

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20202 of 2008

Date of Decision: 09.11.2016

Rinku

... Petitioner

Versus

The State of Haryana and others

... Respondents

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

Present: Mr. Rohan Sharma, Advocate,
for Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. J.S. Bedi, Addl. AG, Haryana.

Mr. Kuldip Singh, Advocate,
for respondent No.4.

RAJIV NARAIN RAINA, J.

1. On April 07, 2016 Mr. Kuldip Singh, learned counsel for the respondent-Bank offered ex gratia compensation of Rs.2.5 lacs to the petitioner and the opposite counsel prayed for time to seek instructions whether the offer would be acceptable to his client or not. When the matter came up on May 05, 2016 learned counsel was granted last opportunity to seek instructions on the offer made by the Bank. The offer has not been accepted and statement was made before this Court as August 02, 2016 by the learned counsel for the petitioner, on instructions from his client, that he is not interested in receiving any amount of money and prays for compassionate appointment alone. On this statement, I had admitted the case. It has been listed in a bunch of cases on compassionate appointments and that is how the matter has come up before me for hearing. Since the

petitioner has waived his right to financial assistance this Court is left with considering his case for compassionate appointment. To understand the rights of the petitioner, one would necessarily have to delve into a few relevant facts which go like this:-

2. The petitioner's father Dharam Singh was a Guard working in the Karnal Central Cooperative Bank Limited, Karnal. He passed away on December 25, 1995 while in service. The petitioner was a minor then. His mother Darshana Devi submitted an application to the Bank on April 16, 1996 with the request that one post be kept reserved for her son for ex gratia appointment. The request was placed before the Board of Directors on August 22, 1996 vide item No.17 and it was resolved that one post of Peon be kept reserved for the son of Dharam Singh on compassionate grounds. The petitioner was accordingly informed vide letter dated August 30, 1996 vide Annex P-2. The mother informed the Bank on December 27, 2005 that her son would complete 18 years of age on November 19, 2006 and requested that he be employed as a Peon in the Bank as per the decision of the Board of Directors. Again the request of the petitioner was placed before the Board of Director in its meeting dated April 17, 2006 vide item No.5 but the Board deferred the case. Being a postponed item the case was again put up before the Board on June 09, 2006 vide item 7 but no decision was taken. The General Manager of the Bank sent a letter to the Additional Registrar (Credit) exercising the powers of Registrar, Cooperative Societies, Haryana to convey its decision on the resolution. About a year later on January 27, 2008 the mother of the petitioner appeared before the authorities and prayed that the representation to be decided expeditiously since by that time the

petitioner had become major.

3. As there was no response to the request from the Bank, the petitioner approached this Court in CWP No.13216 of 2008 which was disposed of on July 29, 2008 with a direction to the Registrar, Cooperative Societies, Haryana, Panchkula to decide the legal notice within a period of two months with the cushion of supply of certified copy of the order.

4. The Additional Registrar (Credit) exercising the powers of Registrar, Cooperative Societies, Haryana, Panchkula by the impugned order dated October 23, 2008 rejected the claim for compassionate appointment holding that the petitioner is entitled only to ex gratia financial assistance provided by the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules, 2006.

5. The petitioner has approached this Court assailing the impugned order on the ground that the rejection is improper. He is entitled for consideration for compassionate appointment as his case falls under the policy of 1995 prevailing when his father died. The scheme in the 1995 policy envisaged only ex gratia appointment and the concept of financial assistance was not conceived then.

6. In addition to the assertion of rights under the Policy-1995, the petitioner cites an instance of one Harjit Singh who died on January 10, 1998 and whose son was appointed in the same Bank on compassionate grounds on July 20, 2004 whereas the same relief has been arbitrarily denied to the petitioner.

7. In the policy dated November 30, 2005 which is also relied upon by the petitioner there is a stipulation in clause (vi) prescribing that in

the old Rules, 2003 [the policy floated after the 1995 policy] there was a condition that an option was to be exercised by an eligible family member of the deceased Govt. employee within 3 years from the date of death. Now, this period has been fixed at 4 years from the date of death. The rules have been amended to enable an eligible family member to exercise the option for compassionate appointment/financial assistance within 6 months from the date of death of the Govt. employee.

