

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

Sr. No. 201

CWP-6470-2009

Decided on : 28.03.2016

Pankaj Yadav

..... Petitioner

VERSUS

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

To be referred to Reporters or not?

Whether the judgment should be reported in the digest?

Present: Mr.Jaivir Yadav, Advocate, for the petitioner.

Mr.Harish Rathee, Senior DAG, Haryana.

DEEPAK SIBAL, J.

Through the present petition, on account of the death of his mother in harness, the petitioner seeks compassionate appointment and in the alternative, ex-gratia compensation under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (hereinafter referred to as the “2005 Rules”).

After hearing counsel for the parties and having perused the record with their able assistance, the facts which have emerged, are that the petitioner's mother while serving the State of Haryana as a Junior Basic Teacher (JBT), died in harness on 06.04.2005. On 02.04.2008, the petitioner made an application, seeking appointment on compassionate grounds but when the same went undecided, the present petition was filed

for claiming the afore-referred reliefs.

No compassionate appointment can be ordered to be given to the petitioner as he had applied for such an appointment after a delay of nearly three years after the death of his mother. The aforementioned delay while seeking compassionate appointment, is fatal as compassionate appointment is given to pull the family of the deceased employee out of the sudden financial distress in which it may find itself on the death of its sole bread earner. This view of mine finds supports from the judgments of the Apex Court in “Umesh Kumar Nagpal Vs. State of Haryana” (1994) 4 SCC 138; and “The Chief Commissioner, Central Excise and Customs, Lucknow and others Vs. Prabhat Singh”, (2012) 13 SCC 412.

A relevant extract from the judgment in Umesh Kumar Nagpal (supra), reads as follows: -

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in

Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

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6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole (1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.”

A relevant extract from the judgment in The Chief Commissioner, Central Excise and Customs, Lucknow and other's case (supra) is as under: -

“The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved.”

The petitioner's prayer for the grant of compassionate appointment/ex-gratia compensation cannot be granted for other reasons as well.

For the reliefs claimed the petitioner relies on the 2005 Rules but such reliance is misplaced as it is the admitted position that the 2005 Rules came into effect on 18.11.2005 whereas the petitioner's mother

died on 06.04.2005. Therefore, in the light of the decision of the Apex Court in Canara Bank and another vs. M. Mahesh Kumar, (2015) 7 SCC 412 and a Full Bench decision of this Court in Krishna Kumari vs. State of Haryana and others, 2012(2) SCT 736, the petitioner's case would have to be considered under the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (hereinafter referred to as the “2003 Rules”) which were in existence at the time of death of his mother. Rule 2 of the 2003 Rules provides that the object of the Rules is to assist the family of a deceased employee to tide over the emergency situation, resulting from the loss of its sole bread earner. Under Rule 8, assistance under the Rules can be given only if the family is indigent and deserves immediate assistance for relief from financial destitution and that the monthly income of the family is not exceeding Rs.6,000/- per month, from all sources other than family pension. It further provides that where the spouse of the deceased is already in government service, no other dependent member shall be eligible for appointment or ex-gratia compassionate financial assistance. The relevant extracts from the 2003 Rules are reproduced hereinbelow: -

- “2. **Object of rules:** - The object of the rules is to assist the family of a deceased employee in tiding over the emergency situation, resulting from the loss of the bread-earner by giving either of the following options.
- (i)

xxx xxx xxx
- (ii)

xxx xxx xxx
3.

xxx xxx xxx
4.

xxx xxx xxx
5.

xxx xxx xxx
6.

xxx xxx xxx
7.

xxx xxx xxx
8. **Criteria of eligibility:** - The criteria for eligibility under these rules

shall be as under: -

- (a) The family is indigent and deserves immediate assistance for relief from financial destitution.
- (b) The monthly income of the family shall not exceed Rs.6000/- per month, from all sources other than family pension. For this purpose, the income of the entire family of the deceased Government employee will be taken into account and not just the income of the dependent who has applied for appointment on compensation grounds.
- (c) xxx xxx xxx
- (d) Where spouse of the deceased is already in Government service, no other dependent member shall be eligible for appointment or ex-gratia compassionate financial assistance.
- (e) xxx xxx xxx
- (f) xxx xxx xxx
- (g) xxx xxx xxx.” (Emphasis supplied).

