

CWP No. 85 of 2011 (O&M)

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

**CWP No. 85 of 2011 (O&M)
Date of Decision : 02.08.2016**

Amrik Singh

...Petitioner

Versus

**General Manager (Region), Food Corporation of India, Punjab and
others**

...Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Sanjeev Manrai, Senior Advocate with
Mr. Gaurav Talwar, Advocate for the petitioner.

Mr. Satinder Khanna, Advocate for the respondents.

P.B. Bajanthri, J.(Oral)

In the instant writ petition, the petitioner has assailed the Communication dated 08.02.2010 (Annexure P-3) of respondent No. 3, by which, claim of the petitioner for compassionate appointment was rejected on two counts, (i) he is over age as his date of birth is 06.10.1974 and (ii) vacancies under Category IV were not available.

Brief facts of the case are that petitioner's father was an employee in the respondent-Department as a Picker. His father Late Sh. Dhian Singh died on 20.02.2006. The petitioner, son of the deceased employee, submitted application on 14.07.2006 for compassionate

appointment by completing lengthy procedure which is stated in Annexure P-1 from Item No. 1 to 19. In fact, application for compassionate appointment would be routed through a Committee consisting of three members in respect of financial status of the family of the deceased. The Committee submitted a report regarding eligibility etc. Thereafter, the petitioner's grievance relating to compassionate appointment was declined on 08.02.2010 (Annexure P-3) stating that his name has been rostered at Serial No. 1483 for Category IV post with reference to qualification. His date of birth being 06.10.1974, he is over age and as and when vacancies arise in Category IV, his name will be placed before the Committee for the decision. Thus, the petitioner is aggrieved by the decision of respondent No. 3 stating that he is over age and also simultaneously stating that his name be placed before the Committee for fresh decision as and when vacancies arise in Category IV.

Learned senior counsel for the petitioner submitted that a very lengthy procedure has been adopted by the respondent-Department for consideration of application under compassionate ground appointment. The said lengthy process has been completed in the year 2006 itself by the official of the respondents and his name has been forwarded for consideration to appoint him on compassionate ground. Till 2010, the respondents have not taken decision on the petitioner's application as well as recommendations made by the Committee. For the first time in the year 2010, the respondents have stated that petitioner is over age. However, he is over age, is not stated in the Communication dated 08.02.2010 as on the date of submission of the application i.e. on 14.07.2006, the petitioner was

about 32 years and few months as on the date of application. Under the scheme for compassionate appointment (Annexure P-4), age relaxation provision in respect of upper age limit is stipulated but the respondents have not noticed it.

Learned senior counsel for the petitioner further submitted that as per Annexure P-3, petitioner's name is still under consideration. When respondents have taken a decision that petitioner is over age, under what circumstances, it is stated that his name would be considered for Category IV as and when vacancies arise. On 08.02.2010 (Annexure P-3), on the one hand the respondents have stated that he is over age and on the other hand, it is stated that his name would be considered as and when vacancies arise. Thus, the respondents are under utter confuse.

Learned senior counsel for the petitioner further submitted that there is discrimination in issuing compassionate appointment, those who have applied subsequent to petitioner's claim were appointed out of turn. Learned counsel for the petitioner has pointed out in the pleadings that the same has not been countered by the respondents. Subsequently, by virtue of interim directions of this Court dated 02.02.2015, respondents have filed an application/affidavit in which they have disclosed that they have adopted pick and choose method in respect of one person with reference to the fact that in that case applicant's father was murdered on 12.06.2008, therefore, pick and choose method has been adopted. Learned senior counsel for the petitioner submitted that petitioner's name has been declined or postponed for want of vacancies under Category IV. In this regard, learned counsel for the petitioner pointed out from Annexure P-5, which reveals that

respondents have sanctioned strength is departmental 8606 and outsourced 6700, in respect of Watch and Ward Staff.

Learned senior counsel for the petitioner submitted that one of the reasons for not considering the name of the petitioner for want of vacancies in the compassionate appointment claim, there is a provision that if there is no vacancy, in such circumstances his case would be sent to other department for consideration.

In view of the above facts and circumstances, petitioner seeks for quashing communication dated 08.02.2010 (Annexure P-3) seeking direction to respondents to appoint him on compassionate appointment.

