

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CWP-2164-2017

Date of decision : 20.02.2018

Rishi Raj

... Petitioner

Versus

The State of Haryana and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH**

Present: Mr. Neeraj Sheoran, Advocate,  
for the petitioner.

**Amol Rattan Singh, J.**

By this petition, the petitioner seeks quashing of an order/communication dated 30.04.2012 (Annexure P-4 with the petition), by which his claim for appointment on compassionate basis, to a post in the respondent bank, has been rejected, informing him that the Financial Commissioner-cum-Principal Secretary to the Government of Haryana, Department of Cooperation (respondent no.1 herein), had intimated the petitioner that the “matter has been filed after consideration”.

The petitioner consequently further seeks issuance of a writ of mandamus by way of a direction to the respondents, to consider his case for appointment in terms of the 'ex-gratia scheme' promulgated by the Government of Haryana (stated to be applicable to the respondent bank also), in view of the fact that vide a resolution dated 31.01.1995 (copy Annexure P-1), passed by the Board of Directors of the bank (respondent no.4), it had been resolved that the application of the petitioners' mother, reserving the right of her son for such appointment, should be accepted.

2. The background to the matter is that the father of the petitioner, Sultan Singh, was working as an Establishment Officer/Junior Accountant in the respondent bank, i.e. The Bhiwani Central Cooperative Bank Limited, Bhiwani, and while in service he unfortunately died on 16.09.1994.

The petitioner being a minor, his mother Smt. Shakuntala Devi made an application to the bank on 24.11.1994, to reserve one post for the petitioner for appointment on ex-gratia basis, which was considered and accepted, as noticed above, vide the aforesaid resolution. A copy of the resolution has been annexed as Annexure P-1 with the petition, with the decision taken thereon conveyed to the petitioners' mother by the Managing Director of the bank (respondent no.4 herein), vide a communication dated 22.02.1995 (copy Annexure P-2).

3. The petitioner is stated to have passed the 10+2 examination in the year 2004 at the age of 19 years, after which his mother, vide a letter dated 21.06.2004, requested the Managing Director to appoint the petitioner on the post of a Daftri, in terms of the aforesaid decision, with further reminders sent on 18.08.2004 and 15.09.2005.

4. On 11.07.2005, the Board of Directors of the bank is stated to have considered the aforesaid request, and thereafter resolved "to take guidance from the Registrar, Cooperative Societies, Haryana, in order to complete the process". Accordingly, a request was sent to the Registrar by the General Manager of the bank on 22.07.2005 (copy Annexure P-3), a perusal of which shows that the background of the case (including the resolution passed on 31.01.1995), has been referred to in the letter, as has the fact that legal opinion was obtained from three lawyers (though the actual opinion is not reproduced in the letter). The Registrar vide his letter dated

28.09.2005 (not annexed with the petition), is stated to have asked the General Manager to follow the guidelines “under the Scheme of 2003”.

5. Thereafter it seems the matter remained dormant till 04.10.2012, when another representation was made by the petitioners' mother. The matter was again considered by the Board of Directors, with the matter resolved to be sent to the Financial Commissioner, Department of Cooperation (respondent no.1), to clarify as to whether the post reserved for the family member of the deceased employee, should now be given to the petitioner or not.

A similar resolution is stated to have been passed by the Board of Directors in its meeting held on 04.01.2013, with guidelines sought from the Chief Executive Officer of the bank vide a letter dated 12.01.2013. However, prior to that, a refusal came in the form of the impugned letter dated 30.04.2012.

6. It is therefore contended in the petition, that the matter having been referred to the Registrar, Cooperative Societies, many a time, seeking guidance whether employment should be provided to the petitioner or not, as his right already stood reserved in the year 1995, the petitioner has a right to be appointed even today on the said post, the delay of such appointment not being his fault (as contended by learned counsel appearing for the petitioner).

7. A legal notice is also stated to have been served upon the first respondent on behalf of the petitioner, on 18.05.2015, in reply to which again a decision earlier taken on 19.04.2012 was reiterated by the General Manager of the bank on 22.06.2015 (copy Annexure P-7), further stating that since the instructions under the new scheme of the Haryana Government do not permit such ex-gratia employment, the petitioner could not be given any employment.

