

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

**CWP No.17389 of 2002(O&M)
Decided on : 20.01.2016**

Gurvail Singh

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.Vishal Mittal, Advocate, for the petitioner.

Mr.L.S.Virk, Addl.A.G., Punjab.

G.S. Sandhawalia , J. (Oral)

CM-16184-2015

Application for placing on record the income certificate and backward class certificate, as Annexures P13 & P14, respectively, is allowed. Same are taken on record. Office to tag the same at appropriate place.

Main case

Challenge in the present writ petition is to the order dated 28.06.2002 (Annexure P12), vide which, the application of the petitioner for compassionate appointment, had been rejected.

A perusal of the impugned order would go on to show that the file of the petitioner was closed on the ground that the same had been sent to the Director, Technical Education and he had been called many times by the Technical Department for appointment, on priority basis, but he had not come present. Accordingly, in view of the instructions dated 05.02.1996 and the decision of the Apex Court that in compassionate appointment

cases, priority is to be given and in the case of the petitioner, it was not made out, the relief was denied.

It is not disputed that the petitioner's father was serving as a Driver in the Punjab Roadways, who died on 29.02.1992. Petitioner immediately filed an application on 30.07.1992 (Annexure P1), for appointment on compassionate ground. It is further the case of the petitioner himself that his case was put up for consideration on several occasions and reference can be made to correspondences made on 10.06.1994, 16.05.1995, 11.12.1998, 25.01.1999 & 07.06.1999 (Annexure P3 to P7). He had also sat in the test conducted for the post of Steno-Typist (Punjabi) on 04.06.1995 but had failed to qualify the same. It is the case of the petitioner himself that he left the country in April, 1997 and went to Sharjah in the Middle East and only came back in May, 2000. During the said period, it is apparent, that the State made efforts to call the petitioner, on the dates mentioned above by Annexures P5 to P7. He had been asked to bring his educational qualification certificates. It is only due to his inability to come present, admittedly, because of the fact that he had gone abroad to Sharjah, in search of greener pastures, the file had been closed in the year 2002.

Keeping in view the above, it is apparent that the petitioner, at this belated stage, cannot question the denial of

appointment on compassionate basis. The Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana & others (1994) 4 SCC 138** has held that the object of compassionate appointment is not to create another source of employment and is only for the purpose to get over the financial crisis. The observations made by the Apex Court 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 SCC 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 SCC 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 view of the law, which now stands settled and in view of the admitted case that the petitioner himself was not available when due consideration had to be made by the State, no fault, as such, can be found in the action of the authorities in closing the file of the petitioner, due to his non-availability. The fact that the petitioner had the sources to go to the Middle East in search of employment, would also go on to show that the family was not in such a pecuniary financial difficulty which would entitle the petitioner to seek the benefit of compassionate appointment.

In view of the above, no interference is called for in the action of the respondents and the present writ petition, accordingly, stands dismissed.

JANUARY 20, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE