

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.6994 of 2016 (O&M)
Decided on : 26.04.2016

Gurpreet Kaur

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.K.S.Dadwal, Advocate, for the petitioner.

G.S. Sandhawalia, J. (Oral)

CM-4821-2016

Application for placing on record Annexures P17 to P22, is allowed. Same is taken on record. Office to tag the same at appropriate place.

Main case

Petitioner challenges the order dated 04.02.2016 (Annexure P16) whereby her request for compassionate appointment has been rejected by respondent No.2. The ground for rejection is that the petitioner had attained the age of majority in the year 2005. At that point of time, she had passed her Matriculation examination and was eligible for the post of Clerk/SLA but she thought it prudent to pursue her higher education. Thereafter, she revived her claim in the year 2010. Accordingly, a finding was recorded, in view of the judgment of the

Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana 1994 (4) SCC 138** that appointment on compassionate grounds is not another source of recruitment but merely an exception, the object being to enable the family to tide over the sudden financial crisis. Accordingly, it was noticed that the date of death of the employee was more than 13 years earlier on 25.04.2002 and therefore, there was no lawful justification in providing the compassionate appointment as the main object of the same was unlikely to be achieved. Resultantly, the relief was denied, leading to the filing of the present writ petition.

Counsel for the petitioner has vehemently submitted that the petitioner was a minor, at that point of time and therefore, in view of the judgment of the Apex Court in **Syed Khadim Hussain Vs. State of Bihar & others 2006 (9) SCC 195** the petitioner was entitled for compassionate appointment and the impugned order is not justified. Reliance is also placed upon the judgment passed by this Court in CWP-27611-2013 titled *Sushil Kumar Vs. State of Punjab & others*, decided on 05.01.2016.

A perusal of the paperbook would, however, go on to show that the reasoning which has been recorded by respondent No.2 in the impugned order is justified, as the petitioner has been seeking the deference of consideration on account of pursuing her higher studies. It is not disputed that her father was working as a Centre Head Teacher and died on 25.04.2002 and she was only 14

years, at that point of time, having been born on 21.09.1987. The petitioner had immediately applied on 19.06.2004 (Annexure P17), as per the policy dated 24.04.1986 (Annexure P1), taking the plea that she was studying in 10+1 and had not attained the age of joining Government service. As per the circular dated 08.08.1996, appointments were to be made within a period of 6 months from the date of death of the Government employee. The dependent member who become eligible for appointment had to apply within 6 months from the date of death and there was a presumption that if it was not done, the family did not require the job. As per Clause 3 of the said instruction, where the death has taken place more than 5 years ago and no request had been made for compassionate appointment within the reasonable time, such belated requests were not to be entertained. The aim being that the delay in submitting the application for compassionate appointment could not be justified.

The petitioner, thereafter, on 19.06.2004 (Annexure P17), submitted representation to the District Education Officer (SE), Hoshiarpur that she was now studying in 10+2 and she had completed her age for serving the Government department, as per the Government instructions and sought for relaxation to complete her study. Thereafter, a similar application was again filed, on 02.06.2005 (Annexure P18) a year later that now she had been studying in B.Sc Part-I (Annexure P19). The application filed on

13.06.2006 (Annexure P19) was followed by another application on 26.06.2007 (Annexure P20) that she was studying in B.Sc. Part-II and request was sought that she be given permission to complete her studies and therefore, the right of compassionate appointment was kept open by her, for completion of studies. On 10.06.2008 (Annexure P21) another application was filed that she was studying in B.Sc. Part-III, which was followed by another application on 11.06.2009 (Annexure P22) that thereafter, she was doing her B.Ed. After completing her education, she then approached this Court in the year 2015 that her case was not being considered and her legal notice dated 20.11.2013 had not been heeded to. Accordingly, this Court issued directions on 06.04.2015, to consider and decide the claim as set out in the legal notice. Resultantly, the impugned order has been passed.

Thus, from the perusal of the above sequence of events, it would be clear that though the petitioner was eligible to be considered for compassionate appointment in the year 2005, the moment she turned major, but for reasons best known to her, she preferred to continue with her education and improved her qualifications. By giving repeated representations, every year, that her right, as such, of appointment be retained, the petitioner was under the misconception that she had a vested right. The rejection is, thus, based on the ground that the petitioner does not seem to be suffering from any such financial exigencies which would

require the benefit of compassionate appointment, which is for the purpose of ensuring that the family who loses the bread-winner suddenly, is entitled to relief for the extraordinary situation created. It is, thus, obvious that the petitioner was reasonably well placed and not in such a dire need of the Government job which she was entitled to, at the time of attaining her majority. The reasoning, thus, which has been given, does not suffer from any infirmity, which would warrant interference by this Court, whereby reliance has been placed upon Umesh Kumar Nagpal's case (supra).

Relevant observations of the Apex Court read as under:

“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 judgment which has been relied upon by counsel for the petitioner in Syed Khadim Hussain's case (supra) would not be applicable, in the facts and circumstances of the present case. In the said case, the applicant was also minor and the case was rejected on the ground of minority. The High Court had dismissed the writ petition on the ground that the application was belated and accordingly, the same was set aside on the ground that there was no provision in the rules and the application could only have been filed when the person became a major. In the present case, as noticed above, after turning major, the petitioner delayed the follow up for appointment on her own account and therefore, cannot fall back on the said judgment.

Similarly, the observations in Sushil Kumar's case (supra) would also not help the petitioner. In the said case, the rejection was on the ground that the petitioner had failed to apply for the job on compassionate appointment and therefore, there was delay. A finding had been recorded that the authorities themselves had deferred the case till the petitioner attained the age of majority and it was, in such circumstances, the writ petition was allowed, with direction to reconsider the case, unfettered from the limitation clause.

Resultantly, keeping in view the above observations, this Court is of the opinion that for the action of the petitioner herself, she is not entitled for consideration of appointment on compassionate grounds.

Accordingly, finding no merit in the present writ petition, the same is hereby dismissed in limine.

At this stage, counsel submits that the original certificates of the petitioner have been retained by the department. Accordingly, the same shall be returned to the petitioner, within a period of one month from the receipt of the certified copy of this order.

APRIL 26, 2016
sailsh

(G.S. SANDHAWALIA)
JUDGE