

In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 5091 of 2015

Date of Decision: 21.09.2015

Amritpal Soi

... Petitioner(s)

Versus

State of Punjab and Others

... Respondent(s)

CORAM: Hon'ble Mr. Justice G.S.Sandhawalia.

Present: Mr. G.L.Bajaj, Advocate
for the petitioner(s).

G.S.Sandhawalia, J.

The prayer in the present petition is for directing the respondents to appoint the petitioner in place of his deceased brother Deepak Soi, who was working as a Constable No. 2/272 and expired on 14.2.2002 on compassionate appointment as per instructions dated 19.9.2002 (Annexure P9).

Perusal of the paper-book would go on to show that vide letter dated 9.6.2014 (Annexure P10), the case of the petitioner was rejected on the ground that the same is not covered under the instructions of the Government for appointment on compassionate grounds. Perusal of the policy on the basis of which the petitioner is seeking compassionate appointment would go on to show that a brother is not included in the list of dependents as per clause 3(i) of the

Policy. The said clause reads as under:-

"3) *In case of any doubt, or where the claimant dependents are more than one, the appointing authority must refer the matter to the District Magistrate for determining the real dependent for compassionate appointment. In all such cases the District Magistrate shall:*

(i) Call all the claimants in his Court including all dependents i.e. widow/widowers/sons, daughters, adopted sons, adopted daughters."

Once the petitioner is not covered under the purview of the instructions, the refusal for appointment of the petitioner on compassionate grounds is justified. It being a concession which is being extended to the immediate family members, who have been defined under the policy and there is no legal right as such. It is only a relief granted to the family to tide over its extreme financial exigencies which it is facing at the time of crisis. In the present case, the death of brother of the petitioner took place more than 13 years back. In such circumstances, the observations of the Hon'ble Apex Court would also come into force in ***Umesh Kumar Nagpal v. State of Haryana and Others (1994)4 SCC 138*** which have also been followed by this Court. The said observations read 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."

Resultantly, there is no scope for interference in the present petition and the same is dismissed.

(G.S.Sandhawalia)
Judge

September 21, 2015

"DK"