

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

CWP No. 25385 of 2013 (O&M)
Date of decision: March 3, 2017

Pardeep Kumar

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM:- HON'BLE MS. JUSTICE JAISHREE THAKUR

Present: Mrs. Anu Chatrath Kapur, Senior Advocate with
Ms. Harmanpreet Kaur, Advocate,
for the petitioner.

Mr. Pankaj Mulwani, DAG, Punjab.

JAISHREE THAKUR, J.

1. The challenge in the present writ petition is to the order dated 31.05.2013 (Annexure P14), whereby the claim of the petitioner seeking compassionate appointment on the basis of the death of his mother has been declined.

2. In brief, the facts are that the mother of the petitioner was working as Pharmacist at ESI Dispensary at Verka, Amritsar and expired on 25.01.2002 while in service. The petitioner alongwith with his father and sister were the only legal heirs of late Smt. Saroj Kumari. At the time of the death of his mother, the petitioner was 13 years old. The father of the petitioner submitted an application on 10.06.2002 requesting therein to reserve a post for his son Pradeep Kumar on compassionate grounds. On attaining the age of majority, the petitioner submitted an application along

with his educational qualification and also submitted an indemnity bond. When the petitioner was not given appointment, he again submitted an application dated 31.10.2011, which was rejected on the ground that the application seeking compassionate appointment had not been preferred within the statutory period of one year from the date of the death of the government employee.

3. Mrs. Anu Chathrath, learned Senior Counsel appearing on behalf of the petitioner, argues that the petitioner was a minor when his mother expired on 25.01.2002 and, therefore, was not in a position to take up a job immediately. In fact, the natural guardian of the petitioner, his father, had requested, vide letter dated 10.6.2002, that a post on prior priority basis be reserved for his minor son Pradeep Kumar, the petitioner herein, as he was only 13 years old.

4. Per contra, Mr. Pankaj Mulwani, appearing on behalf of the respondents, submits that the claim of the petitioner has been rejected on the ground that the petitioner did not apply for compassionate appointment within one year of his mother's death, as per the government instructions of 2002.

5. I have heard the counsel's for the parties and with their assistance have gone through the record of the case.

6. Admittedly, the petitioner's mother died while in harness on 25.01.2002. The father of the petitioner addressed a communication, within 6 months of the demise of the government servant, seeking one post to be kept reserved for his minor son on priority basis. Thereafter, the petitioner on completion of his 10+2 examination applied for appointment on

compassionate ground but the same came to be rejected by relying upon instructions dated 21.11.2002 which specified that compassionate appointment employment cannot be claimed and offered after the crisis is over and beyond the period of one year.

7. The policy, as relied upon by the respondents, is not applicable in the case of the petitioner. It is the Policy of 1996 that will be applicable to the petitioner since the policy of 2002 only came into existence after the death of the employee, namely the mother of the petitioner. A Full Bench of this Court in **CWP No. 4303 of 2009 decided on 20.04.2012 in Krishna Kumari versus State of Haryana and others** has held that it is the rules applicable on the date of death/incapacitation of an employee that need to be followed.

8. The petitioner's mother expired on 25.1. 2002 on which date the policy of 8.8.1996 was prevalent. This policy was subsequently amended on 21.11.2002 . In paragraph 2 of the policy of 1996 it was stipulated "*that in cases where no dependent member in the family of the deceased government employee becomes eligible for compassionate appointment within the prescribed period of 2 years from the date of death due to their being underage, the request for compassionate appointment in such cases can be made within a period of 6 months after any of the dependent member in the family becomes eligible for compassionate appointment.*"

9. Even otherwise, policy regarding compassionate appointment framed in the year 21.11.2002 was subsequently amended on 3.7.2008 by adding para 13(a), which reads as under; –

"Provided that in the case where the deceased government

employee leaves behind his/her minor children, who are studying at that time of death of the employee and are not qualified for an employment in the government and the spouse is not in a position to join the government job, a dependent child may be allowed to apply for compassionate appointment by the competent authority, within a period of one year from the date of attaining the age and educational qualifications for a C or D appointment in government’.

The benefit of these instructions were also extended and made applicable as a one-time measure to old cases. It was also decided that an application for employment could be made within 6 months from the date of issue of these instructions, if not already made.(emphasis added).

10. A conjoint reading of the above said provisions would lead to the conclusion that a dependant child could apply for compassionate appointment to the competent authority, within a period of one year from the date of attaining the age and educational qualifications for a C or D appointment in government and such a benefit was also extended to those person who apply within 6 months of the amendment made to the 2002 policy i.e by 2.2.2009. On humanitarian grounds, a direction was issued to consider all cases where application was received within 6 months, if not already received.

11. The petitioner’s father had already applied as far back as 10.6.2002 for keeping a post reserved for his minor child. The petitioner on attaining majority and completing his 10+2 applied on 8.12.2009 with all the requisite papers. Denial on the ground that the application was not

preferred within one year on of the death of the deceased government servant is unsustainable, in view of the fact that the policy of 1996, and the amendment made to the policy of 2002 itself permitted an underage dependent of a deceased government employee to apply to competent authority for appointment on compassionate ground on attaining eligibility to apply for a class C or D post. Even the argument raised that the petitioner ought to have applied immediately on completing his 10th examination since the basic qualification for group “C” is only matriculation, is an argument only noted to be rejected. A request had already been made for as far back as June 2002 for keeping one post reserved for the petitioner, therefore it cannot be said that there is a delay in approaching the Department concerned seeking compassionate appointment. Once an application is already pending, the respondent State cannot be permitted to reject the claim on hyper technical ground. It is expected of a welfare state to act fairly in the implementation of beneficial legislation.

12. Accordingly, the impugned order dated 31.5.2013 (Annexure P14) is not liable to be sustained and is hereby quashed. The respondents are directed to reconsider the case of the petitioner for compassionate appointment within a period of 3 months from receipt of certified copy of this order.

13. Writ petition stands allowed accordingly.

March 3, 2017
prem

(JAISHREE THAKUR)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No