

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

CWP No.7000 of 2016 (O&M)

Date of Decision: 26.07.2016

Sunil Bakshi

... Petitioner

Versus

Chandigarh Housing Board and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present:- Mr. S.K.Bhardwaj, Advocate,
for the petitioner.

TEJINDER SINGH DHINDSA, J.(ORAL)

CM No.8366 of 2016

Application is allowed as prayed for. Documents at Annexures

P-10 and P-11 are taken on record.

Application is disposed of.

Main Case

Petitioner is aggrieved of the action of the respondent Chandigarh Housing Board in having declined his claim seeking compassionate appointment.

Counsel for the petitioner has been heard at length.

Father of the petitioner died in harness on 15.12.2008 while serving as Junior Technician in Division No.3, Engineering Wing, Chandigarh Housing Board. Application seeking compassionate appointment was preferred by the petitioner through his mother Smt. Meenakshi Devi.

Placed on record at Annexure P-8 is the impugned decision taken in a meeting of the Compassionate Appointment Committee held on 15.09.2015 under the Chairmanship of the Chief Executive Officer,

Chandigarh Housing Board rejecting the claim of the petitioner for compassionate appointment.

The reasoning adopted by the Compassionate Appointment Committee while declining the claim of the petitioner is reflected in the following terms:

“It was observed that Sunil Bakshi in his earlier request dated 14/08/2013 has stated that his mother is employed but handicapped due to severe bus accident and was under treatment. It has further been stated in his application that his mother is under depression and may leave the job at any time. Sh. Sunil Bakshi could not produce the Job Leaving Certificate regarding his mother's job till 24.08.2015. As such, the committee found that the request of the Sunil Bakshi lacks merit and hence cannot be considered at this stage.”

The validity of such decision would have to be examined in the light of the relevant provisions of the applicable Policy/Scheme for compassionate appointment i.e. Scheme for compassionate appointment under the Central Government i.e. Revised consolidated instructions issued by Government of India vide office memo dated 09.10.1998 and placed on record at Annexure P-10.

Relevant clauses of the Scheme are reproduced herein:-

“1. OBJECT

The object of the Scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical grounds, thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency.

2. TO WHOM APPLICABLE

To a dependent family member-

A) of a Government servant who-

a) dies while in service (including death by suicide); or

b) is retired on medical grounds under Rule 2 of the CCS

(Medical examination) rules 1957 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

c) is retired on medical grounds under Rule 38 of the CCS (Pension) Rules, 1972 or the corresponding provision in the Central Civil Service Regulations before attaining the age of 55 years (57 years for Group 'D' Government servants); or

5. ELIGIBILITY

A) The family is indigent and deserves immediate assistance for relief from financial destitution; and

b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

10. WHERE THERE IS AN EARNING MEMBER

a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and

misused by putting forward the ground that the member of the family already employed is not supporting the family.”

Perusal of the relevant Clauses of the Scheme for compassionate appointment clearly reveal that the object to grant appointment on compassionate grounds and to a dependent family member of a Government servant dying in harness is to relieve the family of such Government servant who has been left without any means of livelihood. Clause 5 governs eligibility for grant of compassionate appointment and the same postulates such appointment in favour of the dependent of an affected family which is indigent and deserves relief from financial destitution. Clause 10 of the Scheme grants discretion to the Competent Authority to grant compassionate appointment in deserving cases even in a situation where there is already an earning member in the family. Such discretion if at all to be exercised is only with the prior approval of the Secretary to the Department/Ministry concerned and the compassionate appointment in cases where there is already an earning member in the family is to be approved after taking into account the number of dependents, assets and liabilities left by the deceased Government servant, income of the earning member as also his liabilities etc.

In the present case and as per Annexure P-8, the claim of the petitioner has been rejected by observing that the petitioner prior in point of time had taken a stand that even his mother is employed but she is handicapped having been involved in a severe bus accident and may leave the job at any time. The Compassionate Appointment Committee in its meeting held on 15.09.2015 has rejected the claim of the petitioner taking note of the fact that mother of the petitioner is still serving as no documents

had been produced as regards her having left the job.

This Court on an earlier date of hearing had called upon the petitioner to file an additional affidavit with regard to the employment details of his mother.

Placed on record at Annexure P-11, is an affidavit dated 20.07.2016 of the petitioner and wherein it has been deposed that mother Smt. Meenakshi Devi is in service as a Drawing Teacher in Government Senior Secondary School, Sector 19, Panchkula.

The competent authority in the present case has exercised its discretion against the petitioner and denied compassionate appointment on the basis that there is an earning member in the family of the deceased. Ostensibly, the conclusion of the competent authority is that the petitioner is not in a state of abject poverty or penury.

The Hon'ble Supreme Court in a catena of judgments has categorically held that Articles 14 and 16 of the Constitution of India mandates that all eligible candidates should be considered for appointment to a post which is falling vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said Rule. It is a concession and not a right. Such view was taken by the Apex Court in ***General Manager, State Bank of India and others Versus Anju Jain, 2008 (4) S.C.T. 305*** and subsequently reiterated in ***Steel Authority of India Limited Versus Madhusudan Dass and others, 2009 (1) S.C.T. 449***.

Even otherwise, it is by now well settled that the scope and extent of power of judicial review at the hands of the High Court under Article 226 of the Constitution of India would not be in the nature of an Appellate Court over administrative decisions. The competent authority

having exercised its discretion and having passed an order taking a view declining the claim of the petitioner seeking compassionate appointment, such view would be open to inference in the process of judicial review only if it is shown that the exercise of discretion itself is perverse or illegal. The Hon'ble Supreme Court in the case of *State of Uttar Pradesh and another Vs. Johrimal 2004 (3) SCT 409* has even held that a mere wrong decision without anything more is not enough to attract the power of judicial review under Article 226 of the Constitution of India.

The impugned decision as contained in the minutes of a meeting of the Compassionate Appointment Committee held on 15.09.2015 declining the claim of the petitioner seeking compassionate appointment cannot be termed as perverse and without any basis/material.

This Court does not find any valid basis justifying interference in the same.

Consequently, the writ petition is dismissed.

26.07.2016

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No