

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

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**CWP-16405-2014 (O&M)
Date of decision:30.05.2017**

Parmod Kumar

....Petitioner

Versus

State of Haryana and others

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Mr. R.Kartikeya, Advocate for the petitioner.

Mr. Sushil Gautam, DAG, Haryana.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, petitioner has assailed order dated 12.08.2014 (Annexure P11) by which he has been reverted from the post of Sub-Inspector to that of Clerk.

2. Petitioner was appointed as a Clerk on compassionate ground on 25.01.2000. On the request of the petitioner, he was posted as Sub-Inspector which is equivalent to the post of Clerk on 08.08.2008. The official respondents noticed that petitioner is not entitled to hold the post of Sub-Inspector. Consequently, show cause notice was issued on 22.01.2014 for which petitioner had submitted his explanation as well as written statement. While considering the petitioner's explanation and written statement respondents have passed an order of reversion dated 12.08.2014.

Hence the present petition.

3. Learned counsel for the petitioner submitted that petitioner's father died on 17.01.1999. As on date of petitioner's father's death, policy relating to compassionate appointment is dated 31.08.1998 (Annexure P13). Petitioner's deceased father was working as a Sub-Inspector and he had earned highest standard scale/ACP Scale/2nd Higher Secondary scale etc. Thus, with reference to the status of the petitioner's late father whether the petitioner is entitled for one step lower scale than the post held by petitioner's late father or not? The same was considered by the respondents while appointing him as Clerk on 25.01.2000. Thereafter, he was posted as Sub-Inspector on 08.08.2008.

4. Petitioner's case falls under para 2 of the policy dated 31.08.1998. It was further submitted that respondents are relying on Supreme Court decision passed in Special Leave to Appeal (Civil Appeal No.228 of 1998) disposed of on 22.03.1999 wherein state's appeal was allowed to the extent that compassionate appointment could be given to a post lower than the post held by the deceased employee. Learned counsel for the petitioner also pointed out from the Division bench decision of this court passed in the case titled as ***Rajiv Deshwal Versus State of Haryana*** reported in 1998(8) SLR 125 in which official respondents had preferred an appeal to the extent that in that matter circular or policy relating to compassionate appointment was related to 08.05.1995 and 01.08.1995 not 31.08.1998. Hence decision cited would be distinguishable. He has also pointed out that there is lot of difference between the wordings in the policy dated

01.08.1995 and 31.08.1998. In fact it was submitted that one step lower employment has been explained with reference to an example in para 2 of policy dated 31.08.1998. Therefore, cited decision by the official respondents of the Supreme Court in *Rajiv Deshwal's case (Supra)* is not applicable. Since policy dated 31.08.1998 is specific and under what circumstance compassionate appointment could be given in the same post when deceased employee is drawing higher pay scale as on the date of his death. Therefore, Annexure P11 order of reversion is liable to be set aside.

5. Per contra, learned counsel for the respondents vehemently contended that there is no change of guidelines issued under the letter dated 08.05.1995 and 31.8.1995 read with 31.08.1998. Therefore, Supreme Court decision has already interpreted how compassionate appointment would be given under the policy viz., to immediate lower post held by the deceased employee. Therefore, the petitioner is not entitled to hold the post of Sub-Inspector which is equivalent to Clerk. It was further submitted by learned counsel for the respondents that as on the date of petitioner's application for consideration to the compassionate appointment 08.06.1999 policy was existing. Therefore under 08.06.1999 whatever the clause imposed in respect of one step below is required to be followed with reference to Supreme Court decision has been incorporated. Thus, petitioner has not made out case.

