

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

Date of decision: 06.12.2016

CWP No.6286 of 2008

Sulekh Chand

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Jitender S. Chahal, Advocate, for the petitioner.

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

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner's father died in 2002. He was a Beldar in Class IV service. He died before 'the Haryana Compassionate Assistance Rules, 2003', (for short '2003 Rules') came into force. At the time of death, the petitioner was entitled only to compassionate appointment and not for financial assistance since that scheme saw the light of day in 2003. When the petitioner staked claim for a job on compassionate grounds, the respondent department refused the prayer, but relented to offer financial assistance in the sum of ₹2.5 lacs. However, the petitioner did not give any positive indication to the department to agree to accept the amount offered and instead moved the instant petition praying for an order quashing the order/letters dated 08.02.2008 (Annex P-6) and 02.04.2007 (Annex P-5). Vide letter dated 02.04.2007 (Annex P-5), the respondent - Department sought an option from the petitioner's mother, whether she would be satisfied with financial assistance and in case the family was interested, option could be exercised as per rules. It is not that the case of the petitioner

that the request was not processed in the respondent office. He was called for a meeting with the officials concerned in the department. The impugned letter dated 08.02.2008 (Annex P-6) is a proposal in the department, which records discrepancies noticed in the claim of the petitioner guiding that procedure needs to be followed by giving option and filing application in Form 'B' by the widow of the deceased and counter-signed by the petitioner since financial assistance goes to widow and not to the son in the first instance. The widow was required to execute an affidavit in Part 'B' of Form 'A' duly attested by a Magistrate Ist Class.

When these two documents are challenged in this petition brought under Article 226 of the Constitution, it means that the petitioner is only interested in a job and to fortify claim in the first prayer, he has prayed for a declaration that Rule 6 of 'the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006' (for short '2006 Rules') be declared *ultra vires* to the extent it applies to all pending matters of ex gratia assistance and takes the right away for compassionate appointment. In his third prayer, the petitioner prays for a mandamus directing the respondents to consider his case being a dependent under the policy dated 08.05.1995, which was in force at the time of death of the father of the petitioner.

The question, whether the date of death of the bread winner is a relevant cut off point was the view of the Full Bench, but in the Special Leave Petition filed, the question is left open even though the petition has been dismissed by the Supreme Court.

Mr. Bedi to deny the prayers relies on subsequent judgments in MGB Gramin Bank Vs. Chakarvarty Singh, 2014 (13) SCC 583 and State Bank of India & another Vs. Raj Kumar, 2010 (11) SCC 661 to contend that

the date of consideration should be the relevant date and therefore on the date of consideration new rights and liabilities have been created denying ex gratia appointment altogether.

However, without going into the question and deciding it, the facts and circumstances of this case I believe do not warrant a direction to the respondents to provide a job to the petitioner, as he has no such demonstrable right. It is well settled that compassionate appointment is a concession and cannot be claimed as a matter of right. It is also not meant to provide a career to the petitioner even though his claim may be that of a Beldar so long it is a public post then it has to be filled under the constitutional scheme of appointments to public posts open to all eligible candidates who have come into the employment market and whose rights are guarded by Articles 14 & 16 of the Constitution. In any case, the purpose of compassionate appointment is to provide immediate relief to the family in distress and passage of time significantly reduces chances of a court directive. I would, therefore, not accept the contention in the affidavit filed today by the petitioner that the dependent family is suffering acute financial distress, which keeps them on the road of destitution and the family is unable to both ends meet. I would, therefore, find no manner of doubt in the expression used to plead acute distress financially; “very bad position” or that the petitioner is working as a agricultural labourer which is also an honourable job to do, which gets paid at the minimum living wages fixed by the Deputy Commissioner of the District, if the admission is accepted.

However, since the petitioner has set his heart on compassionate appointment and has paid little attention to seek employment elsewhere these past years, the right being refused by the department, then the petitioner’s mother would be free to follow procedure laid down under

the schemes and claim the amount of ₹ 2.5 lakhs, which was later on increased to ₹ 5 lakhs and cooperate in completing the codal formalities under the 2003 Rules, 2005 Rules or 2006 Rules, as the case may be, by treating the claim for financial assistance pending on the date when 2006 Rules were notified.

As a result of the above discussion, the petition is dismissed regarding compassionate appointment and is allowed as far as financial assistance is concerned. The mother of the petitioner would be at liberty to approach the respondents immediately upon which her case will be processed for financial assistance within a period of two months and the amount determined will be paid to her within the next one month after determination of the outstanding amounts. However, interest on the amount of financial assistance would not arise in this case since the amount offered was not accepted in time expecting the miracle to happen for landing a job for the petitioner. Jobs in Government are not passed down by way of succession or inheritance laws.

06.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes/No*

Whether Reportable: *Yes/No*