

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.19771 of 2008

Date of Decision:21.11.2016

Sandeep

...Petitioner

Vs.

The State of Haryana & others

...Respondents

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

Present:- Mr. R.K. Chopra, Sr. Advocate,
with Ms. Gagandeep Kaur, Advocate
for the petitioner.

Mr. J.S. Bedi, Addl, A.G.Haryana.

RAJIV NARAIN RAINA, J.

1. Having heard the learned Senior counsel for the petitioner and Mr. Bedi, learned Addl. A.G. for the State on both the issues arising in this case, one for compassionate appointment, the other for payment of financial assistance as alternative to the first prayer as per prevailing policy I would dismiss the petition on the first preferred relief and allow it on the second.

2. The facts are thus: Petitioner's mother was widowed when his father died in office on 10.11.1993 while serving as an Assistant Sub Inspector in Haryana Police. The petitioner was then a minor child aged 5 years. His mother applied to the Police Department expressing her personal disinterest for ex-gratia appointment but requested that the name of her son be kept in the pipeline and placed on the priority list of the Police Department and offered ex gratia appointment on becoming major. On reaching the age of majority, the case of the petitioner was rejected by the authorities on the ground that a period of more than three years had elapsed from the date of death of the bread-winner. Whether this is good or bad

reason matters little in this case which does not turn on this decision which excludes ex gratia appointment. Nor should the order be dissected to change the conclusion by striking the impugned order down. However, while saying so, the Court has to pay due regard to the principles of law laid down by the Supreme Court Judgement in one of the leading judicial authorities in Umesh Kumar Nagpal vs. State of Haryana and others, (1994) 4 SCC 138 and so many other decisions pronounced before and after, that the economic condition of the family alone is relevant consideration for offering ex gratia appointment. These schemes are meant to tide over immediate crisis the family may face and by the passing hour the claim gets considerably diluted to a point of effacement due to intervening circumstances, as in this case where passage of time is proof enough that family must have reorganised its life in the changed conditions. Wounds inevitably heal and life progresses. But it should not be at the cost of others who are waiting for jobs placing full faith in their rights of equality and equal opportunity considerations in Articles 14 & 16 of our Constitution. That is why courts have insisted that compassionate appointments are an exception to the rule where sympathy and misdirected kindness would have no place. It is a concession and not a right.

3. Mr. J.S. Bedi points out to the averments made by the petitioner in paragraphs 4 and 16 of the petition and argues from those averments that the mother of the petitioner having shown her disinclination in seeking ex gratia appointment for herself and demanding it for her minor son till he reaches employable age is sufficient circumstantial evidence to prima facie show that the family was not suffering on account of acute financial constraints on the demise of the government employee or suffered for lack

of money in support of a decent livelihood. Besides, it is nobody's case that the mother did not get family pension and other pensionary dues in accordance with the rules after the death of her husband which was sufficient money in hand to overcome immediate hardship with monetary relief granted by the Government. Those sums of money must surely have helped her in tiding over sudden loss of income. That apart, not only has the petitioner to show the financial status of the bread-winner and the family's resources with sufficient precision obtaining at the time of death of the employee but also to demonstrate throughout the intervening period till attaining the age of majority that the condition remained penurious and the family has not been able to make both ends meet before her son's asserted right [the petitioner] to compassionate appointment matured. If not in red, the claim cannot be ignited by the wick of mandamus by issuing directions commanding the respondents to provide a job to the petitioner. The family has not faced ruination or still does. It is of everyday use in such cases to re-emphasise that the scheme is meant to tide over immediate hardship and not to promote a career. The petitioner has not pleaded even prima facie any of the norms necessary to establish that the family was destroyed financially following the death of the Government servant.

4. I would, therefore, reject the prayer for compassionate appointment to the petitioner not only by reason of rejection of his claim by invoking bar of three years and but for other reasons as well as explained above. This is also because the view once expressed by the Division Bench of this court that right could be kept reserved till attaining majority even after long passage of time, was not acceded to in its principle by the Supreme Court as a legal proposition to apply in cases of compassionate

appointment which require no reiteration since they are available in legal software. For this reason as well, I have no doubt that it would be prudent to decline the prayer when the petitioner has no fundamental right to public employment through the ex gratia schemes. There is yet another dimension to the issue of grant of relief of compassionate appointment after long passage of time carved out recently by Brother H.S.Sidhu, J. in an unreported case in where his Lordship observes in these felicitous words:-

“....If he had tried and competed for a job in the open market, without waiting for the compassionate appointment to fructify, he may well have succeeded. And thereby hangs a tale which all applicants for compassionate appointment ought to take note of. Pursue your cases by all means, if you will, but simultaneously, do not give up on your effort to compete for a job on your own merit and capability.”

5. However, there may be some merit in the alternative submission of Mr. Chopra, learned senior counsel that even if compassionate appointment is not to be ordered but at least his client should be considered for financial assistance provided under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2003, 2005 or the 2006 Rules. The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees' Rules, 2006 provides that cases which are pending will be decided in accordance with the 2006 Rules, which Rules deny the right to compassionate appointment altogether in the State of Haryana.

6. I would, therefore, allow this petition partially. The claim for compassionate appointment is turned down. However, the claim for

financial assistance is upheld and the State is directed to grant the family of the petitioner financial assistance in terms of the 2006 Rules which leave an option to the family of the deceased employee either to choose between the 2003 Rules or 2005 Rules or the 2006 Rules, as the case may be. The right, if any, and found legally subsisting till today strictly as per applicable policy, shall be determined by order to be passed preferably within three months from the date of receipt of certified copy of this order and paid to the widow of the deceased employee as per law within three months.

(RAJIV NARAIN RAINA)
JUDGE

21.11.2016
MFK/neeraj

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>No</i>