

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

Civil Writ Petition No.17650 of 2016

Date of decision: 16.11.2017

Rajbala and another

...Petitioners

Versus

State of Haryana and others

...Respondents

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

Present: Mr. Surender Pal, Advocate for the petitioners.

Mr. Harish Rathee, Senior Deputy Advocate General,
Haryana for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioners challenge order dated 29.7.2015 (Annexure P/6) whereby the claim of the petitioners was rejected by respondent no.4 for appointment on compassionate ground.

The respondents rejected the application on the ground that death of employee had taken place on 30.7.1996 and the petitioner no.1 has been brought on the list of Class IV employees and her name figured at Serial No.59. As per seniority list 25 females were senior to the applicant who were to be appointed and thereafter on the availability of vacant post as per Ex-gratia appointment policy, the petitioner was to be appointed. The Haryana Compassionate Assistance to the Dependents of Deceased Govt. Employee Rules, 2003 (hereinafter referred to as "2003 Rules") came into force on 28.2.2003 and since the period of three years from the date of death of her husband had already expired, her name for appointment had been cancelled. It was noticed that she was asked to submit her option for

payment of ₹ 2.5 lakhs as ex-gratia financial assistance vide letter dated 21.8.2003 but she had reiterated her request for appointment vide letter dated 11.11.2003. Thereafter on account of the fact that the Haryana Compassionate Assistance & Employment to the Dependents of Deceased Government Employee Rules, 2005 (hereinafter referred to as “2005 Rules”) had come into force she had demanded a sum of ₹ 5 lakhs as compassionate financial assistance which after due consideration had been rejected.

Counsel for the petitioner has vehemently argued that the petitioner no.1's son was entitled for compassionate appointment on account of the fact that the policy which prevailed at the time of death of employee was to be taken into consideration.

Counsel for the State on the other hand has submitted that after a period of 21 years in view of the settled principle of law since the extreme financial exigency no longer subsists, appointment on compassionate ground is not liable to be offered.

It is not denied that the petitioner no.1's husband was appointed as driver on contract basis on 2.9.1993. His services were regularised on 2.9.1995 after a period of two years and unfortunately he expired on 30.7.1996 within less than a period of three years' service. The case for compassionate appointment as per policy dated 8.5.1995 (Annexure P/7) and dated 31.8.1995 (Annexure P/8) was sent for due consideration. Thereafter, 2003 Rules came into force and as per Rule 19 the existing instructions regarding providing of financial assistance and appointments under ex-gratia scheme were repealed. Rule 19 reads as under:-

“19. Repeal and Savings :- The existing instructions issued by

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Punjab and Haryana High Court,
Chandigarh

the Haryana Government from time to time regarding providing of financial assistance and appointments under ex-gratia scheme are hereby repealed.

Provided that an action taken under these rules and instructions so repealed shall be deemed to have been taken under the corresponding provisions of these rules.”

As noticeable under 2003 Rules also under Rule 3(b) compassionate financial assistance was provided to the tune of ₹ 2.5 lakhs and under Rule 4 option was to be given by the dependent of deceased employee. Similarly under Rule 6, the Head of the Department had to prepare a list which was to be valid for three years and the validity of the list had to lapse after three years. It is in such circumstances the petitioner no.1 had been put on the seniority list and was placed at serial no.59 whose name had not come in the zone of consideration as per rules which have further prescribed restriction of 5% of the sanctioned post under Rule 9. Option was given to her way back on 21.8.2003 for taking a sum of ₹ 2.5 lakhs which she had not opted for which is clear from communication dated 11.11.2003 (Annexure R/2) rather she staked a claim for higher amount of ₹ 5 lakhs vide communication dated 18.2.2013 (Annexure R/3). It is in such circumstances the decision had been taken rejecting her case for compassionate appointment.

The Apex Court has held that compassionate appointment is an exception to the general rule of appointment and is not an independent source of recruitment. The Apex Court in **Umesh Kumar Nagpal Vs. State of Haryana 1994 (4) SCC 138** which has been followed in **Shreejith L. Vs. Deputy Director (Education) Kerala and others (2012) 7 Supreme Court Cases 248** and in **Union of India and others Vs. Sima Banerjee**

2017(1) RSJ 351 has held that grant of appointment after a long period is not justified.

Rule 19(2) of 2005 Rules also provided that pending cases of all those deceased Government employees whose family members are eligible under the old Rules so repealed were to be disposed of in accordance with old rules at the commencement of new Rules. In such circumstances, a sum of ₹ 2.5 lakhs was rightly offered to her.

In such circumstances, no direction can be issued as contended by the counsel for the petitioner for appointment at this belated stage after 21 years of the death of the employee. The only issue thus remains as to the payment of ₹ 2.5 lakhs to the petitioner which respondents themselves had offered subject to her filing of necessary documents vide communication dated 2.4.2013 (Annexure R-4/T). Rather a perusal of the said communication would go on to show if she was interested to get the said amount the same was to be intimated to the office of the General Manager, Kaithal.

Resultantly, the present writ petition is partly allowed to the extent that respondents shall process the case of the petitioner for payment of a sum of ₹ 2.5 lakhs to her within a period of two months from the date of receipt of certified copy of this order.

November 16, 2017
Pka

(G.S.SANDHAWALIA)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable:

Yes/No