

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18786 of 2010

Date of decision: 2.12.2016

Gaurav Sharma

... Petitioner

Versus

The State of Haryana & anr.

... Respondents

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

Present: Mr. RK Arora, Advocate,
for the petitioner.

Mr. JS Bedi, Advocate,
for the respondents.

RAJIV NARAIN RAINA, J.(Oral)

The parents of the petitioner were both in Government service. If the father died, the mother was a good substitute to provide financial support from her substantial salary. The petitioner's mother was informed by letter dated May 20, 1993 that when her son completes 17 years of age detail information regarding her application dated November 24, 1992 to provide a job on compassionate grounds to the minor son could be sent in prescribed proformas 'A', 'B', 'C' to the department i.e. the Office of the Director Development and Panchayat, Haryana where her husband served and died in harness. The petitioner attained the age of majority on March 31, 2001 and the application on the prescribed proforma was submitted on April 18, 2001. The request was rejected by the authorities vide order dated August 6, 2001 by a laconic order informing the petitioner that his case was not covered by the instructions. There is no challenge to the order in the petition. Therefore, its quality is not required to be gone into to find any

error therein as against the record. The petitioner waited for 8 years after passing of the adverse order and served a legal notice dated August 20, 2009 on the Secretary, Government of Haryana, Department of Development & Panchayats, Haryana. The reply to the legal notice was sent through Memo dated March 5, 2010. The Memo reads as under:-

“Kindly refer to your letter No.55/ARK/2009, dated 20.8.2009 on the subject cited above.

2. In this regard, it is to inform you that ex-gratia financial assistance has already been given to Smt. Prem Lata, W/o Late Sh. Ashok Kumar, Assistant (deceased) vide letter Endst. No.P-3-93/4542-46 dated 27.1.1993. It is also pertinent to mention here that Smt. Prem Lata W/o Late Sh. Ashok Kumar, Assistant (deceased) is in Govt. service and as per instructions of Govt. Letter No.16/43/96-6 GS-II dated 22.8.1996 the dependent of deceased Govt. employee shall not be entitled to employment on compassionate ground in case one of his parents is alive and is in Govt. employment. This fact has already been intimated to Smt. Prem Lata W/o Late Sh. Ashok Kumar, Assistant (deceased) vide this office letter No.A-1-2001/57933 dated 6.8.2001.

Sd/-
Deputy Director (Legal)
for Director Panchayats, Haryana,
Chandigarh.

The reason for declining the request rested on Government letter dated August 22, 1996 which disentitles the dependent of deceased Government employee to employment on compassionate grounds in case one of his parents is alive and is in Government service. It is Mr. Arora's case that there is error in the reasoning of the Memo dated March 5, 2010

since the death of the father of the petitioner occurred on October 5, 1992 and therefore, the policy which came into existence later would not apply.

To rebut this contention, Mr. Bedi relies on the decisions of the Supreme Court in MGB Gramin Bank v. Chakarvarty Singh, (2014) 13 SCC 583 and State Bank of India & anr. v. Raj Kumar, (2010) 11 SCC 661, that it is the date of consideration which is relevant.

As far as letter dated May 20, 1993 is concerned, it can only be viewed as a promise broken and would not give rise to a legitimate expectation to create a vested and accrued right to compassionate appointment, which benefit is regulated by rules, instructions and regulations and there terms and conditions. Moreover, other factors such as availability of vacancy in the department in reserved quota are also relevant from where ex gratia appointments can be sourced. Regarding claim for financial assistance, in the absence of a scheme for financial assistance at the time of death of incumbent in harness, the petitioner cannot assert a right which is pre-existing and therefore, the question of a claim subsisting or pending does not arise as that would be creating a fresh right not possessed by the petitioner either on the death of his father or on the date of consideration. Therefore, I see no way out to provide relief to the petitioner and would consider declining the petition with a heavy heart. All the same, equity, sympathy and compassion in absence of statutory sanction is not within the discretion of the Court under Article 226 of our Constitution, financial status of the family through the petitioner's growing up years notwithstanding. There is scant material on record of the writ file attesting to the financial status of the family at the time of death and immediately

thereafter as to the whether there was acute financial hardship deserving immediate relief and the position exists no better today.

The petition is dismissed in view of mandate in instructions of Govt. Letter No.16/43/96-6 GS-II dated 22.8.1996.

(RAJIV NARAIN RAINA)
JUDGE

2.12.2016
monika

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