

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

Civil Writ Petition No.7256 of 2011

Reserved on: 24.08.2017

Decided on : 13.09.2017

Tarsem Kumar

... Petitioner

Versus

The State of Haryana and another

... Respondents

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

Present : Mr. G.S. Gandhi, Advocate
for the petitioner.

Ms. Shruti Jain Goyal, AAG, Haryana.

G.S. Sandhawalia, J.

The petitioner seeks quashing of the order dated 30.04.2010 (Annexure P-19), whereby he has been declined compassionate appointment as per the scheme applicable at the time of the death of his father. Resultantly, a writ under Article 226 of the Constitution of India in the nature of mandamus is sought to consider the claim of appointment and it is alleged that impugned order in contravention of the earlier order passed on 27.01.2010.

Vide the impugned order, it has been noticed by the Engineer-in-Chief that the father of the petitioner, Shri Malhar Singh who was working as Canal Patwari had expired on 25.02.2003 and the case of the petitioner for providing ex-gratia scheme had been forwarded on 02.05.2003, which was received in the office of the said respondents on 07.05.2003.

The reasoning given for non-consideration was that due to

the downsizing of the department in the year 2002-2003, approximately 4909 posts were abolished in the department and 3890 posts of various category including Class IV were declared surplus. Resultantly, the petitioner has approached this Court on the ground that directions had been issued on 27.01.2010 in CWP No.1258 of 2010 that the respondents would take a decision on the question of the compassionate appointment of the petitioner in the light of the Government Policy as was prevalent at the time of death of his father. In case of declining the same, a reasoned and speaking order had to be passed which is now subject matter of dispute.

It was found that the petitioner's name was at Sr. No.164 out of the total pending cases 523 on 26.11.2007 and in view of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 (Annexure P-7) coming into force, the validity of the waiting list was only for 3 years and was to be lapse after 3 years. The petitioner, thus, could not find a place for appointment and his mother was informed on 22.01.2007 and 12.06.2007 about the said fact. The dependent of the deceased employee was to exercise with regard to his option as contained in sub-Rule 1 (b) of Rule 4 and, therefore, advise was given to opt for financial assistance. It is further mentioned that seniors were there who had not been appointed due to the non-availability of the vacancies and, therefore, appointment could not be given on the policy prevalent at the time of death of petitioner's father to avoid litigation. Reference was made to 2006 Rules that under Rule 6 all

pending cases were to be decided and were to be covered under the new rules and the families will have the option to opt for the lump-sum ex-gratia grant provided in the Rules, 2003 or 2005 as the case may be.

The petitioner having not opted for financial assistance of ₹2.5 lakhs, in spite of requests, even the said amount was not directed to be paid to him.

Mr. G.S. Gandhi has placed reliance upon the judgment of the Apex Court in '**Abhishek Kumar Vs. State of Haryana and others**' **2007 (2) SCT 457** and the judgment of the Full Bench in '**Krishna Kumari Vs. State of Haryana and others**' **2012 (3) PLR 383** to submit that the respondents had taken a contrary decision.

The State on the other hand has argued that in view of the judgment of the Apex Court in '**State Bank of India and another Vs. Raj Kumar**' **2010 (11) SCC 661**, which was also considered by the Full Bench to contend that the respondents were justified in relying upon the statutory rules which were binding and the earlier order passed on 27.01.2010 was without filing reply. It is further argued that on 19.03.2007 (Annexure P-16), the claim of the petitioner had been rejected specifically and financial assistance was given for which was never challenged by the mother of the petitioner and neither this fact was brought to the notice of the Court. The persons senior to the petitioner had not been granted the benefit of job and, therefore, he could not jump the queue.

