

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

CWP No. 6640 of 2013
Date of decision: 15.02.2016

PawanPetitioner(s)

Versus

State of Punjab and others ...Respondent(s)

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

Present: Mr. Surmukh Singh, Advocate,
for the petitioner.

Mr. APS Mann, Addl. A.G., Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 06.06.2012 (Annexure P-6) whereby, the petitioner's request for compassionate appointment has been rejected on the ground that the elder brother had applied earlier but thereafter refused to accept the service. The respondent-authority accordingly came to the conclusion that the purpose of the instructions dated 21.11.2002 is to give financial aid immediately and the petitioner was not entitled for the same.

The facts in the present case would go on to show that the father of the petitioner late Surinder Pal Singh was working as a peon-cum-chowkidar with the Government Middle School at Nawanshahr and unfortunately expired on 23.04.2006 during service. The brother of the petitioner namely Sandeep Viridi, who was elder in age, applied on 07.08.2006 for the post of peon-cum-chowkidar. His case was processed vide letter dated 18.08.2006 (Annexure P-2) and certain short comings were asked for. During the period of processing, Sandeep Viridi filed an

application on 15.12.2008 that in the meantime, he had passed the examination of 10+2 in September, 2008 and, therefore, he be considered for the post of Senior Lab Attendant or clerk and forwarded his proof of qualifications. Thereafter, the mother of the petitioner, vide communication dated 26.07.2010, withdrew the earlier application for appointment on the ground that the said son was not interested to get the job and attached his affidavit. The mother further informed the District Education Officer that she would apply on behalf of her younger son. Resultantly, an application was filed on behalf of the petitioner which was forwarded on 30.07.2010 (Annexure P-2), which has now been rejected.

The above sequence of events would go on to show that the petitioner and his family had, on their own, opted out for the consideration. Rather, initial claim for appointment was to a Class IV post since his father was also working on such a post as a Chowkidar. An effort was made to apply on a higher post on account of improving the qualification. The applicant thereafter had shown his lack of interest in the application filed. Thereafter, the application was withdrawn and the fresh application on behalf of another member had been filed.

In view of the facts and circumstances, this Court is of the opinion that the observations of the Apex Court in ***Umesh Kumar Nagpal vs. State of Haryana, 1994 (4) SCC 138*** would come in the way of the petitioner wherein, it has been held that the purpose of compassionate appointment is only to ensure that the family gets over the extreme pecuniary hardship on account of the death of the employee and it is not another source of recruitment. The relevant observations read thus:-

*“5. It is obvious from the above observations that
the High Court endorses the policy of the State*

Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

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.”

The correspondence which has been referred above would go on to show that the family does not seem to be in apparent need as such for the appointment on compassionate grounds and no fault can be found in the order of rejection in view of the settled principle of law.

Accordingly, the present writ petition is dismissed.

15.02.2016
shivani

(G.S. SANDHAWALIA)
JUDGE