

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.5799 of 1996 (O&M)

Date of Decision: 21.07.2016

Dalpat Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

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

Present: Mr. R.K. Malik, Sr. Advocate,
with Ms. Rimple Kadyan, Advocate,
for the petitioner.

Ms. Shruti Jain Goel, AAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner's father died while working as an Assistant Fitter in Haryana Roadways, Faridabad on September 16, 1992. He was 21 years old then. He applied for compassionate appointment after 2 months of the death in place of his father late Mahipal Singh. The petitioner's case was processed by assigning a priority number. The policy instructions in force at that time were dated July 13, 1971 and November 03, 1988. Since the circulars are old and infrequently referred to in the present days it would be worthwhile to reproduce them:-

*“English version of circular letter No.3442-
3GSII/74/19169 dated 13th July, 1971.*

....

*Sub: Ex-gratia grants and other facilities for families of
Government employees who die while in service.*

.....

I am directed to invite your attention to the Haryana Government circular letter No.9054-4GS-70/22230 dated the 22nd December, 1970 on the subject noted above in which it was indicated inter-alia, that one or more members of the family of the deceased employee would be considered for absorption in Government service, the relevant rules being relaxed, if necessary and feasible. In this connection the question as to the general policy to be followed in this behalf and the extent to which the rules should be relaxed has been considered by the State Government and it has been decided to make it clear that it is not the intention to provide employment to the dependents of deceased Government employee as a matter of course. Instead each individual case should be examined carefully and employment, which should be confined to class III and class IV posts, should be provided only if it is justified in order to avoid exceptional hardships and not otherwise.

2. *In the matter of relaxation of rules etc. relaxation will be necessary in respect of the condition that the appointment should be made after reference to the Employment Exchange or the recommendations of the Services Selection Board. As to relaxation in the matter of age, education etc., this criterion should be that the relaxation should be considered only to the extent that the work of the post in question will not be adversely affected and the person concerned will be able to undertake the work satisfactorily. Recommendations in this regard should be formulated after due consideration and reference thereafter be made to the Chief Secretary (in General Services II Branch) which office will then process the case further.*

3. *It is requested that receipt of this communication may please be acknowledged.”*

“Copy of letter No.16/21/88-6GSII, dated 3.11.1988 from the Chief Secretary to Government, Haryana addressed to all the Heads of Departments etc.

.....

Sub: Ex-gratia grants and employment and other facilities for the families of Government employees who die while in service.

.....

Sir,

I am directed to invite your attention to the Haryana Government circular letter No.16/21/84-3GSII, dated 9.9.1985 and to say that the Government have received many such cases where the family of deceased employee make requests for grant of employment and other facilities after a considerable long time. This matter has been considered and it has been decided that in future, the cases for grant of employment and other financial assistance shall not be entertained, where the family of the deceased employee shall not make such requests within a period of three years of his death. The cases in which the person concerned, to whom the employment is to be provided is still minor, the application in such cases also should reach to the Government for consideration/decision within a period of three years after the death of the employee. This decision will be effective from the date of issue of this letter and action in the cases which have already been received, be taken according to the existing instructions.

Besides it, it has also been decided that in future, the cases of family members of the deceased employee for appointment to class II posts should only be considered where the person concerned is in possession of technical qualifications such as MBBS, B.Ed., B.Tech., B.V.Sc. etc. and he can be appointed only against class II or higher post. The remaining cases should not be considered for appointment to the gazetted posts and the proposal be sent to the Government for appointment against class III and IV posts only, keeping in view the qualifications possessed by the applicant.

4. These orders may please be complied with strictly and the acknowledgement of this letter be also sent to the Government."

2. The 1971 instructions were issued in the English language

while those of 1988 are in translation from Hindi to English the latter placed on record at Annex P-18. These two instructions were available before his father died. The remaining instructions were issued long after the death of Mahipal Singh, the first of which is dated May 08, 1995. These were policies were issued when Haryana Government had to address itself to the duty to implement the decision of the SCI in Umesh Kumar Nagpal v. State of Haryana & Ors, (1994) 4 SCC 138.

3. It may be noted that it is not that the petitioner has gone without relief. He was offered appointment was one step lower in the pay scale of the father @ Rs.950-1500 which he was last in receipt of at the time of death. The one step lower rule in offering ex gratia appointments fell for consideration of this Court in CWP No.17633 of 1995 titled *Surinder Singh v. State of Haryana and others* decided on December 20, 1996 to answer the question whether a candidate is entitled to claim appointment in accordance with the instructions existing at the time of submission of application and not those which are in force at the time of consideration of the application. The learned Single Judge did not find the rule of one step lower flexible enough not to admit of any rigidity that the appointment shall always be given on a post which is one step or scale lower than that held by the deceased employee as this would not be conducive to good administration. It could always lead to unfair and unjust results. The Court thought in those days that it appeared unfair to say that the post given to a dependent would be dependent on the post held by his father and not on his qualification and suitability. On these premises the Court held that it would not be just and fair to appoint a Clerk's son only as a Peon inspite of the fact that he holds a

Postgraduate degree and an Assistant's son in office as a Clerk even though he is a mere Matriculate. The qualifications of the individual rather than the post held by the deceased employee should be the determining factor. A dying Peon's son could be appointed to higher post but the concession has to be worked in Class-III and Class-IV service alone depending on suitability and availability of post on the basis of qualifications and not on the basis of the post held by the deceased employee. This question was answered in favour of the petitioner. On the second issue, the Court held that merely by submitting an application a person does not get a right to be considered for appointment in accordance with the instructions in force on that date. The State may have no available posts. It may thus be unable to make any appointment. It cannot mean that the subsequent instructions which lay down different criteria would remain inchoate or inapplicable qua all those persons who have merely submitted applications prior to the issue of new instructions.