However, it was again stated that action would be taken

immediately by the bank, as and when instructions of the Haryana Government regarding the ex-gratia employment are received, as may be applicable to the bank.

Yet again on 10.02.2016, the General Manager of the bank wrote to the Registrar, Cooperative Societies, Haryana, to reconsider the case of the petitioner, as the right of the petitioner related back to the year 1994, with him not having been given an appointment thereafter.

8. In the above given background, to support his case, the petitioner has referred to an order passed by a Division Bench of this Court, in State of Haryana and others v. Babita Rani (LPA no.740 of 2010, decided on 27.02.2015), contending in the petition that in the said order it was held that it would be the rules in force on the date of death/incapacitation of an employee, that would be applicable, and therefore the petitioner was entitled to such compassionate appointment.

Similarly, he refers to a judgment of this Court passed in CWP no.20202 of 2008 on 09.11.2016, titled as Rinku v. State of Haryana and others, to the same effect.

9. Finally, it has been stated in the petition that the resolution dated 31.01.1995 not ever having been recalled by the Board of Directors, the petitioners' right continues to subsist and he is hence entitled to be appointed on compassionate grounds, in place of his father.

10. As noticed earlier in an order dated 21.11.2017 passed by this court, it had been argued by the learned counsel for the petitioner that the petitioner was 8 years old when his father unfortunately passed away; he thereafter having reached adulthood in the year 2004, and hence his right for appointment would actually relate back to the date of death of his father,

especially in view of the resolution dated 31.01.1995.

It had also been noticed in that order that in the meanwhile, before the petitioner reached adulthood, the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003, (hereinafter referred to as the Rules of 2003), had been promulgated, according to which the petitioner could not be given appointment even under the ex-gratia scheme.

Yet further, it was noticed that for almost 7 long years, no action was taken either by the bank or by the petitioner or his mother, i.e. between 22.07.2005 (when the General Manager of the respondent bank wrote to the Registrar Cooperative Societies, seeking guidance on whether the petitioner could be appointed in place of his father), till the (impugned) communication dated 30.04.2012 was issued by the bank to the petitioners' mother, informing her that the case for compassionate appointment had been 'filed away'.

11. Thereafter of course, the matter was again taken up by the bank on 02.07.2013, with the Registrar, on the basis of a resolution again passed by the Board of Directors on 24.05.2013, that the bank wished to provide employment to the petitioner in view of his domestic circumstances, as also the fact that his right had been kept reserved in the year 1995. Again no action having been taken, eventually the petitioner got served a legal notice two years later on 18.05.2015, in reply to which it was stated by the Bank in its letter Annexure P-7 (dated 22.06.2015), that, as already conveyed to the petitioners' mother vide a letter dated 17.07.2004, in terms of Rule 8 (d) of the ex-gratia scheme formulated by the State of Haryana, where the spouse of the deceased employee is already in Government service, no other dependent

member shall be eligible for appointment or even to ex-gratia compassionate financial assistance, and further, as per Rule 16 (d) of the said scheme, “limitation for application for eligibility and for appointment”, was three years. Therefore, the petitioners' case had again been rejected by the Financial Commissioner, on 30.04.2012.

The said letter also states that “the applicant Smt. Shakuntala Devi” (mother of the petitioner), was working as a Government teacher since 1983.

12. It was further noticed in the order of this Court dated 21.11.2017, that despite the above, a letter dated 10.02.2016 (Annexure P-8), was written by the bank to the Registrar, actually on account of the fact that the case of the petitioner had been forwarded by the Minister for Cooperation, Government of Haryana, on sympathetic grounds.

In the aforesaid circumstances, learned counsel for the petitioner was asked to address arguments on the basis of the judgment of the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana** 1994 (2) SLR 677, and subsequent judgments on the issue.

