

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.8246 of 1995 (O&M)

Date of Decision: 06.05.2016

Rajan Gupta

... Petitioner

Versus

The State of Punjab and others

... Respondents

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

Present: Mr. K.S. Khehar, Advocate,
for the petitioner.

Mr. Harkesh Manuja, Addl. AG, Punjab.

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

RAJIV NARAIN RAINA, J.(Oral)

1. The petitioner is not happy with his appointment as Inspector Grade II and claims compassionate appointment as Assistant Food & Supplies Officer. Once there was a proposal afoot in the respondent department to offer compassionate appointment to the petitioner as Assistant Food & Supplies Officer in the Department of Food & Supplies, Punjab vide dormant order dated September 16, 1994. However, the order was not translated into action and was not communicated to the petitioner. It was still-born. Instead, he was offered appointment to the post of Inspector Grade-II which was two steps lower in the hierarchy of the cadre.

2. While contesting the petition the stand taken by the State in its return is that the offer had not matured into appointment and thus no rights could be claimed by the petitioner on an order which was not conveyed. The State Government had changed its mind and offered the post of Inspector

Grade-II instead. The petitioner joined the post and then feeling aggrieved approached this Court in the present petition for directions to the State to appoint him to the higher post of Assistant Food & Supplies Officer. His claim is based on discrimination. He says in para.7 of the petition that there was an instance where a similarly situated person was offered on compassionate grounds the post of Assistant Food & Supplies Officer and some on other posts higher than the rank of Inspector Grade-II in the respondent department.

3. The State does not deny the assertion that in the office such an appointment was made. However, a case of negative discrimination cannot be set up within Article 14 without fully understanding the distinguishing features of prior appointments and the reasons therefor. The petitioner must stand on his own legs to succeed. The petitioner has continued to work as Inspector Grade-II these twenty intervening years and in all probability he must have been promoted to the higher posts by sheer passage of time. The fact remains that the post on which claim is made was not offered to the petitioner in writing. No rights can accrue to the petitioner for him to insist as a matter of right that he should be appointed as Assistant Food & Supplies Officer. Once appointment as Inspector Grade II was accepted the prudent rule of estoppel applies. The purpose of compassionate appointment stands fulfilled when the petitioner was offered the post of Inspector Grade-II and joined service, with or without prejudice to any of his rights, where prejudice alone is of no moment in the present decision making. The purpose of compassionate appointment is also not to secure a career for oneself but to save the family from want, penury and acute financial distress

the death of Government servant brings in its wake upon a hapless family left without financial resources to tide over the hardship and to rehabilitate the family of deceased Government servant. In the present case the appointment made and accepted eminently rehabilitates the family.

4. The legal position is available in a series of judgments dealing with compassionate appointment for instance in Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138; Their Lordships of the Supreme Court holding that "If dependant of deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status, but to see the family through the economic crisis." Again, in *Umesh Kumar Nagpal* it was observed: "...as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. 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."

5. In I.G. (Karmik) & others v. Prahlad Mani Tripathi, (2007) 6 SCC 162, the Supreme Court have held that once the right is exhausted, any further or second round of consideration does not arise. In State of Rajasthan v. Umrao Singh, (1994) 6 SCC 560, the Supreme Court have ruled against the exercise of "endless compassion". The petitioner's rights

stand consummated by acceptance of the offer and no further claim on higher post is tenable.

6. In view of the above, I find no substance in this petition and would dismiss it.

(RAJIV NARAIN RAINA)
JUDGE

06.05.2016
manju