

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 14702 of 2015
Date of decision: 06.04.2016

Shubhneet Kaur

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. K.S. Hissowal, Advocate,
for the petitioner.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks appointment on compassionate grounds in view of the death of Surinder Singh, who is stated to have adopted the petitioner. It is not disputed that Surinder Singh died on 01.09.1993. It is the case of the petitioner that the petitioner, on attaining the age of majority and after completing her graduation in Engineering, applied for the job on compassionate grounds as per the representation dated 11.05.2015 (Annexure P-6). As per the affidavit filed, it is not disputed that the petitioner has done B.Tech (Electronics) and is over 21 years old. The respondents offered her solatium of ₹3,00,000/- vide cheque dated 07.04.2015, due to which, she has approached this Court saying that she is not interested in the amount but only interested in the job.

The said right of appointment on compassionate grounds after such a long period has been frowned upon by the Apex Court in ***Umesh Kumar Nagpal vs. State of Haryana, 1994 (4) SCC 138***, in which, it has

been held that the compassionate appointment is not another source of recruitment to the exclusion of others who are entitled. The relevant observations read thus:-

“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 breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.”

In ***Haryana State Electricity Board v. Naresh Tanwar and Another (1996) 8 Supreme Court Cases 23***, the direction to appoint on compassionate ground, issued by this Court, was set aside by noting that the the purpose of compassionate appointment was an exception and the consideration for such appointment could not be kept pending for years. Relevant observations read as under:

“9. It has been indicated in the decision of Umesh Kumar Nagpal (Supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet

the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad 's case, it has been also indicated that the very object of appointment of dependent of deceased-employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

10. It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decisions of the High Court therefore can not be sustained.”

Similarly, in ***Shreejith L. v. Deputy Director (Education) Kerala and Others (2012) 7 Supreme Court Cases 248***, it was held that the application for compassionate appointment has to be made within a reasonable time claiming the benefit of scheme of compassionate appointment. The deficiencies and defects, if any, ought to be removed within a reasonable time and an adverse inference is to be drawn against a person in default. The relevant observations read as under:-

“28. Learned counsel argued that there was no obligation on the part of the Manager of the school to go in search of the legal heirs left behind by an employee who had died in harness. It was submitted, if an employee of the school died in harness and his legal representatives required any assistance in the form of compassionate appointment it is for them to approach the school in that regard by making an application in the manner prescribed. If the legal heirs did not do so,

the Manager could reasonably assume that they were not in need of any assistance for otherwise they would ask for the same. There is merit in that contention. We do not see any obligation on the part of the institution or the Manager to go in search of the legal heirs of deceased employees or educate them about their right to seek an appointment under the scheme. If a person is eligible for a benefit under the scheme he can and indeed should on his own approach the institution and seek such an appointment. The view expressed by the High Court in Baiju Kumar v. D.E.O., Trivandrum (2003) 3 KLT 240, to which a reference has been made in the judgment, appears to be unreasonable albeit in favour of the legal heirs of the employee. Having said that, we have no manner of doubt that in case an application is made by legal heirs of a deceased employee claiming the benefit of the scheme for compassionate appointment, the deficiencies and defects, if any, in the said application ought to be pointed out to the concerned to enable him to remove the same within a reasonable time. But if the defects are not removed within the time granted, an adverse inference could be drawn against the person in default. On the contrary, where an application is filed, entertained and eventually declined for a reason other than the form in which the same ought to have been filed, the rejection cannot be supported before the higher authority or in the Court on the ground that application was non-est as the same was not in the prescribed form. The application for appointment filed on behalf of the respondent could not therefore have been rejected on the ground that the same was not in the prescribed form.”

In such circumstances, keeping in view the fact that the date of

death of the employee was way back more than 2 decades earlier and the petitioner has first chosen to obtain a technical degree, it does not seem that it is a fit case to exercise jurisdiction under Article 226 of the Constitution of India for issuance of any directions. The appointment in such cases is meant to get over the financial exigency the family faces at the time of the sudden demise of the bread winner.

Accordingly, the writ petition is dismissed in limine.

06.04.2016
shivani

(G.S. SANDHAWALIA)
JUDGE