

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

CWP No.13203 of 2005 (O&M)
Date of Decision:23.3.2018

Bhupinder Singh

... Petitioner

Versus

State of Haryana and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Sanjiv Gupta, Advocate for the petitioner

Ms.Shruti Jain Goyal, AAG, Haryana

RAJIV NARAIN RAINA, J. (Oral)

1. I have heard learned counsel for the parties and have gone through the paper-book.

2. The petitioner's family was offered financial assistance of ₹ 2.5 lakhs in lieu of reinstatement at the time of death of the government employee. They refused money in the hope of ex gratia appointment. In the meanwhile, some posts were declared surplus and stood abolished. And to make matters worse for the petitioner, the 2013 policy came into existence which provided that compassionate appointment can be given within three years from the date of the death in harness of the government servant. Thus, time had run out long ago in terms of the prevailing instructions.

3. In matters of compassionate appointment, the primary consideration is to enable the family to tide over immediate financial crisis to save a family from complete ruin and destitution. Learned Law Officer cites an order of the Supreme Court in Union of India vs. Sima Banerjee (CA No.251 of 2017 decided on 10th January, 2017) in which compassionate appointment was refused in a case of death of husband in 2000 and several years slipping by after the death. The Supreme Court ruled that

compassionate appointment after huge passage of time would not be justified. Their Lordships further noticed that the death of the husband of the respondent in appeal occurred on 26th November, 2009, and there is nothing to show that a vacancy was available within a period of three years from the date of death. The timeline of the three years in the instructions has been upheld by the Supreme Court. In passing the order, the Supreme Court relied on its earlier decision in Umesh Kumar Nagpal vs. State of Haryana and others, (1994) 4 SCC 138 and State of U.P. and others vs. Pankaj Kumar Vishnoi, (2003) 11 SCC 178.

4. In the present case, so far as financial assistance is concerned, the case of the petitioner has not been considered and decided in accordance with the policy of 2003. It can therefore be said that the claim is open without decision. This is for the reason that compassionate assistance of ₹ 2.5 lakhs was offered to the family of the petitioner vide letter dated 4th April, 2001 (Annex. R-1), but the said offer was turned down in the hope of ex gratia appointment which never fructified. Mr. Sanjv Gupta, learned counsel relied on Canara Bank v. M. Mahesh Kumar (SC), (2015) 7 SCC 412. The scheme of compassionate appointment arising out death in harness would have to be considered in the situation existing at the time of death and the policies available at that time. In Canara Bank, *supra*, the situation was akin to what would be the 2006 policy of the government which took away ex gratia appointments altogether and replaced the scheme with compassionate assistance in a formulated manner providing salary to the widow or the widower of the deceased government servant, as the case may be, dependent on length of service left till the date of superannuation. In Canara Bank, the cause of action arose in 1998 when the 1993 scheme of the Bank was in force. The Scheme was replaced by the Scheme 2005 providing

was re-cast by the Scheme of 2014 which revived the earlier Scheme providing for compassionate appointment. In these circumstances, the Supreme Court was confronted with the situation where a claim arising out of the death of the father in 1998, and all rights being revived in 2014 and therefore relief followed. The principle in the judgment appears to be in furtherance of the philosophy of compassion. The Court did not consider rule or policy where there was time limit fixed for appointment against vacancies available to offer ex gratia appointments. In the matter of ex gratia appointment, priority list has to be maintained, from where appointment can be made as per turn against sanctioned posts and within the reserved percentage of vacancies fixed for family member to be entitled to compassionate appointment.

5. In the present case, when the case of the petitioner was processed and sent to the higher authorities for compassionate appointment, it was pointed out that one step lower post from the post of Clerk on which the father of the petitioner served and died in harness, was the post of Peon and Daftri was a promotional post for Peons. It transpired that the cadre of Peon shrunk from 1577 to 1163 posts in the Department of Irrigation, Haryana. This substantial reduction had obviously a deleterious effect on the claim of the petitioner. In the wake of the attrition of posts, the consideration of the case of the petitioner took place in 2003 and the offer of financial assistance was made and compassionate appointment declined.

6. The question which remains to be considered is whether the petitioner would not be entitled to any relief. When the petitioner's mother declined financial assistance, it was in the hope of securing a job and career for her son which cannot be said to be an illegitimate desire. Therefore, her refusal to accept financial assistance should not be used against the family

is a court of extraordinary jurisdiction and the nature of power to be exercised is both equitable and discretionary. Equity demands that the petitioner and his mother should be offered financial assistance of ₹ 2.5 lakhs as was available in 2003 without viewing the case as a waiver. The department itself could have remitted the money with the condition that in case ex gratia appointment matured, the amount could be adjusted against pay or the sum recalled and refunded to the department.

7. Accordingly, the writ petition is partly allowed. The respondents are directed to release ₹ 2.5 lakhs as exgratia payment to the petitioner within eight weeks from the date of receiving a certified copy of this order. If the payment is not made within eight weeks, the amount in default will earn interest at the rate of 9% per annum till its realization.

23.3.2018
MFK

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No