

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Case No. : C. W. P.No. 3934 of 2016

Date of Decision : February 27, 2016

Dharambir Petitioner
vs.
State of Haryana and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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To be referred to Reporters or not ?

Whether the judgment should be reported in the digest ?

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Present : Mr. Aditya Yadav, Advocate
for the petitioner.

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DEEPAK SIBAL, J. :

Through the present petition, the petitioner challenges order dated 06.01.2016 (Annexure P-14), through which the petitioner's claim for grant of ex-gratia lump-sum payment has been rejected.

A few facts, which need to be noticed, are that the father of the petitioner, while serving the Haryana Police as an Inspector, died on 02.08.2004 and on his death, the petitioner's mother made an application seeking appointment on compassionate basis of her elder son Devender Kumar (brother of the petitioner). The application was considered and the petitioner's brother Devender Kumar, through order dated 17.02.2005, was offered the post of Constable. However, both – the petitioner's mother and

his brother rejected the offer and sought appointment to the post of Sub Inspector instead of Constable. As no post of Sub Inspector in the District Police for appointment on compassionate basis was available, Devender Kumar was again asked to join service as Constable, but he again refused to do so. Thereafter, an application was made seeking ex-gratia lump-sum payment, as payable under the Haryana Compassionate Financial Assistance to the Dependent of the Deceased Government Employees Rules, 2003 (hereinafter referred to as – the 2003 Rules), which was considered and rejected through order dated 06.11.2012. Laying a challenge to the aforementioned rejection order, the petitioner approached this Court through **C. W. P. No. 14937 of 2014 – Dharambir vs. State of Haryana and others**, which was considered and dismissed by the learned Single Judge of this Court through order dated 03.09.2014 as under :-

“It is by now well settled that appointment on compassionate grounds is not a right but is a concession. The objective of grant of appointment on compassionate basis is only to mitigate the sudden financial hardship that has fallen on the family of a deceased employee who died in harness. Inspector Bihari Lal expired in the year 2004. Concededly elder brother of the petitioner, namely, Devender Kumar was offered appointment to the post of Constable in the year 2005. Even if such offer on the post of Constable was not acceptable to the dependent of Late Inspector Bihari Lal on the premise that he was entitled to compassionate appointment on the post one rank below than the post held by his deceased

father, it was open for Devender Kumar to have agitated such claim soon thereafter i.e. in the year 2005 itself. Admittedly, the dependents of Late Inspector Bihari Lal had remained quiet for all these years. The claimants suddenly have woken up to the issue only after Haryana Compassionate Financial Assistance to the dependents of deceased Government Employees Rules were notified. Even such lump-sum Compassionate Financial Assistance cannot be viewed in the form of a largess. Such benefit would be available only to the eligible dependents of the deceased employee. The claim with regard to deceased Inspector Bihari Lal came to be considered and finalized in the light of an offer of appointment on the post of Constable to his dependent, namely, Devender Kumar in the year 2005. The same having not been accepted and even the issue as regards claim of appointment on a higher post having not been raised all these years, it would not be open for the second dependent i.e. brother of Devender Kumar i.e. present petitioner to raise a claim for compassionate lumpsum Financial Assistance at this stage.

In view of the observations made above, there is no merit in the present petition and the same is, accordingly, dismissed.”

The afore-quoted order by the learned Single Judge was taken up by the petitioner in an intra-court appeal being **L. P. A. No. 1606 of 2014** – **Dharambir vs. State of Haryana and others**, which, through order dated 28.01.2015, was partly allowed as under :-

“9. In view of the above, the present appeal is partly allowed. The impugned order in the writ petition dated 06.11.2012 with regard to rejecting the application of Smt. Sushila Devi for grant of ex-gratia benefit under the 2003 Rules is set aside.

10. A direction is issued to the Director General of Police, Haryana, to consider the claim of Smt. Sushila Devi wd/o Late Inspector Bihari Lal for grant of ex-gratia lump-sum payment under the 2003 Rules and pass a well-reasoned speaking order within a period of eight weeks from the date of receipt of copy of this order.”

In compliance with the afore-quoted directions given by the Division Bench, the Director General of Police, Haryana considered the claim of the petitioner's mother with regard to grant of ex-gratia lump-sum payment under the 2003 Rules and vide the order impugned in the present petition, has rejected the same.

I have heard learned counsel for the petitioner and with his able assistance, have also perused the record of the case.

A perusal of the record of the case reveals that on the application filed by the petitioner's mother, the petitioner's brother was offered appointment on compassionate grounds, which was rejected as they sought appointment on a higher post than offered. Once the option for seeking employment instead of lump-sum ex-gratia amount had been exercised, but not availed of, then under Rule 4 (2) of the 2003 Rules, the exercise of option to now seek ex-gratia lump-sum amount would be barred.

Rule 4 (2) of the 2003 Rules is reproduced below :-

“4.(2) Exercise of option shall be permitted only once and shall not be changed, once exercised.”

Further, Rule 14(a) of the 2003 Rules provides that once appointment is offered to a dependent of deceased Government employee, no request for change of post shall be entertained and in case, the offer is not accepted, no further claim shall lie. Rule 14(a) of the 2003 Rules is reproduced below :-

“14.(a) Once an appointment has been offered to the dependent of a deceased Government employee, no request for change of post shall be entertained with request to any other post or department under any circumstances. In case the offer is not acceptable to him/her, no further claim shall be entertained.”

A conjoint reading of the afore-quoted Rules read with the facts, as discussed above, leave no room for doubt that the petitioner is not entitled to any ex-gratia lump-sum payment under the 2003 Rules, especially when no challenge is made to either of the above quoted Rules.

A perusal of the record of the case reveals that from the year 2005 till the year 2012, the petitioner or his family did nothing to either secure compassionate appointment or ex-gratia lump-sum amount. The delay of seven years, when the petitioner and his family did not even raise a little finger to seek any assistance on compassionate basis would virtually go on to show that they, in fact, had no need for such assistance, especially

when prior to the year 2005, they had been offered employment twice over to one of the family members, which was refused, while seeking employment on a higher post. This clearly shows that the petitioner and his family were not needy but rather greedy. Greed and a claim for compassionate appointment do not go together.

Learned counsel for the petitioner submitted that since the petitioner's case was pending as on 01.08.2006, when the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employee Rules, 2006 (hereinafter referred to as – the 2006 Rules) were promulgated, under Rule 6 of these Rules, his case should be considered for payment of monthly financial assistance. This argument of the learned counsel needs to be considered only to be rejected. Much prior coming into force of the 2006 Rules, compassionate appointment had been offered to the brother of the petitioner, which was refused. On such refusal, the application of petitioner's mother reached a logical conclusion.

In view of the facts and provisions of the Rules, as noticed above, no claim for ex-gratia lump-sum compensation can be granted to the petitioner, especially after nearly 12 years of the death of his father and when in the integrum, offers for employment to one member of the family have been made and declined by the petitioner's family twice over.

Finding no merit in the present petition, the same is hereby ordered to be dismissed with no order as to costs.

(DEEPAK SIBAL)
JUDGE

February 27, 2016