

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

Date of decision: 29.11.2016

CWP No.11330 of 2008

Azad Singh

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Mahavir Sandhu, Advocate, for the petitioner.

Mr. J.S.Bedi, Addl. AG, Haryana for the respondents.

RAJIV NARAIN RAINA, J.

Compassionate appointment is claimed on account of the death of the Government employee on 11.06.2005, who was the father of the petitioner, dying in harness while working as an Agriculture Development Officer in the Directorate of Agriculture, Haryana. The petitioner was then a minor, who attained the age of majority on 26.01.2008. Immediately, after the death of Nand Lal, the widow applied to the Department informing it that she had lost the only source of income and had no other person to support her family. She applied for grant of ex gratia employment to her son i.e. the petitioner in July, 2005. She sent a reminder in January, 2006 again informing and requesting the Department on affidavit in the prescribed proforma to keep her son's case alive till he was of employable age. Meanwhile, the petitioner completed his studies. When he became major, he applied directly for grant of ex gratia appointment on 23.05.2008. The application was considered by the Director, Agriculture Department, Haryana, who declined the request. The order while rejecting the request for

a job for the son, accorded sanction of payment of ₹2.5 lakh as ex gratia financial assistance in lieu of service to the wife of late Nand Lal. To reach the conclusion, the order noticed the notifications dealing with compassionate appointments/financial assistances dated 28.02.2003 and 10.02.2004 as well as the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short 'the 2006 Rules'). As such, there is no specific reason assigned for declining the request for compassionate appointment. But the request has been decided against the petitioner by necessary implication invoking Rule 3(b) of the Rules to sanction the financial assistance, inversely declining the request for the primary prayer. This has brought the present petition.

On notice, the State has filed its written statement and has contested the case. It is admitted that the mother of the petitioner applied on 22.07.2005 for grant of employment under the ex gratia scheme offered by the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (for short 'the 2003 Rules'). It is explained that the application was forwarded on 11.05.2006 to the competent authority for necessary action. As per Rule 2 of the 2003 Rules, family of the deceased employee has two options i.e. (i) either he can opt for ex gratia appointment on compassionate grounds; or (ii) receive ex gratia compassionate financial assistance of ₹2.5 lakhs in cases where the first option is not exercised. As per Rule 9 of these Rules, there is a provision of 5% of sanctioned posts (falling under direct recruitment quota) in Group C & D categories determined by the Head of the Department on 31st March of each year from where such appointments can be made. Rule 9 (a) confers the benefit only if regular posts meant for that purpose are available. It is the categorical stand of the State that there was no vacancy/post from

11.06.2005 to 10.06.2008, the period within three years on attaining majority of the petitioner under the 5% quota. Therefore, the petitioner was not entitled to compassionate appointment.

It is settled law that compassionate appointment cannot be claimed as a matter of right and if the factors constituting relief are not available, the benefit cannot percolate down. In the meanwhile, the State repealed the 2003 and 2005 Rules and replaced them by the 2006 Rules, which came into force on 01.08.2006. The mother of the petitioner submitted her option for monthly financial assistance in a sum equal to the pay and other allowances that was last drawn by the deceased employee in the normal course in terms of 2006 Rules. However, the Chief Secretary to Government of Haryana by way of clarification instructions dated 08.06.2007 vide clause-3 deciding that the 2006 Rules are not applicable to the cases where death happened prior to 01.08.2006 and where PPO/GPO have been issued to them had deprived the widow of the right where retiral benefits had been settled. Accordingly, the petitioner's mother was not entitled to the benefits under the 2006 Rules and should remain satisfied with the offer of ₹2.5 lakhs under the 2003 Rules. The mother refused to accept the offer or to receive the amount promised by negotiable instrument. Hence, it is urged by the State that there is no infirmity in the impugned order dated 20.05.2008 sanctioning ₹2.5 lakhs in favour of the petitioner's mother.

In the first instance, the claim of the petitioner for compassionate appointment is taken up for consideration in the light of pleadings on file including the averments in the replication filed by the petitioner to the reply filed by the State. The death may have been untimely and would have occasioned loss of income, but still the benefit of ex gratia

employment has to be understood in the light of the financial condition of the family at the time of the death of income-producer. The object of compassionate appointment is to help family to tide over immediate financial hardship and to meet the sudden crisis in cases where, without financial help from the State, the family would be ruined completely i.e. financially, socially, emotionally and physically. It is not the case that the widow was not entitled to the financial benefit arising out of the death in terms of the amounts lying in the accounts of the deceased with the Department including DCRG, leave encashment, family pension etc. Family pension is designed to take care of the widow and the family left behind. There is no pleading in this case to the effect that the petitioner's family faced acute financial hardship of the kind recognized by the Supreme Court as a legal principle to grant compassionate appointment in Umesh Kumar Nagpal Vs. State of Haryana & others, (1994) 4 SCC 138.