Per contra, learned counsel for the respondents submitted that the petitioner's name was considered for compassionate appointment having regard to the rank at Sr. No. 1483 and the fact that upto 1304 rank has been cleared, therefore, petitioner's name has not been considered. It was further contended that there was no intention in respect of denial in the reply statement having regard to the statement made in the pleadings by the petitioner. In one of the matter out of turn appointment issued due to the fact that the applicant's father therein was murdered, therefore, in order to meet the harness in the family, since specific plea was not taken by the petitioner in his petition. Hence, it was denied.

Learned counsel for the respondents submitted that petitioner and his family members are surviving from 2006 to 2010 and even to this day and there is no harness in the family. Consequently, he is not entitled for the relief sought in the present case. Learned counsel for the respondents also submitted that all the outsourced appointment have been

kept in abeyance on 04.07.2013 vide Annexure R3/2, therefore, petitioner could be accommodated against one of the vacancy as there is a proposal for outsource.

Heard learned counsel for the parties.

Analyzing of the above facts, four issues are involved i.e. (i) petitioner is over age for compassionate ground appointment, (ii) there are no vacancies, (iii) discrimination and, (iv) delay. Insofar as over age is concerned, it is evident from the date of birth of the petitioner read with date of application to the post of application for compassionate appointment, it is evident that he is completed 32 years and few months as on the date of submission of the application i.e. on 14.07.2006. Provision of relaxation of age stipulated in the Scheme. Therefore, in the impugned communication dated 08.02.2010 declined to give appointment that the petitioner is over age, is hereby rejected. The other contention is relating to vacancies. The respondents have not highlighted with reference to the Scheme which provides 5% quota earmarked for compassionate appointment, the respondents have not calculated or identified which are 5% posts earmarked for compassionate appointment during the period from 2006 to 2010. Therefore, there is a every likelihood of misusing the 5% quota. If 5% quota is set apart for compassionate appointment, according to the seniority of the application, it can be operated and it will be made known to the applicants about his/her status.

That apart, there is a clause under the Scheme that if there is no vacancy available, application can be forwarded/recommended for any other department for consideration. Reading of Annexure P-5, it is evident that

6700 vacancies are available. There is a proposal for outsourcing those posts. Of course such a proposal have been kept in abeyance as stated by the respondents counsel. If such vacancies are taken into consideration for the purpose of 5% quota, sufficient number of vacancies shall have to be earmarked for compassionate appointment. Therefore, there is no hurdle for saying that there are no vacancies of Category IV.

Discrimination issue is concerned, though the respondents have not admitted in the reply statement, however, in the affidavit they have admitted that a person, who is at Serial No. 1758 has been given compassionate appointment having regard to the fact that his father was murdered on 12.06.2008 and there was a demand of the Staff Union etc. Perusal of compassionate appointment scheme, there is no provision for pick and choose method and also giving out of turn compassionate appointment. No doubt, object of giving compassionate appointment to a person, who is at Serial No. 1758 meets a social justice, however, in the absence of provision under the compassionate appointment, the same is not fair. The respondents being a Government Organization, should have been model employer in furnishing real facts before this Court at the time of filing reply statement.

Respondents submitted that there is no harness in the family of the petitioner for the reasons that he is surviving during the period from 2006 to 2010, therefore, on the question of delay, petitioner's claim can be declined. Harness in the family would be examined as on the date of death of an employee. In the present case, on 20.02.2006 petitioner's father died and petitioner had submitted his application for compassionate appointment

on 14.07.2006, therefore, the above contention of the respondents that there is no harness in the family in the year 2010 or now is rejected.

The respondents are directed to re-consider the petitioner's claim that petitioner is within the age limit on the date of submission of application i.e. 14.07.2006. Age and eligibility criteria for compassionate appointment would relates back to date of application and not on the date of consideration. In the present case, it seems that respondents have considered the petitioner's claim only in the year 2010 and 2011 as is evident from Annexure P-3 dated 08.02.2010 and Annexure R3/3 dated 07.09.2011. The respondents are further directed to take into consideration of 6700 vacancies which are available for the purpose of outsourcing and set apart 5% of the vacancies for compassionate appointment or in the alternative, petitioner's claim can be referred to some other department.

Respondents are directed to undertake above exercise and same shall be completed within a period of three months from today.

Petition is allowed with costs of Rs. 5000/- which shall be paid to the petitioner by the respondents for the reasons that they withheld the facts like pick and choose method and availability of vacancies.

August 02, 2016.
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(P.B. BAJANTHRI)
JUDGE

Whether speaking/reasoned? Yes/No

Whether reportable? Yes/No