It is the uncontroverted position that at the time of the death of the petitioner's mother, his father was serving as a member of the Delhi Police. This fact was not only withheld by the petitioner while applying for compassionate assistance but was also suppressed from this Court as it finds no mention in the present petition. While seeking compassionate appointment/assistance the fact that the petitioner's father was already in government service, was a crucial one, which in my opinion, should have been disclosed. I am, thus, of the opinion that the petitioner has not approached this Court with clean hands, disentitling himself to be even heard on merits. This view of mine finds supports from the judgment of the Apex Court in “Prestige Lights Ltd. vs. State Bank of India”, (2007) 8 SCC 449, a relevant extract from which reads as follows: -

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

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35. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in large public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible.”

To the same effect is a judgment of a Division Bench of this Court in Pawan Kumar vs. State of Haryana and another”, 1994 (5) SLR 73, a relevant extract of which is as under: -

“13. The principle which can be deduced from the above referred decision is that the party who seeks relief from the High Court in exercise of equitable jurisdiction under Article 226 of the Constitution of India must come with all bona fides, must make true, candid and full disclosure of the relevant facts. Its conduct must be above board. There should be no attempt by a party to mislead the Court. The petitioner is under an obligation to collect all material facts with due care and attention and he will not be heard to say that facts were not within his knowledge although the same could have come to his knowledge had he taken due care and had made efforts to find them out. The High Court will be fully justified in declining exercise of extraordinary jurisdiction in favour of a party who is guilty of suppression veri and suggestio falsi or who makes an attempt to mislead the Court.”

Even otherwise, in view of the fact that the petitioner's father at the time of his mother's death and even at present is in government service, would not bring his case under the 2003 Rules as the same would be against the very objects and the eligibility criteria as laid down under Rule 8(a) of the 2003 Rules. Further as per Rule 8(b) of the 2003 Rules, if the monthly income of the family exceeds Rs.6,000/- per month (excluding family pension), then no assistance under the 2003 Rules can be given. There is nothing on record to show that at the relevant time, the income of the petitioner's family was less than Rs.6,000/- per month. On the other hand, the presumption is otherwise as it is the admitted position

that at the time of his mother's death the petitioner's father was serving the Delhi Police as Constable.

Still further Rule 8(d) of the 2003 Rules provides that where the spouse of the deceased is already in government service, no other dependent member shall be eligible for appointment or ex-gratia compassionate financial assistance.

Learned counsel for the petitioner submits that as per Rule 3 (f) of the 2003 Rules, Government has been defined to be Government of Haryana in the Administrative Department and since the spouse of the deceased i.e. petitioner's father was not in the service of the State of Haryana, disqualification under Rule 8(d) of the 2003 Rules would not apply.

The argument though attractive, does not stand deeper scrutiny. Rule 8(d) of the 2003 Rules has to be interpreted in accordance with the objects of the 2003 Rules which are to give compassionate appointment or ex-gratia financial assistance to the members of the family of the deceased employee who are in dire need of such help. In case, one of the family member is already in government service, irrespective of the fact whether the service is under the State of Haryana or otherwise, the claim of the family for seeking compassionate appointment or ex-gratia financial assistance would not lie as the same would be against the very objects for which the rules have been promulgated.

Further, Rule 8(d) of the 2003 Rules is required to be read in harmony with the other sub-sections of Rule 8. Rule 8(a) and Rule 8(b)

provide that the 2003 Rules would apply only to a family which is indigent and whose monthly income is less than Rs.6,000/- per month.

In view of the above, finding no merit in the same the writ petition is ordered to be dismissed.

No costs.

28.03.2016
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[DEEPAK SIBAL]
JUDGE