

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

CWP No.11698 of 2016 (O&M)

Date of decision : 04.09.2017

Rajwinder Singh

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Harminder Singh, Advocate for the petitioner.

* * *

DAYA CHAUDHARY, J.

CM No.11655 of 2017

This application is for placing on record an additional affidavit of the petitioner.

CM is allowed and the additional affidavit of the petitioner annexed with the application is taken on record.

CWP No.11698 of 2016

The petitioner is aggrieved by order dated 22.03.2016 (Annexure P-1) passed by respondent No.2 - Director, Department of Education (Senior Secondary), Punjab, whereby claim of the petitioner for his appointment on compassionate ground has been rejected.

Briefly, the facts of the case as made out in the present petition are that Shri Swaran Singh, the father of the petitioner, was working as Maths Master in Government Senior Secondary School (Boys) at

Roopnagar. He died on 29.12.2009 leaving behind his widow and two sons *i.e.* the petitioner and his elder brother Manpreet Singh. At the time of death of his father, the petitioner was only 17 years of age. A request was made by the brother of the petitioner namely Manpreet Singh on 01.02.2010 for considering his case for appointment on compassionate ground on the post of Clerk. However, the brother of the petitioner suffered critical illness which resulted in a condition due to which he was unable to sit and stand. Thereafter, an application was submitted by the petitioner for his appointment on compassionate ground along with all requisite documents *i.e.* death certificate of his father, affidavits of his mother and brother, medical certificate, his own affidavit, copy of ration card and certificates of his educational qualifications, but the claim of the petitioner was rejected by respondents on the ground that at the time of death of his father, his mother was already in service. The order of rejection passed on 22.03.2016 has been challenged in the present petition.

Learned counsel for the petitioner submits that all family members were dependent upon the earnings of the deceased employee and claim of the petitioner has wrongly been rejected. Mother of the petitioner is suffering from cancer since long and she is getting treatment from different hospitals. Learned counsel also submits that the respondent-authorities have not taken into consideration the fact that the salary of mother of the petitioner is being spent on her treatment for cancer as well as on the ailment of his brother. At the end, learned counsel for the petitioner submits that while considering the claim of the dependent family members

of the deceased employee, the financial condition of the family is also to be taken into consideration but without considering all these aspects the impugned order has been passed.

Heard arguments of learned counsel for the petitioner and have also perused all the documents available on file including the impugned order dated 22.03.2016 (Annexure P-1).

Facts regarding death of father of the petitioner on 29.12.2009 leaving behind his widow (the mother of the petitioner) and two sons *i.e.* the petitioner himself and his brother Manpreet Singh are not disputed. It is also not disputed that initially the claim for appointment as Clerk on compassionate ground was submitted by elder brother of the petitioner namely Manpreet Singh on 01.02.2010, however, it was not granted because of his critical condition. Subsequently, the petitioner applied for his appointment as Clerk in the month of January 2015 on completion of his B.Tech degree and finding himself eligible for the same. All documents of educational qualifications were also submitted, however, it was rejected vide order dated 22.03.2016 on the ground that at the time of death of father of the petitioner, his mother was already in service.

Vide order dated 28.07.2017, the petitioner was directed to place on record his additional affidavit to show as to how much amount was received after death of his father and what are their other immovable properties. In pursuance of that direction, the petitioner has placed on record his additional affidavit, wherein it has been mentioned that after death of his father, the family of the petitioner had received ₹8,28,700/- towards GPF

and ₹7,50,000/- towards retirement gratuity. It has also been mentioned that petitioner along with his family members is residing in the house which was owned by his deceased father. It has also been mentioned that ₹19,00,000/- is the GPF amount of the mother of the petitioner and her retirement gratuity is about ₹7,50,000/-. Mother of the petitioner is also getting basic pension of ₹9954/- per month and she is also receiving her husband's pension as ₹22,000/- per month.

On perusal of said affidavit, it cannot be said that family of the deceased employee is in financial crises. Not only a residential house is there of deceased father of the petitioner but at the time of presentation of the application also the mother of the petitioner was working on regular basis and was getting handsome salary. After her retirement, she is getting pension as well as family pension because of death of her husband, which is approximately ₹22,000/- per month. An amount of ₹8,28,700/- towards GPF and ₹7,50,000/- towards retirement gratuity has also been received by the family. Total ₹19,00,000/- is the amount of GPF of the mother of the petitioner and she has also received an amount of ₹7,50,000/- towards retirement gratuity.

It has been held in various judgments of this Court as well as of the Hon'ble Apex Court that object of compassionate appointment is to mitigate the financial crises that has occurred due to sudden death of the employee while in service, upon whom whole of the family was dependent. The appointment on compassionate ground cannot be claimed as a matter of right. It is to be seen that after the death of sole bread earner, the family of

the deceased employee is not in a position to meet out both ends of life. The sole object of such appointment is to provide immediate relief to the employee's family to tide over the sudden financial crises. The concept of compassionate appointment has been recognized as an exception to the general rule and it is to be given in case there is certain exigencies. Same view has been taken in judgments of cases ***State of Haryana Vs. Ankur Gupta 2004(1) SCT 165, Steel Authority of India Limited Vs. Madhusudan Das and others 2008(15) SCC 560, MGB Gramin Bank Vs. Chakrawarti Singh (2014) 13 SCC 583, State of Manipur Vs. Md. Rajaodin, (2003) 7 SCC 511, Sanjay Kumar vs. State of Bihar & Ors., (2000) 7 SCC 192 and Bhawani Prasad Sonkar Vs. Union of India & Ors., (2011) 4 SCC 209.***

In judgment of case titled as ***Haryana State Electricity Board Vs. Hakim Singh 1997(8) SCC 85***, Hon'ble the Apex Court has observed as under:-

“The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception belief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the ultimately death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.”

It is also well settled principle of law that appointment on compassionate ground is not a source of recruitment. The reason for making such appointment by the benevolent scheme is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crises.

The foremost factor for consideration for appointment on compassionate ground is to protect the family in question on the death of sole bread earner. In case any eligible member of the deceased family is in government service, it is not reasonable or just to appoint other family member on compassionate ground.

In the present case, the mother of the petitioner was in service at the time of death of his father and it is not the case of the petitioner that they were residing separately. Meaning thereby, whole of the family members were residing altogether and both the parents of the petitioner were getting salary in regular appointments. In case ***Shiv Kumar Dubey Vs. State of U.P. and others UPLBEC 2014 (1) 589***, full Bench of Hon'ble Allahabad High Court has held as under:-

"(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment.

Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;"

In view of the facts and legal position, as discussed above, there is no merit in the contentions raised by learned counsel for the petitioner and the present petition being devoid of any merit, is hereby dismissed.

04.09.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No