8. From here, it is argued that rights under the 2003 policy continued despite being repealed by the 2005 policy which incidentally also increased the financial assistance from Rs.2.5 lacs to Rs.5 lacs.

9. Learned counsel for the petitioner submits that date of death of his father was December 25, 1995 and the request for compassionate appointment was made on April 16, 1996 within the time prescribed and there is no delay on the part of the petitioner or his mother in applying.

10. It would be necessary to delve on the nature of the order passed by this Court in CWP No.13216 of 2008 (supra). Learned counsel for the petitioner submits that the order was passed ex parte Bank at the first hearing and a direction was issued to respondent No.2 to decide the representation. The respondent No.2 happened to be the Registrar, Cooperative Societies, Haryana.

11. The RCS, Haryana has only the jurisdiction to frame service rules of a Cooperative Bank at the outset after which he is rendered *functus officio* and has no concern with those rules in their everyday applicability and working which had to be adhered to by the respective societies. The RCS could not interfere in the day-to-day functioning of the respondent

Bank. It appears to me that the RCS should have actually sent the matter back to the Bank for its consideration being the appointing authority by either filing application for appropriate orders from this Court in the disposed of matter pleading lack of authority in a simple service matter and the lurking danger of overstepping his jurisdiction which might vitiate his decision if he rendered one. But he did not adopt this course. In the impugned order dated October 22, 2008 at Annex P-7 the RCS clearly and apparently usurped jurisdiction in passing the order and in this manner declined the petitioner's request for compassionate appointment and instead applied the law in the rules of 2006 where the petitioner could get his ex gratia financial assistance since the policy did not make provision for ex gratia appointments which were done away with.

12. The legal proposition which falls for consideration is whether the petitioner's right crystallized when the Board of Directors of the Bank being the competent authority decided in its meeting held on August 22, 1996 vide item No.17 and passed a resolution in favour of the petitioner resolving as follows:-

“Considered and decided that one post of peon is kept reserved for the son of Late Sh. Dharam Singh, Guard on compassionate ground.”

13. If the right had vested and accrued and the consideration had taken place by the Board, the repository of power, only to mature on a contingency fact in the future and the petitioner turned major then nothing remains I think to examine the case with reference anchored to policies of 1995, 2003, 2005 or 2006 because the Board of Directors of the Bank was the final authority in the matter which was not even subject to appeal or

revision or approval before or by the Registrar Cooperative Societies, Haryana in the matter of Bank employment. He was neither the disciplinary nor the appointing authority of an employee of the Bank. At best he could be a member of the Board of Directors of the Bank or his nominee in which case the petitioner has even a stronger case. Even assuming in absence of such a provision in the Haryana Cooperative Societies Act, 1984 the petition still must succeed. The decision of Board of Directors deserves to be honoured by the Board itself and not by abdicating authority to the Registrar. This is not a case of the Court creating a right for the first time in the petitioner. What is pressed in this case is a decision based on a resolution duly passed by the appointing authority which RCS had no business to interfere. The resolution has not been recalled till date by the BOD.

14. I also fail to see how in this case either the date of death or the date of consideration is relevant since the consideration has already taken place on August 22, 1996 when the resolution was passed by the Board of Directors of the respondent-Bank.

15. For the foregoing reasons, I hold that the impugned order dated October 22, 2008 is void *ab initio* for lack of jurisdiction to decide. The High Court order cannot be seen as conferring jurisdiction on the Additional Registrar (Credit) to exercise the powers of Registrar Cooperative Societies, Haryana, Panchkula to disturb the valuable and legitimate rights of the petitioner to compassionate appointment. Moreover, the specific instance in the respondent Bank appointing Harjit's son in similar circumstances is a case in point which deserves reflection by the authorities in the Bank.

16. As a result, the impugned order is set aside. A mandamus is issued to the Bank to give effect to the decision of the Board of Directors in its resolution dated August 22, 1996 and considered offering appointment to the petitioner as Peon. The petitioner would take his past benefits notionally and salary from the date of appointment. The consideration is directed to take place within six weeks from the date of receipt of a certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

09.11.2016
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<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>