

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

**CWP No.2586 of 2011
Date of decision: 12.07.2016**

Kuldeep

.....Petitioner

Versus

Uttar Haryana Bijli Vitran Nigam Ltd. and another

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. Neeraj Kumar, Advocate,
for the petitioner.

Mr. Mohnish Sharma, Advocate,
for the respondents.

Ritu Bahri, J.

The petitioner is seeking direction to the respondents to appoint him on compassionate ground being orphan in view of the judgments passed in **Kumari Bandana Sharma Vs. State of Haryana and others**, 2006 (3) SCT 619 and **Ritu Vs. Dakshin Bijli Vitran Nigam Limited and others**, 2008 (3) SCT 585.

Petitioner is son of late Shri Sukhdev Singh, who was working as ALM in HSEB. He died in harness on 30.07.1997 as per death certificate (Annexure P-1). Mother of the petitioner expired on 29.04.1993. Copy of death certificate is annexed as Annexure P-2. As per marks-sheet (Annexure P-3), the petitioner passed the middle standard examination in the year 2003. At the time of death of his father, the petitioner was minor as his date of birth is 20.07.1988. After attaining the age of majority, he sent a legal notice dated 12.04.2006 (Annexure P-4) to the respondents for being

appointed on compassionate ground. The benefit of compassionate appointment is being sought on the basis of notification/Rules dated 28.02.2003 (Annexure P-5). Rule 18 of the said Rule reads as under:-

“18. There shall be no relaxation of any provision of these rules. However, as a special case, these rules shall be relaxed only in the case of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans, shall remain alive till one child has attained majority/minimum eligible age for entry into Government service.

Upon notice, the stand taken by the respondents in their written statement is that at the time of death of father of the petitioner on 03.07.1997, the petitioner was 11 years old as his date of birth is 20.07.1988. He passed the Middle Class in the year 2003 and after serving a legal notice upon the respondent-Nigam on 12.04.2006, he filed the writ petition in February, 2011, which suffers from delay and laches. The retiral benefits have already been released to the family of the deceased person well in time and the petitioner is also getting the family pension of Rs.7773/- per month from the respondent-Nigam. Rule 18 of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 are not applicable to the case of the petitioner and there was no provision of reservation of any post for minor for compassionate appointment.

The decision given in **Ritu's** case (supra) is not applicable to the facts of the present case, as in that case father of the applicant had died in the year 2002 and within three years of the death, the application for compassionate appointment had been made as per policy/Rules dated 28.02.2003 (Annexure P-5). As per Rule 16 (d) of the above Rules, an application has to be made within three years of the death of the employee

circumstances prevailing on the date of death of Government employee. It has been further emphasized that the application has to be made within three years of death of the employee.

In **Kumari Bandana Sharma's** case (supra), father of the petitioner, who was a doctor, had died on 21.10.1988. Thereafter, she lost her mother on 24.09.1993. The petitioner made an application on 28.07.2004 for compassionate appointment under the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2003, as she had become eligible for appointment as Mistress on acquiring the qualification of B.A./B.Ed. Her case was rejected by the respondents on the ground that she had not applied within three years of date of death of her mother-Raj Bala, who died in 1993. Another ground taken was that after 1993, the petitioner had waited till 2004 and hence, the crises caused by the death of her parents had been wiped out. Rejecting the stand of the respondents, the Division Bench allowed the said petition and observed as under:-

“6. The argument of the learned State counsel that Rule 18 of the Rules is attracted only in cases where both the parents died simultaneously, has to be noted for rejection. The argument is unsustainable for the simple reason that Rule 3 (k), which defines the expression 'orphan' uses the expression 'a child who has previously lost one parent'. The use of expression 'previously lost one parent' would patently show the rule envisages death of one parent at one point of time and the government employee at a later point of time. It would show that the simultaneousness as pleaded by the learned State counsel neither flows from the Rule nor it is imaginable. We fail to understand the ingenuity of the argument raised by the learned State counsel. We are also not inclined to accept the archaic stand of the respondent State that crises confronting the orphan children is blown off after lapse of time. In ordinary cases of compassionate appointment and in given facts such a stand could possibly be taken but in the cases of orphan, as envisaged by Rule 3 (k) read with Rule 18 of the Rules, the stand of the respondents cannot be accepted at all.

Therefore, we haven't no hesitation to reject the submissions made on behalf of the respondent State."

In the present case, father of the petitioner died on 30.07.1997. After attaining the age of majority, the petitioner applied for Group 'D' post when 2003 Rules were in operation. He was not required to file an application within three years of the death of his father after 1997 because being an 'orphan', this period had to be relaxed by the respondents to enable the petitioner to make an application at an appropriate time. The ratio of the judgment passed in **Kumari Bandana Sharma's** case (supra) is directly applicable to the facts of the present case.

In view of the above discussion, this petition is allowed and the respondents are directed to consider the case of the petitioner for appointment on compassionate ground to Class-IV post or any other post which may be available.

12.07.2016
ajp

(RITU BAHRI)
JUDGE