

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

1. CWP No. 20062 of 2006

Vijay Nath Bahl

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

2. CWP No. 20064 of 2006

Paramdev

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

3. CWP No. 20065 of 2006

Mridul Sharma

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

4. CWP No. 20066 of 2006

Gaurav Chawla

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

5. CWP No. 20087 of 2006

Rajinder Kumar

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

6. CWP No. 20092 of 2006

Vaneet

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

7. CWP No. 20097 of 2006

Vijay Kumar.

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

8. CWP No. 20101 of 2006

Kulvinder Singh

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

9. CWP No. 20102 of 2006

Sanjay

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

10. CWP No. 20103 of 2006

Pawan Kumar

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

11. CWP No. 20121 of 2006

Saroj Rani

....Petitioner

versus

State of Haryana and others

..Respondents

12. CWP No. 20181 of 2006

Rajman

....Petitioner

versus

Ch. Charan Singh Haryana Agricultural Uni, Hisar & ors.

..Respondents

Date of decision:-08.02.2016

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. R.K. Malik, Sr. Advocate, with
Ms.Rimpal Kadyan, Advocate

GAURAV ARORA
2016.05.03 14:51
I attest to the accuracy and
integrity of this document

for the petitioner(s).

Mrs. Girish Agnihotri, Sr. Advocate with
Mr. Kshitij Sharma, Advocate, for respondent No. 1 and 2

Mr. Gaurav Goel, AAG, Haryana for respondent No. 3

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

RITU BAHRI , J.

This order shall dispose of the above twelve petitions as common question of facts and law are involved in all these petitions wherein prayer is for quashing of impugned order dated 12.12.2006 whereby it was decided to relieve the petitioners from their services. However, for the facility of reference, the facts are being taken from C.W.P No. 20062 of 2006.

The father of the petitioner was in service of respondent-University and died during service on 29.03.2003 and thereafter, petitioner applied for compassionate appointment and he was offered appointment as Clerk vide order dated 17.08.2004 (P-1).

Thereafter, on 30.06.2006 (P-2), he was given one month's notice in view of some clarification received from the State Government and it was decided to relieve her from the respondent-University.

Petitioner approached this Court by way of filing CWP No.

11379 of 2006 against the impugned notice dated 30.06.2006. The petition was disposed of on 27.07.2006 by enabling the petitioner to file reply to the above said show cause notice and the respondents were directed to consider the reply filed by the petitioner and adjudicate upon the same by passing a well reasoned speaking order before the petitioner is relieved from his employment.

In compliance of the above said order, petitioner submitted detailed representation (P-10). Thereafter, respondent-University submitted before the Government for reconsideration of the matters as there was no concealment or misrepresentation on the part of the employees and they were appointed taking into consideration that in University the age of retirement is 60 years while in Haryana Government, it is 58 years. So, in these circumstances, the dependants of those who died after the age of 55 years, were considered for compassionate appointment. The letters written by the University to the Government are Annexure P-11 and P-12.

Thereafter, Government, vide order dated 12.12.2006 rejected the claim of the petitioner and he was ordered to be relieved (P-14). Hence the present writ petition.

On notice a written statement has been filed on behalf of the respondents stating therein that the petitioner was given employment on compassionate grounds in terms of Haryana

Government Compassionate Assistance Rules, 2003 (for short “Rules 2003”) which were adopted by the University in toto for its employees. The Local Audit Department, Haryana did not admit the pay of the petitioner on the plea that the age of the father of the petitioner was more than 55 years and hence, the petitioner is not entitled for ex gratia employment under the Rules 2003. The matter was discussed with the Director, Local Audit Department, Haryana and it was decided that the pay of the petitioner be admitted provisionally and vide letter dated 26.05.2005 Annexure R-1, a clarification was sought from the State Government followed vide letter dated 13.09.2005 and Financial Commissioner & Principal Secy to Haryana Government Agricultural Department vide letters dated 19.05.2006 (R-3) and 22.05.2006 (R-4) informed that the Government had not agreed to the proposal/interpretation of the University i.e for giving ex gratia employment where the age of the deceased employee was 55 years and above and hence the impugned show cause notice was issued to the petitioner, as the employment of the petitioner was found to be in contravention of the Rules 2003. Further the University vide memo dated 05.05.2003 (R-5) had adopted the notification of the Haryana Government dated 28.02.2003 which was circulated on 31.03.2003 by the Chief Secy to Government of Haryana.

This Court vide order dated 18.12.2006 issued notice of

motion and stayed the operation of impugned order dated 12.12.2006 and the writ petition was admitted on 13.11.2007.

Mr. R.K. Malik, learned Senior Advocate submits that the impugned removal order (P-14) has been passed on the directions of the Government who has no jurisdiction at all. The Vice Chancellor has adopted the Government Rules for Compassionate Appointment and once he can adopt the Rules of the Government, he can also interpret Rules in the light of the different terms and conditions of the employees of the University. Further there was no concealment or misrepresentation on part of the petitioner. The objection raised by the Local Audit Department is wrong and was against the notification dated 10.02.2004 (P-5) issued by the Haryana Government whereby rule 3 (d) (iii) was omitted which reads as under:-

“(iii) who should not have crossed the age of 55 years.”

