

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.19646 of 2009
Date of Decision: 16.11.2016

Sandeep Kumar

... Petitioner

Versus

State of Haryana and others

... Respondents

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

Present: Mr.VD Sharma, Advocate for the petitioner

Mr.J.S.Bedi, Addl.A.G., Haryana for respondents no.1 to 4

Mr.J.S.Dhull, Advocate for respondent no.5

RAJIV NARAIN RAINA, J. (Oral)

1. This writ petition has been filed by the elder son of the deceased government employee. The death of the petitioner's father, who was income producer, occurred on 23rd May, 2005 when the petitioner was a minor. The petitioner's date of birth is 14th January, 1989. Initially, the widow of the deceased employee applied for grant of compassionate appointment for her elder son. The Department rejected her case for compassionate appointment, but allowed it for grant of financial assistance in terms of the Ex-gratia Scheme-2003 and instead offered financial assistance of ₹ 2.5 lakhs under the same policy. This offer was made on 19th June, 2009. It is against the denial of compassionate appointment that the petitioner approached this Court for directions to the respondents to provide him a job in place of his father who was a Veterinary Livestock Development Assistant in the Animal Husbandry & Veterinary Department, Haryana.

2. The petitioner places reliance for grant of similar relief citing the case of the 5th respondent whose father was also a Veterinary Livestock

Development Assistant and died about a year after the death of the father of the

petitioner and his ward has been given compassionate appointment as Bull Attendant in June, 2008 which is a Class IV post. Before any comparison can be made, there must be material and relevant pleadings in the petition outlining the facts of the case of the 5th respondent and the financial status of the family and acute monetary distress faced at the time of death of the breadwinner and thereafter. In the absence of such pleadings in the petition, this Court can only turn to the pleadings set out by the State and the 5th respondent in their written statements.

3. The State in its reply has denied that the case of Khushi Ram, the father of the 5th respondent has any concern with the case of the petitioner. This is in response to the pleadings of the petitioner made in paragraph 11 of the writ petition. The petitioner has filed a replication in which the only assertion in trying to bring the two cases together on equal footing is that the fathers of both of them were working in the same Department on the same post while the petitioner's father expired on 23rd May, 2005, the father of the 5th respondent expired on 16th June, 2006. The petitioner did not assert as to what was the financial status of family of Khushi Ram as compared to the family of petitioner's father when they died, even though the petitioner had such an opportunity to make relevant assertions in this regard in the replication, however, in the replication he has made only bald statements without referring to the financial status of the family of Khushi Ram which was the most important consideration in cases of compassionate appointment as held in Umesh Kumar Nagpal vs. State of Haryana and others, 1994 (4) SCC 138 interpreting the policy of the Haryana Government itself on the subject matter.

4. The defence of the State hinges on a declaration on oath given by the mother of the petitioner on affidavit dated 5th December, 2007 that she was not

instead she may be given monthly financial assistance/pension in lieu of employment. This affidavit, the State would submit, is a disclaimer of rights and waives the claim for compassionate appointment and therefore, this takes the case of the petitioner from outside the shelf of compassionate appointment and into another zone of relief available under the policy instructions/ex gratia rules. Even though in her affidavit, the mother of the petitioner had opportunity to explain and insist that the financial condition faced by her family were in dire straits as against the circumstances Khushi Ram's family was driven into on account of sudden death of the earning hand which were the same, and therefore, on a comparison of financial status, she should be given a right of employment to her elder son on the same parameters but she did not plead such similarity. This affidavit has been filed long back soon after the death of her husband and if both the deceased employees were colleagues and served in the same department they are presumed to have known the financial status of each other's family, and therefore, I have no doubt that compassionate appointment cannot be granted to the petitioner as a matter of right. The claim is not tenable and is turned down.

5. Nevertheless, insofar as award of financial assistance is concerned, it cannot be denied, since it has been offered by the State itself on 23rd June, 2005, but the widow of the deceased government employee refused to accept the offer in the hope that she might get public employment for her son. However, during the currency of the policy of 2003 as amended in 2005 the ceiling of financial assistance to the tune of ₹ 5.00 lakhs was raised after the death of the father of the petitioner on 18th November, 2005. This replacing policy came into existence after the death of the father of the petitioner, but still the Haryana Government came out with a fresh policy in the shape of rules called the 'Haryana Compassionate Assistance to the Dependents of the Deceased Government

and which have not attained finality by settlement, the rules would apply to pending cases. The family of the deceased employee would thus be entitled to enhanced amount of ₹ 5.00 lakhs. This is the relief which should have been granted or at least offered by the State after promulgation of the 2006 Rules. These rules were brought into force on 1st August, 2006 which the entitled LR's of the decedent employee are entitled to as a matter of right. As a consequence of entitlement, the question of award of interest on principal amount due may arise. It would I think serve the ends of justice if the financial assistance in the sum of ₹ 5.00 lakhs is paid to the family of the deceased employee as per rules of succession with interest at the rate of 6% per annum calculated with effect from the date of filing of the writ petition.

6. As a result of the above discussion, the writ petition is dismissed for the prayer for grant of compassionate appointment and at the same time is allowed for grant of financial assistance in the above terms as per policy-2006. The interest would run at the rate of 6% per annum from the date of filing of this writ petition. The writ petition itself would be treated as a request for financial assistance in view of the fact that there is a prayer for alternative relief in the petition, though not articulated but all the same sufficient in the residue prayer for any other relief the petitioner may be entitled to in the facts and circumstances of the case. Allowing this legitimate prayer would avoid multiplicity of proceedings and burden this Court with further litigation.

(RAJIV NARAIN RAINA)
JUDGE

16.11.2016
MFK

Whether speaking/reasoned

Yes

Whether Reportable

No