4. His Lordship (J.L.Gupta, J.) explained the legal position in the following words:-

“To illustrate, under the instructions issued by the Government vide letter dated July 13, 1971, it has been inter-alia provided that “it is not the intention to provide employment to the dependents of the deceased Government employee as a matter of course. Instead each individual case should be examined carefully and employment, which should be confined to class III and class IV posts, should be provided only if it is justified in order to avoid exceptional hardships and not otherwise. Thereafter, instructions were issued vide letter dated November 3, 1988, by which it was provided that a request for appointment may be made within a period of three years of the death of the employee. It was further provided that the

cases of family members of the deceased employee for appointment to class II posts should only be considered where the person concerned is in possession of technical qualifications such as M.B.B.S., B.Tech., B.V.Sc. etc. and he can be appointed only against class II or higher post. Vide instructions dated May 8, 1995, it has been inter-alia provided that the applicant having a monthly income of Rs.2500/- per month or more from all sources shall not be eligible for getting appointment on ex-gratia basis. The instructions were later on clarified vide letter dated August 31, 1995, that "the income of the family of the deceased employee will be taken into account and not just that of the dependent who has applied for appointment on compassionate grounds. In spite of these instructions, can a person claim that he should be given appointment on compassionate grounds despite the fact that his family has an income of more than Rs.2500/- per month merely because he had submitted his application at a time when the instructions issued by the Government in the year 1988 were in force. I should think that the answer would be in the negative. However, sitting singly I am bound by the decision of the Division Bench. Respectfully following it, I hold that the claim of the petitioners has to be considered in accordance with the instructions which were in force at the time of the submissions of their applications."

5. Mr. Malik has placed strong reliance on this judgment for the relief of compassionate appointment by filing CM No.4303 of 1997 appending the text of the ruling.

6. To return to facts. After the request was made in November 1992 for compassionate appointment there was correspondence exchanged between the petitioner and the department which caused delay in taking the final decision after completion of formalities, till the petitioner was offered compassionate appointment on temporary basis as Chowkidar vide order dated March 30, 1999. The petitioner stakes claim for appointment as Clerk

in this petition. It is a foregone conclusion after the pronouncement in Krishna Kumari v. State of Haryana & Ors, 2012 (2) SCT 736 by the Full Bench the relevant date is the date of death and not the date of application or the consideration thereof. The SLP against the decision of the Full Bench has been dismissed but the question of law has been left upon in appeal filed by the State of Haryana in the SCI.

7. Therefore, the instructions issued after the date of death will not apply to the case of the petitioner. At the same time, there can be no avoiding the fact that the petitioner's appointment came after the instructions dated May 08, 1995 and August 31, 1995 were in force and also before the rules of compassionate appointment were notified in the year 2003 by the Haryana Government.

8. The issue presently falling for consideration is whether the petitioner had any vested or accrued right on the death of his father in 1992 for appointment on compassionate grounds on the basis of policies dated July 13, 1971 and November 03, 1988 which were in force at the time of the death of the father. The petitioner asserts that his case should be considered under these instructions, but due to one reason or the other, the matter lingered on and was considerably delayed and the appointment letter was not issued to the petitioner and in the meantime, the new instructions came into existence in 1995. Thereafter, the respondents decided to appoint the petitioner on the post of Chowkidar which was one step lower in pay scale than the post held by his father, which action has been challenged in this petition.

9. The challenge to my mind cannot sustain. The purpose of

providing ex gratia appointment is not to mark a career in Government but to bring succour to the family in its hour of need. The right stands consummated on appointment offered on compassionate grounds. Once accepted that is the end of the matter. There can be no second consideration. The rule is against exercise of endless compassion. See, State of Rajasthan v. Umrao Singh, (1994) 6 SCC 560. A candidate for compassionate appointment has no right to a particular post of his choice but can only claim consideration strictly in terms of the policy as such appointments are an exception to equal opportunity mandates in Article 16 of the COI; See, State of Madhya Pradesh v. Ramesh Kumar Sharma, AIR 1994 SC 845: 1994 (Supp) SCC 661. “The High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic consideration” in matters of compassionate appointment; see, LIC v. Asha Ramchandra Ambekar, (1994) 2 SCC 718. Nor can the prayer be granted after twenty years, although in waiting.

10. Accordingly, the petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

21.07.2016

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No