A perusal of the pleadings and the documents attached would

go on to show that on 07.08.2003 (Annexure P-3), the Engineer-in-Chief had asked the legal heirs of the deceased to apply in the prescribed proforma alongwith the requisite affidavits since 2003 Rules, had come into force. The petitioner's mother had been insisting that she was wanting only consideration for appointment of the petitioner, which would be clear from Annexure P-1 and communication dated 13.06.2005 (Annexure P-9) which was followed up repeatedly on 24.02.2006 (Annexure P-10), 08.06.2006 (Annexure P-11), 24.11.2006 (Annexure P-12), 19.12.2006 (Annexure P-13), 05.02.2007 (Annexure P-14), 16.04.2007 (Annexure P-18). She was informed on 19.03.2007 (Annexure P-16) that in view of the 2006 Rules, there is no provision of granting employment to the dependents of the deceased Government employee and payment of ₹2.5 lakhs shall be made and she should give her option. The respondents were informed of the said communications vide Annexure P-17 by the mother of the petitioner that she would wait for employment, which was reiterated vide Annexure P-18.

The petitioner, thereafter, approached this Court in **CWP No.1258 of 2010** without challenging the said order dated 19.03.2007 (Annexure P-16) informing the Court that she was being offered financial assistance and by contending that the matter was still pending and claim of the petitioner had not been considered. Keeping in view the judgment of the Apex Court in **Abhishek Kumar's case (supra)** a direction was issued to take a decision on the issue of compassionate appointment, in view of the policy policy prevalent at the time of death.

The order dated 27.01.2010 reads as under:-

“Notice of motion.

Mr. R.S. Kundu, Addl. A.G., Haryana has been asked to accept notice on behalf of respondents-State.

Keeping in view the facts of the case, this petition is being disposed of at the motion stage itself with the consent of learned counsel for the parties.

Petitioner's father was serving as a regular canal patwari in the Irrigation Department of Haryana. He died in harness on 25.2.2003. Petitioner's mother applied for compassionate appointment immediately after the death of her husband. The matter remained pending. Vide letter dated 11.1.2005 mother of the petitioner was asked whether she is willing for the financial assistance of Rs. 2.5 lacs or wish to be considered-the claim of her son for compassionate appointment. In compliance to that the mother of the petitioner vide letter dated 13.6.2005 (Annexure P-3) informed the Executive Engineer that she is ready to wait for the employment of her son instead of receiving financial assistance of Rs. 2.5 lacs. The aforesaid letter was followed by further communications (Annexures P-4 & P-5).

The matter is still pending and the claim of the petitioner for compassionate appointment has not been considered till date. *It is alleged that at the time of death of father of the petitioner the Govt. Policy dated 31.8.1995 was in vogue and the petitioner's claim is required to be considered under the aforesaid policy. The new policy came into operation on 4.3.2003. The petitioner has also relied upon a judgement of the Hon'ble Apex Court reported as 2007 (2) SCT 457, wherein the Hon'ble Apex Court has considered the question of application of the policy and it has been held that the policy which was prevalent at the time of death of the deceased employee is to regulate the question of compassionate appointment. **Respondents have yet to decide the claim of the petitioner.***

In view of the above circumstances, this petition is disposed of with a direction to the respondents to take decision on the question of compassionate appointment of the petitioner in the

light of the Govt. policy as was prevalent at the time of death of father of petitioner within a period of four months from the date certified copy of this order is served upon the competent authority. Needless to say that in the event the claim of the petitioner is to be rejected, the same shall be by a reasoned and speaking order.”

It is, thus, apparent that the petitioner's case had already stood declined 3 years earlier and the same had been communicated to the mother of the petitioner and was never brought to the notice of the Court and neither the said communication was set aside.

Resultantly, a advance notice of contempt was issued on 05.07.2010 (Annexure P-20), wherein reference was made to the order dated 30.04.2010 (Annexure P-19) and that necessary documents had not been furnished for payment of ₹2.5 lakhs. Resultantly, the present writ petition came to be filed challenging the impugned order.

It is the categorical case of the respondents that no appointment for the post of Class-IV was offered to any one on compassionate grounds and persons who were senior to the petitioner were also not offered appointment.

The State counsel was well justified in pointing out that way back on 11.01.2005 the mother of the petitioner had been informed to take financial assistance of ₹2.5 lakhs, which would be clear from her letter dated 13.06.2005 (Annexure P-9), wherein she had insisted for employment. Thereafter, the communication dated 19.03.2007 (Annexure P-16) had been addressed to her which she chose not to challenge.