13. Thereafter, the following order was passed on 28.11.2017, when arguments were heard and judgment was reserved:-

“Pursuant to the order dated 21.11.2017, learned counsel for the petitioner has produced in Court the judgment of the Supreme Court in Umesh Kumar Nagpal vs. State of Haryana, 1994(2) SLR 677, as also another judgment of the Supreme Court in MGB Gramin Bank vs. Chakrawarti Singh, (2014) 13 SCC 583. The latter judgment, which duly considers the ratio of the judgment in Umesh Kumar Nagpal's case, first goes on to discuss the meaning of the word 'vested', and thereafter, eventually holds that depending on the circumstances of each case, i.e. the eligibility and financial condition of the family etc., an application for compassionate appointment has to be considered in accordance with the scheme existent, and if the said

scheme does not create any legal right, a candidate cannot claim that his case be considered as per the scheme existing on the date that the incumbent on the post died, i.e. in whose place the applicant is seeking appointment on compassionate basis.

He has also referred to the scheme promulgated by the Government of Haryana vide the instructions dated 31.3.2003, to submit that the rules notified in the year 2003, i.e. the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003, would apply to the cases pending as on the date of coming into force of those rules, but the cases that had already been decided shall not be reopened.

The contention of learned counsel is that the petitioners' case already having been decided in his favour by the respondent Bank at the time when his father died, (at which time the petitioner was a minor), deciding to reserve the right of the petitioner to be appointed on compassionate basis when he attains majority, he would be governed not by the subsequent policies and rules notified, but by the instructions existent at the time when his father died, i.e. 16.11.1994.

He further submits that the petitioner is a single brother of 5 sisters.

It is also to be noticed by this Court that by the time the petitioners' mother seemingly applied again in the year 2012, after the year 1995 (as already noticed in the previous order of this Court), two other sets of the notified rules promulgated under the proviso to Article 309 of the Constitution had come into force, i.e. the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 and the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees (Amendment), Rules, 2006, copies of which have been supplied to this Court by learned State counsel on request by this Court, even though no notice has been issued in this petition.

Mr. Sheoran also reiterates the dictum laid down in a judgment of a coordinate Bench of this Court in CWP No.20202 of 2008, the judgment having been rendered on 9.11.2016, to submit that a decision of the Board of Directors taken even in the year 1996 (in that case), to offer appointment to the child of a deceased employee, would have to be given effect to when the child attains majority.

Yet further, he relies upon a Full Bench judgment of this Court in Krishna Kumari vs State of Haryana and others, 2012(4) SLR 481, as also another judgment of the Supreme Court in Canara Bank and another vs. M. Mahesh Kumar, 2015(5) SLR 243.”

14. The question that now arises therefore is, as to whether in terms of the 'Full Bench judgment' in *Krishna Kumaris'* case (supra), as also in *Babita Rani* (supra), the petitioner is entitled to appointment 23 years after his father unfortunately passed away, with the new rules thereafter having coming into effect first in 2003, thereafter replaced by another set of rules in 2006. Still further, the question would be whether the petitioner can be granted the benefit despite the fact that between 2005 and 2012, i.e. for about 6 years and 9 months, no step was taken by either him or his mother to secure compassionate appointment for him, especially as his mother is also in Government service and therefore, even in terms of the Rule 8 (d) of the Rules of 2003, he would not be entitled to the benefit.

15. Having considered the matter, it is seen that the Full Bench of this Court in *Krishna Kumaris'* case (supra), while discussing the entire law on the subject, observed that though in the earlier judgment of the Supreme Court in **Kuldeep Singh v. Govt. of NCT of Delhi** (2006) 2 SCC 702, it had been held that it would be the policy prevalent on the date of consideration of a dependents' case for employment, that would prevail, however, subsequently in **Bhawani Prasad Sonkar v. Union of India** (2011) 4 SCC 209, it was held that it would be the policy prevalent on the date that the employee was incapacitated, that would apply. (In that case, no offer of alternate employment had been made to the incapacitated employee in terms of the scheme and therefore, the subsequent policy was held to be inapplicable).

On that yardstick, the Full Bench, in the first part of the last paragraph of its judgment, held that it would be the policy applicable on the date of death of the employee which would need “to be invoked to provide immediate relief”.

