

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

CWP No.19423 of 2005

Date of decision: 09.11.2016

Chand Ram

...Petitioner

Vs.

Punjab & Haryana High Court & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jagbir Malik, Advocate, for the petitioner.

Ms. Divya Sharma, Advocate, for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

1. The petitioner's father died in harness on 01.11.2002 while serving as a Reader in the District Courts at Karnal. The petitioner applied for ex gratia appointment. The prevailing policy at the time of death of petitioner's father were the policy instructions dated 08.05.1995 (Annex P-2). The policy gave right of consideration for compassionate appointment to a dependent of deceased government employee.

2. It may be noted that the case of the petitioner's father for retention in service beyond 55 years was considered earlier and he continued to serve till he died soon thereafter at the age of 55 years and 5 months.

3. On the other hand, Ms. Divya Sharma, learned counsel representing the respondents, submits that after the petitioner made an application on 03.12.2002, it was returned in original informing him that he had not mentioned the post for which he applied and he should act accordingly and identify the post. He took about a year to respond to the letter and identified the post he desired to be considered by his application

dated 25.02.2004. By that time, the 'Haryana Compassionate Assistance to the Dependents of Deceased Government Employee's Rules, 2003' had come into force. The said Rules mandated that compassionate appointment could not be offered where the deceased government employee was over 55 years of age at the time of demise. Ms. Sharma points out to Rule 3(d)(iii), which defines 'deceased government employee' as one, who should not have crossed the age of 55 years. Thus, the petitioner was not eligible for compassionate appointment. However, this bar was removed by a subsequent notification issued on 10.02.2004, but with a rider that in such cases family would be entitled to ex gratia financial assistance by adding Clause (c) in Rule 4 of the policy. The amount fixed was ₹2.5 lakhs as a one-time settlement.

4. In Umesh Kumar Nagpal Vs. State of Haryana & others, (1994) 4 SCC 138, the Supreme Court elucidated the law on compassionate appointments and held that as a general principle, such policies were repugnant to the constitution obligations placed on the State in Articles 14 & 16 of the Constitution of India which guaranteed equal opportunity to eligible job seekers pursuing public posts. However, power could be exercised by the Government in cases of extreme hardship and acute financial crisis a family may face as a result of the death of the bread winner. Neither had the petitioner pleaded his financial status in the application filed soon after the death of his father nor when he responded to the department naming the post he was keen to join and worse still in the present petition. In the absence of specific pleadings on financial status of the family at the time of death, it would not be possible to either direct the respondents to consider the case of the petitioner for compassionate appointment or consider issuing any direction by the writ Court by way of a mandamus to

the respondents commanding them to provide a job ex gratia to the petitioner.

5. At this stage when faced with an uphill task difficult to surmount, Mr. Malik tactically withdraws and confines his claim to financial assistance, which he lawfully can and prays it may be considered as an alternative relief.

6. Heard counsel on this point of departure at some length in search of admissible relief.

7. Though the petitioner did not apply specifically for financial assistance, but the respondents were ever ready and willing to give revised right to the petitioner permitting him to apply for financial assistance and his case could be considered accordingly. Not having applied for financial assistance to contest the case for ex gratia appointment, Ms. Divya Sharma submits that he cannot be taken to have waived his right to compassionate appointment till presently or at least to have succumbed to the position. But I see that this petition was brought in the year 2005 without unreasonable or negligent delay and thus, as it is often observed in judgments where the State is the defendant/respondent, pleas of limitation and delay should ordinarily not be taken by it only to defeat just claims at least is a socially beneficial measure the policy testifies. It does not redound to the credit of the State to deprive a person of his rightful due which subsists or is once agreed upon by virtue of passage of time. The mere fact that the petitioner has approached Court in 2005 means that he wished to keep his rights alive and press them in court and, therefore, I would not read delay and limitations fatal against the petitioner to deny him a just and equitable relief which can be handed down within the law. He has not been negligent in pursuing legal remedy. Argument to the contrary is rejected.

8. Consequently, this petition is treated as a request application for financial assistance de hors any earlier correspondence on the subject between the parties.

9. At this stage, on the oral request of Mr. Malik, is accepted to remove any technical defect in the array of parties in the cause title memorandum and the State of Haryana is allowed to be impleaded as a party-respondent which is to bear the financial burden of the decree. On the asking of the Court, Mr. J.S.Bedi, Additional Advocate General, Haryana, who is present in Court in routine as law officer with the Court, accepts notice on behalf of the State of Haryana. The only issue, which the State of Haryana could have raised was bar of limitation and that the petitioner had not applied for financial assistance either to the Sessions Division, Karnal or to the competent authority in the State Government. But since I have already discarded the contention of Ms. Divya Sharma on this specious plea there would be no legal or dire necessity to receive a written statement from the State especially when the petitioner has a right to financial assistance in terms of the 2003 policy as amended.

10. Therefore, and having regard to the reasons afore-stated, I would allow the petition and direct the respondents to pay an amount of ₹2.5 lakhs to the petitioner within a period of two months from the date of receipt of certified copy of this order. However, since the petitioner did not apply for financial assistance in the fond hope of compassionate appointment, he would not be entitled to any interest on the principal amount.

09.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: Yes