

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 10159 of 2008

Date of Decision : April 26, 2016

Sandeep Petitioner

vs.

The Haryana Vidyut Prasaran
Nigam Ltd. and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Sunil Kumar Bhardwaj, Advocate
for the petitioner.

Mr. Mohnish Sharma, Advocate
for the respondents.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner seeks quashing of order dated 24.09.2007, through which, his claim for seeking appointment on compassionate basis was rejected. He further seeks the issuance of a direction to the respondent – the Haryana Vidyut Prasaran Nigam Ltd. (hereinafter referred to as – the Nigam) to appoint him on compassionate grounds.

A few facts may be noticed.

On 03.01.2004, father of the petitioner, who was serving the respondent Nigam, died in harness and on the happening of such an event, in the year 2004 itself, mother of the petitioner sought employment for the petitioner on compassionate grounds. The application moved by the petitioner's mother was considered under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003 (hereinafter referred to as – the 2003 Rules) and accordingly, in response thereto, the respondent Nigam, through letter dated 24.06.2005, informed the mother of the petitioner that in the seniority list, being maintained by the respondent Nigam, of all eligible candidates seeking compassionate appointment, the petitioner figured at Serial No. 92. She was further informed that as per clause 3(b) of the 2003 Rules, a maximum of 5% of the sanctioned posts (falling under direct recruitment quota in Group-C and Group-D) could be filled up through ex-gratia employment and since as per seniority, the petitioner was not entitled to appointment in lieu thereof, she was offered compassionate financial assistance of ₹ 2.5 lacs, the amount payable under the applicable Rules. The record reveals that neither the petitioner's mother nor the petitioner responded to the afore-referred offer and in the meanwhile, the Haryana Compassionate Assistance to the Dependent of the Deceased Government Employees Rules, 2006 (hereinafter referred to as – the 2006 Rules) were promulgated, as per which, on 20.11.2006, the petitioner's mother was asked to give either of the following options :-

- “a. Lump sum ex-gratia grant provided in the Rules, 2003 for ₹ 2.5 lacs, where death occurred prior to 18.11.2005 (On form 'B')*
- b. Lump sum ex-gratia grant provided in the Rules, 2005 for ₹ 5 lacs, where death occurred prior to 18.11.2005 (On form 'B')*
- c. Financial Assistance, a sum equal to the pay and the allowances that was last drawn by the deceased employee in the normal course without raising a specific claim as per clause 5 (1) sub clause (A), (B) and (C) and 2 to 5 of Rules, 2006 (On form 'A'). The calculation of the period shall be made from the date of the notification of these Rules i.e. 01.08.2006.”*

No option was given either by the petitioner or his mother.

The respondent Nigam again wrote a letter on 05.02.2007 reminding the petitioner's mother to exercise her option. Even after the afore-referred reminder, it is the admitted position that no option was submitted by the petitioner or his mother.

However, instead of opting for ex-gratia compensation, the petitioner got served upon the respondent Nigam a legal notice seeking appointment of compassionate basis, which was considered and responded to by stating therein that since at the time of consideration of the petitioner's case, as per his seniority, he did not fall within the prescribed 5% quota and that as per the applicable rules, since the validity of the list was for three years, no offer of appointment on compassionate basis could be made to

him. So far as ex-gratia compensation is concerned, since the petitioner or his mother had failed to exercise their option when specifically asked to do so on several occasions, the same was also rejected.

On 27.02.2016, at the time of hearing of the matter, learned counsel for the respondents, in spite of delay and non-submission of options by the petitioner and his mother, again offered to the petitioner payment of ₹ 2.5 lacs as ex-gratia compensation. Learned counsel for the petitioner sought time to seek instructions and on receipt of the same, while declining the offer, insisted only for being appointed on compassionate basis.

Appointment on compassionate basis was not given to the petitioner since he was figuring at Sr. No. 92 in the seniority list, being maintained by the respondents for appointment on compassionate basis and as per his seniority, he did not fall within the prescribed 5% quota of posts to be filled up on compassionate basis.

As per Rules, the list remained valid for a period of three years and within this period or even beyond it, no person junior to the petitioner from the afore-referred seniority list has been shown to have been appointed.

Learned counsel for the petitioner has alleged discrimination. He argued that one Subhash, who was working on the post of Junior Engineer, had expired on 28.02.2005 i.e. later than the father of the petitioner and his son namely Shiv Charan had been offered appointment as Clerk on compassionate basis. On the ground of parity, claim for

compassionate appointment was made.

A close scrutiny of the record reveals that the ground of discrimination, as sought to be raised on behalf of the petitioner, is not made out as the afore-referred Shiv Charan was an employee of Uttar Haryana Bijli Vitran Nigam Limited, which is a separate entity from the respondent Nigam, where the father of the petitioner was serving at the time of his death. It is the un rebutted case of the respondent Nigam that the Nigam and the Uttar Haryana Bijli Vitran Nigam Limited maintain separate seniority lists with regard to the persons seeking compassionate appointment. No person junior to the petitioner in the seniority list, being maintained by the respondent Nigam for the purpose of making compassionate appointment, has been shown to have been appointed in the respondent Nigam. That being so, the claim for discrimination, as sought to be raised on behalf of the petitioner, is misplaced.

Even otherwise, the petitioner and his mother had refused to accept ex-gratia compensation to the tune of ₹ 2.5 lacs, way back in the year 2005, and consistently even thereafter. This certainly poses a question-mark on whether the petitioner and his mother did ever need ex-gratia compensation on the death of the father of the petitioner.

Reliance of the learned counsel for the petitioner on a Division Bench judgment of this Court in **C. W. P. No. 5994 of 2008 – Ravinder Kumar vs. State of Haryana and others**, decided on **09.04.2008**, for being granted ex-gratia compensation under the 2006 Rules, is also misplaced. In

that case, the petitioner therein was seeking compassionate appointment, which was rejected by the respondents therein and in lieu thereof, offer was made to the mother of the petitioner therein for ex-gratia financial assistance under the 2006 Rules.

In the case in hand, options were given to the petitioner's mother as also the petitioner for being paid ex-gratia compensation way back in the years 2005, 2006, 2007 and again at the time of hearing of this case in the year 2016. The option was neither exercised earlier nor before me in the year 2016. Once options were given for being paid ex-gratia compensation earlier under the 2003 Rules, then under the 2006 Rules and consistently declined in the years 2005, 2006, 2007 and 2016, no liberty can be granted to the petitioner to be considered for the grant of ex-gratia compensation. The facts of the case in **Ravinder Kumar** (*supra*) are, thus, completely distinguishable from the facts of the case in hand.

In view of the above, finding no merit in this writ petition, the same is hereby ordered to be dismissed with no order as to costs.

(**DEEPAK SIBAL**)
JUDGE

April 26, 2016
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