There is no rebuttal of the assertion that no sanctioned posts were available from the date of death and the petitioner becoming a major for the three years period required to be taken into consideration in the 5% quota from where appointments can alone be made. If there are neither posts nor vacancies, then a supernumerary post cannot be created by a direction of the Court to accommodate the claim of the petitioner for ex gratia appointment. Besides, the petitioner has not placed anything on record to suggest what his current financial status is and what he has made of his life after completing his studies. It is, therefore, not a fit case to award compassionate appointment for the asking.

However, as far as financial assistance is concerned, the reason to restrict the payment of ₹2.5 lakhs and not extend it to the benefits available under the 2006 Rules as far as they are based on the instructions

issued by the Chief Secretary to Government of Haryana dated 08.06.2007, is not sustainable in law. I have already considered this aspect in CWP No.12717 of 2009 titled 'Smt. Saroj & another Vs. State of Haryana & others' decided on 07.11.2016, holding that instructions cannot supplant statutory rules. Rule 6 of the 2006 Rules keeps cases of ex gratia financial assistance, which are pending after coming into force of the Rules to be treated as 'pending cases'. Thereby, the right of the petitioner's mother to enhanced financial compensation/assistance when having remained pending after coming into force of the new Rules and the case being rejected on 20.05.2008, the benefits available under 2006 Rules cannot be denied. The 2006 Rules are option based on whether claimant desires to follow pursuit of financial benefits under the 2003 rules or 2005 rules or the 2006 Rules.

Though the claim for financial assistance may still be alive, but the intractable position on file is that the petitioner's mother refused to receive compassionate financial assistance of ₹2.5 lakhs when offered while insisting for a job for her son but she is not before the Court claiming enhanced compensation under the 2006 Rules nor is there such a prayer in the petition on behalf of the mother in the alternative, which could have been considered. However, a prayer is made for quashing the order dated 20.05.2008 (Annex P-6). Quashing the order dated 20.05.2008 is rendered academic as far as the petitioner is concerned, since it only accords sanction of ₹2.5 lakh to his mother Urmila Devi, but does not speak of compassionate appointment. As said earlier, there is no specific order in writing declining the request for compassionate appointment, but by necessary implication it has been denied because of passing of the order dated 20.05.2008. If order dated 20.05.2008 (Annex P-6) is quashed, the widow gets nothing and accordingly there is apparently a grave defect in the form of the petition in

the prayer clause. But still, this Court cannot do injustice to the widow by depriving her financial assistance altogether. There could have been an alternative prayer in the petition that in case the Court does not find merit for compassionate appointment, then at least financial assistance should be enhanced for the mother, where both could have been petitioners. In these circumstances there is scope for interference to avoid a miscarriage of justice. The widow's right to financial assistance in terms of the 2006 rules deserves to be kept open.

For the foregoing reason, the instant petition is dismissed with respect to compassionate appointment. However, the rights of Urmila Devi, mother of the petitioner, are kept alive in terms of *Smt. Saroj's* case. Merely because she refused to receive the sanctioned amount of ₹2.5 lakhs in the hope of obtaining a job for her son cannot be used against her as a waiver of rights, as she may have thought that accepting the money would shut out the case of her son for ex gratia compassionate employment. Accordingly, in case Urmila Devi yet applies for amending her request made under the 2003 Rules, the same will be accepted for consideration.

The respondent department would proceed to seek her option and help complete the formalities necessary under the 2006 Rules and consider granting her the benefit as per option she chooses to exercise as per rules. In this exercise, the order dated 20.05.2008 shall be treated as non est and *ab initio void* and, therefore, not binding on the rights of the petitioner's mother. This is the view I have taken in similar circumstances in some cases in a batch of about a 100 writ petitions on compassionate appointment/financial assistance heard and decided by me recently where the issue was involved and especially the Chief Secretary's instructions dated 08.06.2007 invalidated. In case, the consideration is adverse to the

interest of the petitioner's mother, if she sets the ball rolling, she would be at liberty to resort to her legal remedies in accordance with law.

29.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*