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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CWP No.22761 of 2016
Date of Decision: 23.08.2017

Tarsem Lal ....Petitioner

Versus

The Chairman Punjab State Power Corp. Ltd., Mall Road, Patiala and others ....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Sunil Agnihotri, Advocate
for the petitioner.

*****

DAYA CHAUDHARY, J.

Petitioner-Tarsem Lal has filed the present petition for issuance of direction to the respondents to consider his claim as per old policy applicable to his case.

Briefly, the facts of the case, as made out in the present petition, are that the father of the petitioner was working as Assistant Line Man and he died on 05.04.2002 due to heart attack. Petitioner, being son of deceased Chander Bhan, applied for compassionate appointment under the policy as the economic condition of the petitioner as well as his family members was not good and also being dependent upon income of the deceased father. However, when no action was taken by the respondents on the application submitted by the petitioner, the petitioner sought the information under Right to Information Act, 2005 and came to know that he was not found eligible as per policy dated 23.11.2004, under which, the

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lump sum compensation was to be paid to the dependants of the deceased. Thereafter, he made a detailed representation to the respondents but still no action was taken and the respondents refused to accept the claim of the petitioner in view of new policy. The father of the petitioner died on 05.04.2002 and this policy was framed in the meeting of the Board held on 16.08.2004. When the claim of the petitioner was not accepted by the respondents, he filed the present petition.

Learned counsel for the petitioner submits that whole of the family was dependent upon the income of the deceased but still the case of the petitioner was not considered. Learned counsel also submits that even no order of rejection was passed and only on moving an application under Right to Information Act, the petitioner came to know that his claim has been rejected. Learned counsel further submits that the action of the respondents in not accepting the claim of the petitioner is not only illegal but unlawful and *mala fide* also.

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

Admittedly, the father of the petitioner was working as Assistant Line Man and he died due to heart attack on 05.04.2002. When the claim of the petitioner for appointment was not considered, he sought an information under Right to Information Act wherefrom he was informed that he was not found eligible as per policy dated 23.11.2004 as under this policy, the *lump sum* compensation was to be paid to the dependants of the deceased family. Thereafter, the petitioner made various representations but no action was taken thereupon.

After hearing the arguments of learned counsel for the parties;

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on perusal of documents available on file and on asking from the counsel as to how this petition was maintainable after a period of 15 years, no satisfactory explanation has been submitted. Even if it is considered that the petitioner made various representations even then it is clear from Annexure P-6 colly that they were made to the respondents in the years 2004, 2008 and 2012 and thereafter in the year 2015 (Annexure P-7). The claim has been made on the basis of policy dated 23.11.2004 but no reasonable explanation for condonation of delay has been made.

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

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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

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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

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> 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.

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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.

In the present case also, neither any convincing explanation of delay has been made nor anything has been raised during arguments that the petitioner is entitled for compassionate appointment even after delay of 15 years.

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 view of facts and law position as discussed above, it is clear that there is an inordinate delay not only in making representations but in approaching the Court and no satisfactory explanation has come forward.

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The petitioner remained sitting over his claim for years together and it has also not been brought on record as to how the family of the deceased employee was in a position to support itself during this time.

Accordingly, 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.

(DAYA CHAUDHARY)
JUDGE

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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No