

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

CWP No.8700 of 2015

Date of Decision: 27.07.2015

Rupinder Singh

....Petitioner

Versus

State of Haryana and others

...Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

- 1. Whether reporters of local newspapers may be allowed to see the judgment ? (Yes/No)**
- 2. To be referred to reporters or not ? (Yes/No)**
- 3. Whether the judgment should be reported in the Digest ? (Yes/No)**

Present:- Mr. R.S. Longia, Advocate
for the petitioner.

DAYA CHAUDHARY, J.

The petitioner has approached this Court by way of filing the present writ petition under Article 226 of the Constitution of India for issuance of a writ in the nature of *mandamus* directing the respondents to appoint him on compassionate ground on some suitable post after the death of his parents while in service.

Brief facts of the case, as have been narrated in the present petition are that the mother of the petitioner was in regular service as a Staff Nurse in LNJP, Civil Hospital, Kurukshetra and his father, late Shri Angrej Singh was working as a Mali in the same hospital. Both of them died in an accident occurred on 17.05.1990. The petitioner, at that point of time was of two years and two months of age. He became major on 14.02.2005. During this period, he was looked after by his maternal

grandfather.

Learned counsel for the petitioner submits that as per policy of the year, 1990, the dependent of a deceased Government employee is to be appointed, in case, none of their dependant was major. The petitioner was left alone in the family and nobody was there to look after him. The petitioner, on becoming major on 14.02.2005, moved an application dated 25.04.2005 but still, he has not been appointed. Learned counsel also submits that many representations were made but no action has been taken thereupon so far.

Learned counsel for the petitioner has also relied upon the judgment of Full Bench of this Court in case **Krishan Kumar vs State of Haryana and others 2012(2) SCT 736** as well as instructions dated 03.11.1988 clarified vide circulars dated 27.03.1991 and 13.12.1993.

Heard the arguments of learned counsel for the petitioner and have also perused the documents available on the file.

Admittedly, the parents of the petitioner died on 17.05.1990 and the petitioner, at that point of time, was minor. He became major on 14.02.2005. An application for appointment on *ex-gratia* basis was moved by him on 25.04.2005. It is also admitted by learned counsel for the petitioner that the petitioner was not granted *ex-gratia* appointment on account of death of his mother in spite of the fact that he attained majority on 14.02.2005. The representations were made and ultimately, a legal notice was also served upon the respondents but learned counsel for the petitioner has not been able to show as to whether any person, under similar circumstances, has been appointed or some list was prepared by the respondent-department for appointment on attaining majority. Merely death of a Government employee in harness does not entitle the family to claim compassionate employment. The appointment cannot be claimed as

a matter of right. Such kind of appointment is not a vested right. In case, any application is moved at a belated stage, which is after a lapse of years together, the purpose of making such appointment stands evaporated. Compassionate employment is merely a concession which is given to the dependent family of the deceased employee and it is not a vested right. In case, any application is moved, the same is to be considered within a reasonable period of time as the purpose of such appointment is to meet the sudden crises occurring in the family on account of death of sole bread winner. The object of *ex-gratia* appointment is to enable the family to tide over the sudden crises, in case, the other source of income is not there to support the family of the deceased employee. It has also been held in various judgments of Hon'ble the Apex Court as well as of this Court that such appointment cannot be claimed as a matter of right as the purpose of it is to provide minimum relief at the time of crises occurred due to death of earning family member.

Hon'ble the Apex Court in case ***Steel Authority of India Limited vs Madhusudan Das and others 2008(15) SCC 560*** has observed as under :-

“ This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidate should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a

deceased employee is an exception to the said rule. It is a concession, not a right.”

In another judgment of Hon'ble the Apex Court in case **State of Haryana vs Ankur Gupta 2004(1) SCT 165**, it has been held as under :-

“ As was observed in **State of Haryana v. Rani Devi, 1996(4) SCT 63 : (1996) 5 SCC 308** it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crises occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.....The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

Hon'ble the Apex Court in case **Umesh Kumar Nagpal vs State of Haryana 1994(3) SCT 174** has held as under :-

“2. xxx xxx xxx As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is

neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crises. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus

with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

In the present case, the parents of the petitioner died on 17.05.1990 and the petitioner became major on 14.02.2005. The petitioner has slept over the matter since attaining the age of majority. Not only the delay is there but even the same has not been explained in any manner. The petitioner has placed on record two representations of the year 2007 and 2008 and the legal notice served upon the respondents is of the year, 2014. Simply by saying that the petitioner has been pursuing the matter with the respondent authorities but his case has not been considered does not entitle him to compassionate appointment.

The submissions made by learned counsel for the petitioner have no merit and the petition, being devoid of any merit, is hereby dismissed.

27.07.2015
gurpreet

(DAYA CHAUDHARY)
JUDGE