

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

**CWP No.4845 of 2016
Date of decision: 15.3.2016**

Sourav

... Petitioner

Versus

Municipal Corporation Hoshiarpur & anr.

... Respondents

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

Present: Mr. Arnav Sood, 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.(Oral)

1. Harjinder Pal died in harness due to brain haemorrhage in June, 2001 while working as a Clerk in Municipal Corporation, Hoshiarpur. The petitioner's mother Janki Devi applied for compassionate appointment in favour of her son, who is the petitioner. The petitioner asserts that Municipal Corporation, Hoshiarpur passed resolution on April 8, 2002 on the mother's request dated November 27, 2001 by which it approved the case on which approval the Director, Local Government, Punjab advised that the petitioner may apply for a Class IV job after attaining the age of majority. The petitioner completed his matriculation in March, 2007 and the Senior Secondary Examination (12th Class) in February, 2009. He pursued his academic career and obtained a degree in Bachelor of Technology (Mechanical Engineering) from the Rayat Bahra Institute of Technology and Nano-Technology,

Hoshiarpur. He was awarded the degree in August, 2013.

2. Armed with his acquired academic credentials he made a representation to the Local Government, Punjab in September 2013 for ex gratia appointment which request has not received the attention in the quarters concerned. He followed up the request by a reminder representation addressed to the Municipal Corporation, Hoshiarpur in October, 2013. This representation has also not been considered. Another reminder representation was shot in July, 2014 which also fell on deaf ears. After about a year or so the petitioner submitted yet another representation to the Director, Local Government, Punjab. This request has been rejected by the impugned order dated October 1, 2015 [Annex P-19].

3. The representation has been rejected on the ground that the petitioner did not apply for a job within the stipulated time, meaning thereby, the claim was time barred measured from the time of death of the breadwinner. The petitioner was about 10 years old at the time, which makes the petitioner about 26 of age today. The petitioner has a sister named Shivani who was 14 years old at the time of death of their father Harjinderpal. The admitted position is that Mrs. Janki Devi, the mother of the petitioner was working as a Clerk in the Municipal Council Mahilpur and she had applied for job for her son in Nagar Council, Mahilpur by adjusting her son on a job on priority basis.

4. The petitioner rests his case on a resolution at Sr. No.33(A) dated April 8, 2002 placed on record as Annexure P-3 passed by the Municipal Council, wherein it is recorded by someone signing as K.C.A.

in whose opinion the decision of the Council was correct and therefore, a post was reserved as per the rules.

2. Law requires resolutions passed by Municipal Councils ratification by the Director, Local Government, Punjab to become enforceable orders settling rights. It is only when the Director, Local Government, Punjab permits an appointment to be made can it be properly offered to a claimant of a post on compassionate grounds. But the decision of the competent authority approving the moot resolution has not been brought on record of this case. If the petitioner has any vestige of rights they are inchoate and in a state of flux. Neither is it that in the successive representations made to the Municipal Council, Hoshiarpur or to the Director Local Government, Punjab the critical financial status of the family was indicated at the time of death of Harjinderpal. There is no averment in the petition that the family suffered irreconcilably to penury or extreme financial distress on the date of death of the government servant. In the resolution relied upon, there is also no discussion on the financial status of the family concluding that it was put to extreme hardship when Harjinderpal died in 2001. Therefore, it is not safe to conclude that the petitioner has an accrued or vested right to compassionate appointment on the basis of resolution 33(A) dated April 8, 2002.

3. It is not for this Court to enter into such domain but one significant fact can be taken cognizance of is that on the death of Harjinderpal his wife Janki Devi was employed as a Clerk in Nagar Council. Acute financial stress is thus ruled out. It is not a correct legal

decision any longer that public post can be kept reserved to await minor turning major to provide him a job as per his qualifications. No policy on compassionate appointments has been placed on record from where alone rights may follow. It cannot be accepted as a general principle that a policy can be inferred on such skeletal facts presented where the essential ingredients required for compassionate appointments can be said to be satisfied. In any case, compassionate appointments are in exception to the normal rule of filling public posts by open competition to survive the test of Articles 14 & 16 of the Constitution of India. I find no special features in this case to intercede. Compassionate appointments cannot be directed as a matter of right.

3. For these reasons, I find no merit in this petition and order it to stand dismissed. However, this order would not preclude the consideration of the case of the petitioner by the respondents, in case he is able to demonstrate before the authorities that the family has been in acute financial distress ever since the date of death of Harjinderpal.

(RAJIV NARAIN RAINA)
JUDGE

15.3.2016
monika

