

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

CWP No.16402 of 2017

Date of decision : 24.10.2017

Kashmir Kaur

.....Petitioner

Versus

State of Punjab and others

...Respondents

CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present : Mr. Kuldeep Singh Gill, Advocate for the petitioner.

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DAYA CHAUDHARY, J.

Petitioner Kashmir Kaur has approached this Court by way of filing the present writ petition for issuance of a writ in the nature of mandamus directing the respondents to consider the case of her son for appointment on compassionate basis.

Briefly, the facts of the case as made out in the present petition are that petitioner's husband namely late Shri Kuldeep Singh was working as Patwari in the Department of Revenue of Government of Punjab. He died on 04.02.1989 leaving behind his wife as no issue was born out of their wedlock. Thereafter, the petitioner adopted one Jagdeep Singh on 07.04.2004, who was born on 17.04.1994. Being the legal heir of late Shri Kuldeep Singh, he has claimed compassionate appointment on the ground that his father was permanent employee and was only bread winner of his family. Said application was made after passing of his 10+2 examination.

However, the claim was declined vide letter dated 10.04.2013 on the ground that the son was adopted by the wife of the deceased employee after his death. In spite of making representation, no action was taken and, thereafter, the present writ petition has been filed by the wife of the deceased.

Learned counsel for the petitioner submits that the petitioner is a poor lady and has claimed compassionate appointment for her adopted son, which has been rejected without any sufficient reason. The action of the respondents in declining compassionate appointment is not only unlawful and illegal but discriminatory as well, as the claim of similarly situated person has been considered by the respondent-department.

Heard arguments of learned counsel for the petitioner and have also perused the documents available on the file.

Facts relating to death of husband of the petitioner on 04.02.1989 and adoption of one Jagdeep Singh, who was born on 17.04.1994, are not disputed.

The application preferred by the petitioner for appointment of Jagdeep Singh her son was rejected on the ground that he was adopted after death of deceased employee and, therefore, he was not entitled for compassionate appointment. However, a communication was sent by the respondent with regard to rejection of the claim on the ground that son was adopted by mother after death of her husband. Thereafter, a legal notice was also sent on 20.02.2017. Deceased employee died on 04.02.1989 and adoption was made on 07.04.2004. Application for appointment was made by the petitioner when her son passed 10+2 examination. It has also come

in the arguments that the wife was in service at the time of death of her husband and it cannot be said that the whole family was depending upon the income of the deceased. Moreover, the claim for appointment on compassionate ground was made after a long delay, which has not been explained.

It is well settled position of law as has been held by this Court in various judgments as well as Hon'ble the Apex Court that appointment on compassionate ground cannot be claimed as a matter of right. The object of such appointment is to enable the family to tide over the sudden crises and to give employment to any dependent family member by considering the financial condition of the family of the deceased but only on being satisfied that the family is not in a position to meet out the crises which has occurred due to sudden death of the earning member of the family. In case the Government employee is sole bread winner then only it is to be considered. When unexplained delay has occurred, it is presumed that the crises is over. It is also a relevant factor which is to be considered that such appointment cannot be granted after a long lapse of unexplained delay as the very purpose of such appointment is an exception to the general rule of open recruitment and same is intended to meet the financial problem being suffered by the members of the family of the deceased employee.

The same issue was also raised in judgment of this Court in case ***Tarsem Lal Vs. The Chairman, Punjab State Power Corp. Ltd. CWP No.22761 of 2016 decided on 23.08.2017***, as the claim was made after a long delay and factor of delay was considered.

Hon'ble the Apex Court in case ***Steel Authority of India Limited Vs. Madhusudan Das and others 2008 (15) SCC 560*** has observed as under :-

“ This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidate should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.”

In another judgment of Hon'ble the Apex Court in case ***State of Haryana Vs. Ankur Gupta 2004(1) SCT 165***, it has been held as under :-

“ As was observed in ***State of Haryana v. Rani Devi, 1996(4) SCT 63 : (1996) 5 SCC 308*** it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crises occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which

can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.....The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.”

Hon’ble the Apex Court in case ***Umesh Kumar Nagpal Vs.***

State of Haryana 1994(3) SCT 174 has held as under :-

“2. xxx xxx xxx As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such

employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crises. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

In judgment of Hon’ble the Apex Court in case *State of J & K*

and others Vs. Sajad Ahmed Mir 2006 (3) SCT 598, it has been held that the policy of compassionate appointment cannot be used as an alternate channel of recruitment in violation to Articles 14 and 16 of the Constitution. It is an exception to the normal rule which cannot be allowed to overlook the normal rule. The purpose of policy is to tide over the sudden crises. In case, the family was able to subsist for considerably a long time, it cannot be said to be in any financial crises to be granted assistance by way of compassionate appointment. The court will not only consider the delay in making application but also the period for which the applicant remained mum after making application and also the time taken during the proceedings. It was also held that if the court was considering the writ petition after 15 years of death of the employee, the relief cannot be granted after such a long delay only on the ground of financial crises.

In another judgment of Hon'ble the Apex Court in case **National Hydroelectric Power Corporation Vs. Nanak Chand 2004 (4) SCT 724**, it has been held that delayed claim for compassionate appointment should not be entertained. Such appointment cannot be claimed as a matter of right.

Similarly, in another judgment of Division Bench of this Court in case **Mrs. Anita Bhatia Vs. State Bank of India and others 2004 (6) SLR 259**, it has been observed that delayed claims of compassionate appointment are not to be entertained as its object is only to get the family over the financial crises at the time of death of its sole bread winner. It has also been observed that a family which was able to manage for a long time,

cannot be said to be in such grievous poverty which deserve compassionate appointment.

It is well settled that power of the High Court to issue an appropriate writ under Article 226 of the Constitution is discretionary and the High Court in exercise of its discretion does not ordinarily assist the tardy and indolent person, who is lethargic. There is inordinate delay on the part of the petitioner in filing a present petition and no satisfactory explanation has come forward by the petitioner in the averments made in the petition as well as during arguments. The delay comes in the way of equity. Under certain circumstances, delay and laches may not be fatal but in most circumstances it is fatal also. It has also been held in various judgments that if a person chose to sit over the matter and then woke up after the decision of the Court, then such person cannot stand to benefit.

In the present case the son of the petitioner was adopted later on after the death of husband of the petitioner, which is not a ground to claim such appointment unless the scheme provides. Application was moved after a long delay and the petitioner has no right much less a legal to ask for an appointment. However, there is no difference between a son and adopted son.

It is also relevant to mention here that the petitioner was working at the time of death of her husband and it cannot be said that the petitioner was dependent upon the salary of her husband or subsequently her adopted son was dependent upon the salary of the deceased employee as the son was adopted after a period of 15 years of death of the deceased

employee. The petitioner adopted the son on 07.04.2004 and the deceased died on 04.02.1989. The claim of the petitioner was rejected vide letter dated 10.04.2013 but said order was never challenged. Even in this petition said order has not been challenged.

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

24.10.2017

sunil yadav

**(DAYA CHAUDHARY)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No