

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

**CWP No.7386 of 2015 (O&M)
Date of decision: 18.10.2016**

Daljeet Singh Bhullar

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. Surinder Garg, Advocate
for the petitioner.

Mr. Avinit Avasthi, AAG, Punjab
for the respondents -State.

Daya Chaudhary, J.

CM Nos.3026-CWP and 7235-CWP of 2016

Learned counsel for the petitioner submits that the present applications have become infructuous and the same may be dismissed as such.

Ordered accordingly.

CWP No.7386 of 2015

The present writ petition has been filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of certiorari for setting aside the impugned order dated 18.03.2015 (Annexure P-27) passed by respondent No.1 and to restore order dated 07.01.2015/13.01.2015 (Annexure P-23) passed by respondent No.5.

A further prayer has also been made for issuance of direction to the respondents to fix the seniority of the petitioner to the post of Chief

Inspector w.e.f.03.03.1982 as has been done in the case of one similarly situated employee, namely, Rachhpal Singh as earlier he was appointed as Inspector and later on he was given appointment as Chief Inspector from the date of his original appointment and was also given seniority on the post of Chief Inspector.

Briefly, the facts of the case as made out in the present writ petition are that the father of petitioner, namely, Darshan Singh, was working as Inspector with the Punjab Roadways and he died on 16.03.1971 while in service. At that time, the age of the petitioner was 13 years and he was not eligible to join Government job. Thereafter, on attaining the age of 23 years, an application was submitted by the petitioner to respondent No.2 i.e., Director, State Transport, to appoint him in the respondent department and he was appointed as Inspector on compassionate ground vide memo dated 25.02.1982 w.e.f.03.03.1982. However, he joined the services as Inspector under protest. On completing his training, he made an application to appoint him as Chief Inspector. Subsequently, he was promoted as Chief Inspector and presently, he is working as Traffic Manager.

The grievance of the petitioner is that at the time of appointment, he joined on the post of Inspector under protest as no request was made to appoint him as Inspector.

Learned counsel for the petitioner submits that the petitioner was to be appointed as Chief Inspector as he fulfilled all the eligibility conditions of said post but still he was not appointed even though the posts of Chief Inspector were lying vacant. Learned counsel also submits that one similarly situated employee, namely, Rachhpal Singh, who was junior to the

petitioner, was also appointed as Inspector on compassionate ground. Subsequently, his case was considered for appointment as Chief Inspector from the date of his initial appointment under the directions issued by this Court in CWP No.16853 of 1997, which was upheld by Hon'ble the Apex Court in SLP No.14623 of 1998. At the end, learned counsel for the petitioner submits that the petitioner is also entitled to be appointed on the basis of parity as has been done in the case of Rachhpal Singh. Learned counsel for the petitioner has also relied upon judgment rendered by Hon'ble the Supreme Court in *Surya Kant Kadam vs. State of Karnataka and others, 2002(1) SCT 244* as well as judgments rendered by this Court in *Rajiv Kumar Sharma vs. State of Haryana, 1995 (3) SCT 643*, *Rajinder Kumar Khera vs. State of Haryana and another, 1996(3) SCT 99*, *CWP No.4636 of 1998* titled as *Gulbahar Singh vs. State of Punjab and another* decided on *10.01.2002*, *CWP No.21444 of 2010* titled as *Harwinder Singh vs. State of Punjab and others* decided on *30.01.2013*, *CWP No.3974 of 2012* titled as *Harbhajan Singh vs. State of Punjab and others* decided on *18.09.2015*, *CWP No.3953 of 2013* titled as *Karnail Singh vs. State of Punjab and others* decided on *24.09.2015* and *CWP No.23931 of 2015* titled as *Tarsem Singh vs. State of Punjab and others* decided on *06.11.2015* in support of his contentions.

Learned State counsel has opposed the submissions made by learned counsel for the petitioner and submits that the petitioner has joined as Inspector and the object of compassionate appointment is to mitigate the financial loss occurred due to the sudden death of the employee. Learned counsel also submits that once a person has accepted the post, the higher

post cannot be claimed as a matter of right. Moreover, The petitioner was also afforded an opportunity of hearing while passing of order dated 18.05.2011.