6. Heard learned counsel for the parties.

7. Crux of the matter is whether policy dated 31.08.1998 or 11.08.1999 is applicable to the present case? Undisputedly, petitioner's

father died in the month of January, 1999 and as on that date policy dated 31.08.1998 was in vogue. Therefore, petitioner's case is required to be considered for compassionate appointment only in the policy dated 31.08.1998 and it was rightly considered initially. Relevant extract of the policy reads as under:-

***“Subject:Employment to the dependents of deceased
Govt. Employees under Ex-gratia Scheme.*”**

Sir,

I am directed to invite a reference to Haryana Govt. Circular letter No. 16/5/95-5GSII, Dated 8.5.95 on the above subject vide which the policy for giving employment to a dependent of a Govt. employee, who dies while in service was laid down. According to para -2(i) of these instructions compassionate employment to the offered should be atleast one step lower than that of the deceased employee except in cases where the deceased employee was working at the lowest level under Govt. These instructions were further clarified in para-6 of the instructions issued vide Haryana Govt. Circular No. 16/5/95-6GSII, dated 31.08.95 as under:

'One step Lower' employment is interpreted as 'One pay Scale Below' that of the deceased employee. It is further clarified that appointment on compassionate grounds under ex-gratia scheme can be offered only on a post in a pay scale lower than that of the deceased employee.”

2. *Now this matter has been further examined and it has been decided that appointments under ex-gratia scheme are to be given one step lower i.e. one pay scale below keeping in view only the pay scale of the deceased*

employee drawn at the time of death and not pay scale of the post held by deceased employee, for example, if a clerk was drawing pay scale of Rs.1200-2000/1400-2600 by virtue of first Higher Standard scale/ACP scale/Second Higher standard scale/Second ACP scale after his death, the dependent of the deceased employee will be entitled for employment as a Clerk in the initial scale.

3. *These instructions will take immediate effect and the cases already decided on the basis of previous instructions dated 31.08.95 will not be re-opened.*

4. *You are, requested to bring these clarifications to the notice of all concerned officers/officials under your control for strict compliance. The receipt of this communication may please be acknowledged.”*

8. Perusal of para 2 it is crystal clear that petitioner's father while holding the post of Sub-Inspector he has already earned ACP scale. Consequently, petitioner is entitled for Sub-Inspector post in the initial scale. The same was denied on 25.01.2000 and he was posted as a Clerk. Later on petitioner was accommodated as Sub-Inspector on 08.08.2008. Having regard to the policy dated 31.08.1998 and factual aspects of the petitioner's case petitioner is entitled for Sub-Inspector post in the initial scale.

9. Learned counsel for the respondents relied on Supreme Court decision wherein it was interpreted policy relating to 08.05.1995 and 31.08.1995. Relevant policy reads as under:-

“1. Ex-gratia employment shall be confined to class III and class IV posts only, irrespective of the Status of the deceased employee. Further, the

compassionate employment being offered shall be at least one step lower than that of the deceased employee except in cases where the deceased employee was working at the lowest level in the Government.

6. *'One Step Lower' employment is interpreted as 'One Pay Scale Below' that of the deceased employee. It is further clarified that appointment on compassionate grounds under ex-gratia scheme can be offered only on a post in pay scale lower than that of the deceased employee."*

10. Having regard to the language in para 2 of the policy dated 31.08.1998, it is crystal clear that for the purpose of compassionate appointment if deceased employee has already earned ACP scale in that event compassionate appointment is required to be given in the initial scale of the post held by the deceased employee. Since petitioner's father was in the post of Sub-Inspector and the fact that he has earned higher scale. Hence petitioner is entitle to be appointed in the initial scale of the Sub-Inspector post.

11. In view of the policy dated 31.08.1998 cited decision of the Supreme Court is distinguishable with reference to policy dated 08.05.1995 read with 31.08.1995. Supreme Court in the case of ***Nair Service Society versus T.Beermasthan*** reported in (2009)5 SCC 545 held that relevant provision of law is required to be examined before considering any decision of the court. Relevant extract of the judgment is as under:-

"48. Several decisions have been cited before us by the respondents, but it is well established that judgments in service jurisprudence should be understood with

reference to the particular service rules in the State governing that field. Reservation provisions are enabling provisions, and different State Governments can have different methods of reservation. There is no challenge to the Rules, and what is challenged is in the matter of application alone. In our opinion the communal rotation has to be applied taking 20 vacancies as a block.”

12. In the present case policy dated 31.08.1998 is crystal clear which supports the petitioner's claim relating to entitlement of Sub-Inspector in the initial scale. Therefore, order of reversion dated 12.08.2014 is hereby set aside.

13. CWP stands allowed. Petitioner is entitled for consequential service and monetary benefits in the cadre of Sub-Inspector from the date of reversion.

30.05.2017
pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No