The petitioner's father had expired way back 14 years earlier. It has been consistently held by 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, that appointment on the ground of compassionate at the belated stage is not to be granted, since appointment on compassionate grounds is only an exception to the general sources of recruitment. The mother of the petitioner had been specifically informed on 19.03.2007 that she was to apply for the amount of ₹2.5 lakhs. The said order having not been challenged and not brought to the notice of this Court and a direction was taken without informing the Court and without getting the said order set aside. Therefore, the petitioner cannot now seek any benefit on the strength of the said order, as the said order was passed without this Court being apprised of the fact that the claim of appointment had been declined and ₹2.5 lakhs had been offered.

It is not disputed that the Full Bench in **Krishna Kumari (supra)** has held that the relevant rule at the time of the death should be applicable in the case, but the Apex Court while dismissing the SLP No.12110 of 2013 vide order dated 28.01.2015 filed by the State left the question of law open. The order reads as under:-

“Delay in filing and refiling the Special Leave Petition (s) is/are condoned.

Delay in filing the application (s), for substitution, if any , is/are condoned.

Application (s) for substitution, if any, is/are allowed.

Application (s) for intervention, if any, is/are rejected.

Special leave petitions are dismissed.

However, question of law raise is kept open to be agitated in an appropriate case.”

Reliance upon the judgment in '**Canara Bank and another Vs. M. Mahesh Kumar**' 2015 (7) SCC 412 also would not give any assistance to the counsel for the petitioner, in view of the fact that in the said case the death of the employee had taken place on 10.10.1998 and the claim had been rejected on 10.06.1999 on the ground that there was no indigent circumstances of the family. The High Court had quashed the order and directed reconsideration which had been further upheld by the Division Bench in the year 2003. The Apex Court had held that 2005 Scheme in force now provided ex-gratia payment which was further superseded by the Scheme of 2014 which has revived the scheme for compassionate appointment. It was, accordingly, held the Bank was not justified on the ground of passage of time and resultantly directions were issued that the case of the respondents be considered as per the scheme which was in force at the time of death. The relevant part of the order reads as under:-

“14. It is also pertinent to note that 2005 Scheme providing only for ex-gratia payment in lieu of compassionate appointment stands superseded by the Scheme of 2014 which has revived the scheme providing for compassionate appointment. As on date, now the scheme in force is to provide compassionate appointment. Under these circumstances, the appellant- bank is not justified in contending that the application for compassionate

appointment of the respondent cannot be considered in view of passage of time.”

Resultantly, this Court is of the opinion that once the statutory rules as such had come into force from 28.02.2003 (Annexure P-7), the petitioner could not as such be considered as per the seniority list which was downsizing of the department and rules itself provided payment of ₹2.5 lakhs as financial assistance under Rule 4 (1) (b). The offer which was made consistently to the petitioner's mother would not give any right to insist on the appointment in the fact and circumstances of the case. Rule 19 of the 2003 Rules provides that existing instructions issued would be repealed. The same reads as under:-

*“**Repeal and Savings:-** The existing instructions issued by the Haryana Government from time to time regarding providing of financial assistance and appointments under ex-gratia scheme are here 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.”

Thereafter, the 2005 & 2006 Rules came into force which further provides that ex-gratia assistance shall be covered under the new rules and families will the option to opt for the lump-sum ex-gratia grant provided as directed under the 2003 and 2005 Rules as the case may be. Rule 6 reads as under:-

“All pending cases of Ex-gratia Assistance shall be covered under the New Rules. The calculation of the period and payment shall be made to such cases from the date of notification of these Rules. However, the families will have the option to opt for the lump-sum Ex-gratia grant provided in the Rules, 2003 or 2005 as the case may be, in lieu of the monthly Financial Assistance provided

*under the Haryana Compassionate Assistance to the Dependents
of Deceased Government Employees Rules, 2006.”*

Keeping in view the above, this Court is of the opinion that the claim for compassionate appointment is not liable to be granted to the petitioner. However, keeping in view the above discussion the petitioner's entitlement for payment of ₹2.5 lakhs is made out and, therefore, direction is issued that the said amount be paid to the legal heirs of the deceased employee since the mother of the petitioner has not arrayed as party in the present case. The needful be done within a period of 2 months from the receipt of the certified copy of this order.

Accordingly, the writ petition is partly allowed.

SEPTEMBER 13, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No