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

Undisputedly, the petitioner being minor at the time of death of his father, who expired on 16.03.1971 while in service, was not eligible for job. Thereafter, an application was moved by the petitioner on attaining 23 years of age to appoint him in the respondent-department. Thereafter, he was appointed as Inspector and joined as such. Not only the petitioner underwent the training but he also accepted the offer. On completion of the training, he moved an application to appoint him as Chief Inspector which was not considered. Thereafter, he was promoted as Chief Inspector and presently, he is working as Traffic Manager. The petitioner even filed a civil suit at Moga for his appointment as Chief Inspector from the date of his initial appointment i.e., 03.03.1982 on the ground that he was fulfilling the requisite qualification for the post of Chief Inspector and was entitled to be appointed but said suit was dismissed by the trial Court vide judgment dated 20.08.1998. Thereafter, the petitioner filed appeal against said judgment before the Additional District Judge, Moga for claiming parity with above-said Rachhpal Singh and a liberty was given by the Appellate Court to approach the respondent authorities to claim the post of Chief Inspector on the basis of parity vide judgment dated 15.10.1999. Thereafter, the petitioner filed appeal before respondent No.1 for his claim on the post of

Chief Inspector from the date of his initial appointment on the basis of parity. Respondent No.1 heard the appeal filed by the petitioner and the same was accepted vide order dated 18.05.2011 and benefit of seniority was given to the petitioner on the post of Chief Inspector w.e.f.03.03.1982. Thereafter, said order was cancelled. It was mentioned in the order that there was no provision in the Rules to review the order.

The petitioner is claiming parity on the ground that one similarly situated employee, namely, Rachhpal Singh, was given appointment on the higher post whereas wrong precedent cannot be claimed on the ground of parity. Moreover, the suit filed by the petitioner was also dismissed and thereafter, the appeal was also dismissed. The object of compassionate appointment is to mitigate the financial crisis occurred due to sudden death of the employee while in service, upon whom the whole of the family is dependent. Once the appointment has been made, the petitioner has no right to claim the higher post. Moreover, the case of Rachhpal Singh was considered in view of directions issued in the writ petition filed by him.

Hon'ble the Apex Court in case ***Umesh Kumar Nagpal vs State of Haryana 1994(3) SCT 174*** has held as under :-

“2. xxx xxx xxx As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post.

*However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. **The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crises. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be***

offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

In judgment of Hon’ble the Apex Court in case ***State of***

Haryana vs Ankur Gupta 2004(1) SCT 165, it has been held as under :-

*“ As was observed in **State of Haryana v. Rani Devi, 1996(4) SCT 63 : (1996) 5 SCC 308** it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crises occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. **Appointment on compassionate ground cannot be claimed as a matter of right.....The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate***

ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

Hon’ble the Apex Court in case ***Steel Authority of India Limited vs Madhusudan Das and others 2008(15) SCC 560*** has observed as under :-

“ This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidate should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. ”

The settled law which has been reiterated in various cases has been succinctly elucidated in ***MGB Gramin Bank vs. Chakrawarti Singh,***

(2014) 13 SCC 583, wherein it was observed that compassionate appointment cannot be granted as of right and the application to be decided as expeditiously as possible and held as under:-

“6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its breadearner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing employment, the family will not be able to meet the crisis, that a job is to be offered to the eligible member of the family. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such

appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.”

(Underlining added)

The above consistent view has been reiterated in various judgments by Hon'ble the Apex Court in ***State of Manipur vs. Md. Rajaodin***, (2003) 7 SCC 511 and ***Sanjay Kumar vs. State of Bihar & Ors.***, (2000) 7 SCC 192.

The same principle was reiterated by Hon'ble the Supreme Court in the case of ***Bhawani Prasad Sonkar vs. Union of India & Ors.***, (2011) 4 SCC 209, wherein it was held as under :-

“15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as

an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

.....

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on

account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

(Underlining added)

In the present case, the petitioner was given appointment on the post of Inspector and to claim appointment on the higher post is not a right as purpose/object of the compassionate appointment is to meet out the exigencies of financial crisis that have arisen due to sudden death of the sole bread winner. The petitioner has already been promoted on two higher posts and he is claiming his right on the higher post from the date of his initial appointment by citing an example of other similarly situated employee. A wrong precedent cannot be made a ground to claim appointment on the higher post. Moreover, the suit filed by the petitioner was dismissed and thereafter, his appeal was also dismissed.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is, hereby, dismissed.

18.10.2016
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(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned	√ Yes/No
Whether Reportable	√ Yes/No