

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

CWP No.1815 of 2016

Date of decision: 29.1.2016

Rosy Bhatia

... Petitioner

Versus

State of Punjab & ors.

... Respondents

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

Present: Mr. Ajit Sihag, Advocate,
for the petitioner.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. Petitioner-Rosy Bhatia's father died in harness in 1990 while serving the respondent department posted in Sadar Ludhiana. He was on duty and his life was taken away in a terrorist attack. At that time, she was a minor and could complete her graduation in 2013. Placing reliance on the instructions dated July 3, 2008, she applied for compassionate appointment in place of her father, which instrument gave her a renewed opportunity to apply for compassionate appointment within a period of one year from the date of attaining employable age and possessing the minimum educational qualifications prescribed for Group 'C' & 'D' posts. On humanitarian considerations, it was decided in these instructions as a special one-time measure extending the benefit to all old deserving cases, wherein an application for seeking employment could be made within 6 months from the date of issuance of these instructions, if not already made. It is the petitioner's case that she has a right to apply within one

year from the date of gradation. However, the policy being a concession forged as a one time measure to run from the date of policy issued on July 3, 2008 does not look like a policy which remains in perpetual motion.

The basic scheme for compassionate appointments of the Punjab Government was promulgated on November 21, 2002, a copy of which has been placed at Annexure P-2. The policy was laid down following the decision of the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana & ors.**, (1994) 4 SCC 138. The Supreme Court held that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over sudden financial crisis and was not meant to provide employment. Mere death of an employee did not entitle his family to compassionate appointment. The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death. It is no longer legally permissible to offer compassionate appointments as a matter of course irrespective of the financial condition of the family of the deceased. Neither can compassionate appointment be granted after a lapse of reasonable period which must be satisfied in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object of such appointments is to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner. Compassionate employment cannot be claimed and offered whatever be the lapse of time and after the crisis is over. The Punjab Government thus reviewed its entire policy by taking a cue from the

policy of the Government of India which imposed strict conditions so that compassionate appointments are available only in very deserving cases.

2. There appears to be no doubt that the father of the petitioner was a victim of terrorism. The petitioner applied for the first time on July 10, 2013 for compassionate appointment i.e. after 23-24 years of the death of her father. Her case was received in the quarters concerned routed through the Executive Officer, Panchayat Samiti Pakhowal and was processed both in her father's parent department i.e. Rural Development and Panchayat Department and also in the Revenue and Rehabilitation Department which deals specifically with claims of families who suffered due to terrorism in Punjab. The case has been rejected by the Director, Rural Development and Panchayat Department, Punjab on bar of limitation as per the instructions.

3. I find nothing wrong in this order which adheres to instructions in letter and spirit. Compassionate appointment does not mean that all rules must be relaxed. The 2008 Instructions were a special provision extending limitations in special cases and deserve to be read in the light of the Scheme of Compassionate Appointments-2002. The petitioner claims to be one amongst three siblings who are all daughters of the deceased employee of which two are married and settled in their matrimonial homes. The mother obviously did not apply for compassionate appointment and was satisfied with family pension to raise the family. Even the policy 2002 uses the directory expression "may be applied" to allow for compassionate appointment by the competent authority. There are no inflexible rules for compassionate appointment

and much would depend on the financial status of the family on the date of the application in 2013 to justify appointment against the wishes of Article 14 and 16 of the Constitution. Besides, nothing has been disclosed by the petitioner in her application to the Director Rural Development & Panchayat Department as to the financial resources of the family of the petitioner since the death of the father. The dates of marriages of the sisters is also not known or particulars of their financial status but it is assumed that they were married off after the death of the father and sufficient money must have been spent on them. There is nothing stated in the body of the petition as to the financial status of the petitioner and her mother whether it is penurious still. Public posts are not standing crop to be reaped with the sickle of compassionate appointment. Such appointments are an exception to the rule of equality of opportunity.

4. It appears to this Court inappropriate in a poverty stricken country like India to even seriously consider giving such huge concessions to wards of Government servants who may have contributed little to society except the good fortune of having secured a Government job once upon a time. Instructions on the subject are to be strictly construed leaving discretion to be exercised reasonably within boundaries of the scheme of compassionate appointments or the extension thereof on terms and conditions laid down by policy declarations by the government.

5. No reason to interfere is made out or to consider grant of relief by issuing directions in the nature of mandamus to the respondents to provide a job to the petitioner.

6. For the foregoing reasons, the petition is dismissed

29.01.2016
monika

(RAJIV NARAIN RAINA)
JUDGE