It was also held that the application seeking compassionate appointment should be moved promptly thereafter and should be also considered by the employer without undue delay.

However, having said that, and reiterating that it would be such policy that would need to be followed, it was concluded as follows:-

“We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly.”

16. Thus, eventually what was held was that though it would be the policy on the date of death of the employee which would apply, but where the matter remained pending/lingering for too long, the immediate event of plunging the family into penury, would be an event which would have passed, and therefore the exception to the general rule of (public) employment, could not be made applicable.

17. In the present case, undoubtedly, it was not the petitioners' fault that his case for employment could not have been considered at the time that his father unfortunately passed away in 1994, the petitioner being a minor at that time, and therefore ineligible for immediate employment. Hence, if the family's penurious condition continued, he may have even been entitled to employment in terms of the policy applicable in 1994, once he attained

majority in the year 2004-05, despite the Rules of 2003 having come into effect in the meanwhile.

In fact even the ratio of the judgment of the Supreme Court in **Canara Bank and another v. M. Mahesh Kumar** 2015 (5) SLR 243 would actually otherwise operate in favour of the petitioner, wherein again the Supreme Court has held that it would be the scheme which is applicable at the time of death of the employee that would apply to the case of appointment of his dependent, and not a subsequent policy.

In that case, the employee of the Bank had died on 10.10.1998 with a scheme dated 08.05.1993 being prevalent, despite which the dependents' case for employment in terms of the said scheme was rejected on 30.06.1999, on the ground that the familys' financial position did not show any indigent circumstances warranting employment on compassionate grounds.

Referring to *Sonkars'* case (supra), it was held by the Supreme Court in *Canara Bank'*, that it would be the scheme prevailing on the date of death of the employee that would apply and not a subsequent scheme.

18. Having said that, in my opinion, what goes against the petitioner in this case, are two things.

Firstly, that he and his mother both kept silent for almost a period of 6 years and 8 months between 28.09.2005 when the Registrar is stated to have asked the General Manager of the Bank to follow the guidelines under the scheme of 2003, and the date when the petitioners' mother made another representation on 04.10.2012 for appointment.

As per the letter Annexure P-7, in fact the decision to deny appointment had already been conveyed on 19.04.2012 itself.

Hence, in the opinion of this Court, that delay in not approaching

this Court for seeking the right of employment of the petitioner in terms of the resolution passed in his/his mothers' favour in the year 1995, would be fatal to the petitioner seeking appointment on compassionate basis now, thirteen years after he attained majority in 2004.

If the family was in a genuinely penurious condition, this very writ petition, filed in the year 2017, could also have been filed in the year 2005, though approaching a court of law itself may get delayed due to financial conditions.

19. In fact, that would bring one to the next issue which goes against the petitioner, i.e. that his mother is actually stated to be a teacher in a Government job since 1983, as per the letter Annexure P-7, which is not denied by learned counsel for the petitioner.

Hence, though this Court is obviously not oblivious to the fact that penurious/tough conditions can continue to trouble a family that has lost a bread earner for a long period of time, yet his mother despite being in a secure job, not having approached this Court on time and in fact, not even having actively followed up his case with the bank itself for 6 to 7 years between 2005 to 2012, the conclusion to be drawn is that he and his mother actually at one point of time had decided not to pursue the issue, which was revived about 7 years thereafter.

20. In the aforesaid circumstances, in my opinion, the petitioner cannot be granted the relief he claims, and consequently, the subsequent Rules of 2003 (produced in court but not annexed with the petition), also stipulating that one of the conditions for grant of appointment on compassionate basis is that the surviving parent should not be in Government service, coupled with the delay of 6 to 7 years at the instance of the petitioner/his mother, this

petition has to be dismissed, even without issuing notice to the respondents.

Ordered accordingly.

No order as to costs.

(AMOL RATTAN SINGH)  
JUDGE

February 20, 2018  
vcgarg/dinesh

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|-----------------------------|--------|
| Whether speaking / reasoned | Yes/No |
| Whether reportable          | Yes/No |