 2015 Law Suit (SC) 530 to contend that the decision of the Supreme Court in **Umesh Kumar Nagpal vs. State of Haryana and others**, (1994) 4 SCC 138 has been over-ruled in *Canara Bank* case. This court was a little taken aback when

the sweeping statement was made at the Bar but on a reading of the judgment and especially para.15 of the report it is explicit that what the Supreme Court preserves with respect to minors and keeping their rights in abeyance till they attain the age of majority was a result of reading Clause 3.2 of the 1993 Scheme on compassionate appointments floated by the Canara Bank which prescribed that in case the dependent of deceased employee to be offered appointment is a minor, the Bank may keep the offer of appointment open till the minor attains the age of majority. Thus the observations came of the rule position which admitted the concession.

7. I therefore asked the learned counsel for the petitioner to point out from any scheme or the scheme dated November 21, 2002 placed on record at Annexure P-5 whether such a right had been conferred on minors by the policy instructions of the Punjab Government. All that he could point out from the scheme was what para.3 gives in the matter of grant of compassionate appointments on the death of the breadwinner and it reads:-

- “(1) A dependent member of the family of a person (breadwinner) killed or 100% physically disabled in terrorist action or by security forces acting in-aid of civil power, in the State;*
- (2) A dependent member of the family of the deceased Government employee, who dies in harness.*
- (3) Disabled Ex-Servicemen (fit for Civil Service).*
- (4) A dependent member of the family of the Defence Services Personnel.*
- (i) Killed in service, while performing duties, or*
- (ii) Who are severely disabled and totally unfit for re-employment.”*

8. I am afraid Clause (2) of para.3 of the policy circular would not accommodate the claim of the petitioner merely because her father died in harness in the year 1986 though sub-para.(2) of para.3, and for that matter,

the policy circular dated July 03, 2008 cannot be applied to cases where adverse orders have been passed and have become final and the remedy against which is either barred by limitation or by principles of delay and laches. The rule would apply in pending applications howsoever old. To quote from *Bhailal Bhai* once again: “It has been made clear more than once that the power to give relief under Art. 226 is a discretionary power. This is especially true in the case of power to issue writs in the nature of mandamus.”

9. I would, therefore, find no ground to entertain this petition and would dismiss the same on the ground of delay and laches.

(RAJIV NARAIN RAINA)
JUDGE

10.08.2015
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