

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

***CWP No.24342 of 2016***

Date of Decision: 28.11.2016

Davinder Sharma

....Petitioner

Versus

The PSPCL and others

....Respondents

***BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY***

Present:- Mr. Gurmeet Gill, Advocate  
for the petitioner.

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**DAYA CHAUDHARY, J.**

The prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing the impugned order dated 05.05.2016 (Annexure P-3) whereby the claim of the petitioner for grant of employment on compassionate ground has been declined. A further prayer has also been made for issuance of direction to the respondents to give suitable employment to the petitioner on compassionate ground.

Briefly, the facts of the case, as made out in the present petition are that the father of the petitioner namely late Sh. Somnath, was posted as S.S.A at Anandpur Division with the respondent department and he died on 16.02.2008 during service leaving behind his wife Pushpa, two daughters, namely, Monika and Jyoti and one son, namely, Davinder Sharma i.e the present petitioner. After death of father of the petitioner, her mother applied for the retiral and other benefits being the legal heir of the deceased and awarded a sum of ₹ 3,00,000/- in addition to the retiral benefits which were duly received by mother of the petitioner. In December 2013, the petitioner

passed his B.Tech. Thereafter, on acquiring the degree in month of March 2016, he made representations to the respondent department for employment on compassionate ground but the same was rejected vide order dated 05.05.2016 (Annexure P-3) on the ground that he cannot be given employment as his mother had already accepted the amount of ₹ 3,00,000/-, which is under challenge in the present petition.

Learned counsel for the petitioner submits that the impugned order is arbitrary and discriminatory as the case of the petitioner was declined only on the ground that an amount was paid to his mother and a receipt was obtained from mother of the petitioner, who is an illiterate lady. Learned counsel also submits that the only earning member of the family had died and there is no other source of income to look after the mother and younger marriageable sisters of the petitioner, hence, the claim of the petitioner has wrongly been rejected.

Heard the arguments of learned counsel for the petitioner and have also perused the impugned order as well as other documents on the file.

Admittedly, the father of the petitioner died on 16.02.2008 and after his death, the mother of the petitioner applied for retiral and other benefits being the legal heir of the deceased. Respondents awarded a sum of ₹ 3,00,000/- in addition to retiral benefits, which were duly received by the mother. After a gap of more than five years and acquiring degree in B.Tech., he made his request for employment on compassionate ground which was rejected on the ground that his mother had already accepted an amount of ₹ 3,00,000/-. The impugned order of rejection has been challenged only on the ground that the deceased father of the petitioner was

only earning member and his mother is an illiterate lady. Only a meagre amount was paid, whereas, the petitioner being qualified, is entitled for employment.

Not only the delay is there but mother of the petitioner has also received ₹ 3,00,000/- as an *ex-gratia* amount. Moreover, the respondent department can consider the request for compassionate appointment only in accordance with the scheme framed by the State Government. In the present case, no discretion as such is left with the respondent authorities to consider the claim of the petitioner after a delay of more than five years. It is also well settled that the appointment on compassionate ground is not source of recruitment rather it is an exception to the general rule that recruitment to public services should be made on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of concession which may be extended by the employer under the Rules or Scheme, to enable the family of the deceased to get over the sudden financial crisis being faced on account of death of sole bread winner of the family.

Compassionate appointment is not a matter of vested entitlement and is intended to enable the family of the deceased employee to get over the immediate financial crisis following the death of the employee. It is also well settled that once the employer has made due assessment of the financial condition of the family, it would not be open to the Court under Article 226 to substitute its own conclusion.

The appointment under the Scheme is to be made by the

Competent Authority, in case, the respondent authority is satisfied that the financial condition of the family is such that the family will not be able to meet out the crisis. While considering such appointment, the Competent Authority is to take into consideration the financial condition of the family including family pension, gratuity, employee/employer's contribution to the provident fund, any compensation paid by the Bank or its Welfare Fund, LIC policy and other investments, income of family from other sources and also the employment of other family members. This concession cannot be granted irrespective of sound financial position of the family. ***If the family has been able to manage its financial affairs for a long time, it cannot be considered any more in financial crises. The consideration for compassionate appointment is not a vested right which can be exercised at any time in future. The object is to enable the family to get over the financial crises which has taken place due to untimely death of the sole bread-winner. In case, the crises is over with the lapse of time then the dependant family is not entitled for compassionate employment.*** The observations made by Division Bench of this Court in case ***Subash vs State of Haryana and others 2005(2) SCT 478*** are as under :-

*“The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly horse in favour of one or other member of the family of the deceased because if it were to be so allowed, then such a consideration would go against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their bread-winner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment*

*but in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment had become non-existent – the deceased parent having died 4/5 years ago – an event which can hardly be said to be reasonable vis-a-vis persons waiting for regular appointment.*

*We are, therefore, of the view that there cannot be continuity of cause of action in matters to compassionate appointment.”*

In the present case, the father of the petitioner died on 16.02.2008. The mother of the petitioner made a written request for grant of retiral and other service benefits being the legal heir of the deceased. After death benefits were released to mother of the petitioner and in addition to those benefits, the respondents also awarded a sum of ₹ 3,00,000/-, which were duly received by mother of the petitioner in lieu of appointment as per instructions applicable to the case of the petitioner. Once, an option has been exercised for receiving amount in *lump sum* in lieu of appointment, the petitioner has no right to revoke the earlier option subsequently that too after a delay of more than eight years as father of the petitioner died on 16.02.2008 and the present petition has been filed in the year 2016. Even the representation for the first time was moved by the petitioner on 29.03.2016. No reasons, whatsoever, have been mentioned as to why the

petitioner remained silent and how the financial condition of the petitioner is not sound. Even nowhere, it has been mentioned as to how much amount was received by the deceased family. Simply saying that the petitioner has passed B.Tech. and his mother is an illiterate lady, is not a ground to change the option.

Accordingly, the present petition is dismissed not only on the ground of delay but on merits as well.

**(DAYA CHAUDHARY)**  
**JUDGE**

28.11.2016  
**gurpreet**

Whether speaking/reasoned

Yes

Whether Reportable

Yes