Thus, once this clause had been deleted on 10.02.2004, it was not necessary to examine the case of the petitioner on compassionate grounds in the case the employee had crossed the age of 55 years.

Petitioner was appointed on 17.08.2004 and the above said clause was deleted vide notification dated 10.02.2004 and hence his appointment was not in violation of notification dated 28.02.2003.

On the other hand, Mr. Girish Agnihotri, learned senior

counsel has argued that Rules 2003 were adopted by the University for its employees as per letter dated 31.03.2003 issued by the Chief Secy to Government of Haryana. Further the University has written a letter to the Government stating therein that since the age of the University employees is 60 years, the University has allowed the ex gratia benefit to the dependent of deceased Government employee who died while in active service and gave employment to the dependents and thus a clarification was sought from the Government, who did not agree to the proposal/interpretation of the University i.e for giving ex gratia employment where the age of the deceased employee was 55 years and above and hence the impugned show cause notice was issued to the petitioner.

Learned counsel for the parties have been heard at length and careful thought has been given to the submissions made by them.

Petitioner was appointed on 17.08.2004 and at the time of death of his father on 29.03.2003 there was no bar that the dependants of the deceased died after 55 years are not entitled for compassionate appointment. At the time of joining of the petitioner, notification dated 10.02.2004 was in existence and he was rightly given the benefit of that notification.

Similar issue has come up for consideration before this Court in a case of ***Pawan Kumar vs. State of Haryana and others***

passed in CWP No. 6241 of 2005 and connected matters, decided on 25.04.2005 wherein the petitioners were dismissed from service on the ground that their initial appointments were perhaps contrary to the Rules. The writ petitions were allowed and petitioners were held to be deemed to continue in service and respondents were given liberty to pass a fresh order after giving due opportunity of hearing to the petitioners.

The case of the petitioner in the present case is squarely covered by Full Bench judgment of this Court in ***Krishna Kumari vs. State of Haryana and others*** passed in CWP No. 4303 of 2009 and connected petitions, decided on 20.04.2012 wherein petitioner's husband who had been working as Jr. Engineer expired on 23.02.1995. She moved an application on 05.05.1995 for providing employment on compassionate grounds to her son. The application of the petitioner was rejected on 18.08.2006 on the ground that there was no provision for employment under new policy dated 03.08.2006. This Court allowed the writ petitions and held as under:-

“In view of above judgment of the apex court and principles laid down therein, it is clear that the employer is within its power to lay down a policy for compassionate employment. It has to strictly adhere to the such policy. Though compassionate employment is in an exception to the general

*rule, power of the government or public authority to frame policy to offer compassionate employment has been accepted by the courts in the interest of justice and to meet sudden crisis which befalls the family when an employee dies in harness or is incapacitated. The question whether the policy in operation at the time of death of the employee would be applicable or that at the time of consideration of application would operate, arises for consideration. In Raj Kumar's case (supra) decided by the apex court it was held that there being no vested right for compassionate employment scheme in force at the time application is actually considered would apply, not the scheme in force earlier to said date. Subsequent policy would impliedly abolish the earlier policy. In this case, scheme which was in operation at the time of consideration of the application specifically provided that all pending applications would be considered under the new scheme. In a later judgment in **Bhawani Prasad Sonkar's case (supra)** the apex court took the view that the scheme in operation at the time of incapacitation of the employee would be applicable and not the scheme framed subsequently. In our considered view date of death of an employee is an important factor to be taken into consideration as schemes for compassionate appointment are*

*floated with a view to provide immediate relief to families of deceased employees to meet the financial crisis they face on death of sole bread winner. Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognized as an exception to the general rule for offering public employment would necessarily be applicable strictly in the parameters laid down therein and accepted by the apex court in its various decisions. Particular reference may be made here to **Umesh Kumar Nagpal v. State of Haryana & Ors, (1994) 4 SCC 138**, wherein it was held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to*

dependent of the deceased employee was accepted as it bore a rationale nexus to the object sought to be achieved viz. relief against destitution. The Supreme Court held:-

“6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.”

In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed.

*Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognized by the apex court in its recent judgment in **Bhawani Prasad Sonkar's case**. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer*

the reference accordingly

In the present case, petitioner was appointed on 17.08.2004 after his father expired during service on 29.03.2003 but he was issued show cause notice (P-14) on the ground that his appointment was in contravention of notification (P-4), which is illegal as vide notification dated 10.02.2003 (P-5) issued by the Haryana Government, rule 3 (d) (iii) of notification dated 28.02.2003 was omitted which reads as under:-

“(iii) who should not have crossed the age of 55 years.”

Thus, the petitioner at the time of his appointment was fully covered by the policy dated 10.02.2003 and further there was no concealment or misrepresentation on the part of the petitioner.

Applying the ratio of the above mentioned judgments to the facts of the present case, the writ petitions are allowed and order dated 12.12.2006 is set aside and petitioners are entitled to all consequential benefits.

(RITU BAHRI)
JUDGE

08.02.2016

G Arora