

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

LPA No. 738 of 2018 (O&M)
Date of Decision: 21st August, 2018

Gurpreet KaurAppellant

versus

State of Punjab and othersRespondents

**CORAM: HON'BLE MR.JUSTICE KRISHNA MURARI, CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE**

Present : Ms. Jyoti Sareen, Advocate, for the appellant.

KRISHNA MURARI, CHIEF JUSTICE:

CM No.2036-LPA of 2018

Heard. For the reasons mentioned in the application, delay of 83 days in re-filing the appeal is condoned. Application stands disposed of.

LPA No. 738 of 2018 (O&M)

This intra-court appeal filed under Clause X of the Letters Patent by the appellant-petitioner is directed against the judgment and order dated 26.10.2017 passed by the learned Single Judge dismissing the writ petition challenging the order passed by respondent No.2 herein rejecting her claim for compassionate appointment.

2. The case set up by the appellant-petitioner in the writ petition was that her father, who was working as JBT teacher under the Education Department of the Punjab State, died in harness on 17.08.2001. An application seeking compassionate appointment is alleged to have been made on 11.12.2001 which was returned with some objections and was again submitted to the concerned Blok Primary Education Officer on 07.05.2002 after removing objections. It was further pleaded in the writ petition that the matter of compassionate appointment was kept pending and

it was only in the year 2012 she was informed that her application is not traceable. Accordingly a fresh application is alleged to have been made by the appellant-petitioner in January, 2012 seeking compassionate appointment on the post of Science Mistress. Again an objection is alleged to have been made with respect to the claim made by the appellant-petitioner on the post of Science Mistress whereupon she is alleged to have given her consent for appointment as a Clerk (Group-C) post. However, vide order dated 04.06.2014, her claim was rejected on the ground that since she is married, hence cannot be treated as dependent upon the deceased employee.

3. Learned Single Judge after taking into consideration the scheme/policy formulated by the State Government dated 21.11.2002 for compassionate appointment and the fact that a married daughter was not covered under the scheme/policy and also the fact that the petitioner herself choose to keep quiet for a period of more than 12 years upheld the decision of the authorities and rejected the claim for compassionate appointment. Learned Single Judge has also taken into account the fact while dismissing the writ petition that there was no material brought on record to demonstrate that the family was still in state of penury as the same was an essential condition for being eligible to be considered for compassionate appointment under the scheme/policy.

4. Learned counsel for the appellant-petitioner vehemently contended that since at the point of time when the compassionate appointment was claimed, the petitioner was unmarried and dependent upon her father and it was respondents themselves who kept the claim pending for a considerable period during which she got married. Thus denial on the ground that she is married is not justifiable inasmuch as the status of the

time of the death of the government servant and not at the time of consideration of the grant of compassionate appointment. It is further submitted that delay, if any, has been caused by the respondents and they cannot be allowed to take benefit of their own negligence and lapses. It is also vehemently contended that denying the right of compassionate appointment to a married daughter on her father's death would be arbitrary and would amount to unreasonable classification and thus would be hit by Articles 14 and 16 of the Constitution of India.

5. We have considered the argument advanced by learned counsel for the appellant-petitioner and perused the record.

6. State of Punjab has formulated a scheme/policy dated 21.11.2002 which governs the compassionate appointment. Clause 3 of the policy clearly limits the grant of appointment on compassionate grounds to the persons specified therein. The relevant clause-3 of the policy is extracted hereunder:-

"Henceforth, the objective of the Scheme is limited to grant of appointment on compassionate grounds to persons who fall in the categories mentioned below:-

- 1) A dependent member of the family of a person (bread-winner) killed or 100% physically disabled in terrorist action or by security forces acting in-aid of civil power, in the State;*
- 2) A dependent member of the family of the deceased Govt., employee, who dies in harness.*
- 3) Disabled Ex-Servicemen (fit for Civil Service).*
- 4) A dependent member of the family of the Defence Services; Personnel.*
- 5) Killed in service, while performing duties, or*
- 6) Who are severely disabled and totally unfit for reemployment.*

NOTE-I Dependent Family Member means:

- a) Spouse; or*
- b) Son(including adopted son); or*
- c) Un-married Daughter (including adopted Daughter); or*
- d) Un-married Brother or Un-married Sister in the case of unmarried Govt. Servant.-who was wholly dependent on the Govt. Servant/member of the Armed Forces at the time of death in harness.*

NOTE-II Government Servant for the purpose of these instructions means a Govt. Servant- appointed on regular basis and not one working on daily wage or casual apprentice or adhoc or contract on reemployment or 89 days basis.

NOTE-III Confirmed Work-Charged Staff will also be covered by the terms 'Government Servant' mentioned in Note II above.

NOTE-IV Service means a period prior to the date of superannuation. It does not include extension in service or re-employment after attaining the normal age of retirement in a civil post.

NOTE-V Re-employment does not include employment of ex-servicemen before the normal age of retirement in a civil post."

7. There can be no manner of doubt or dispute and it stands well settled by a catena of decisions that purpose of framing rules/policy for compassionate appointment is to relieve the family of the deceased employee from immediate financial distress but for this objective the same would not have withstood the test of Articles 14 and 16 of the Constitution of India which require providing equal opportunities in the matter of public employment. The claim of compassionate appointment is not a right of a person and thus cannot be claimed as a matter of right. It is an exception to general rule of equality and cannot be treated as an independent and parallel source of employment. It is in effect a concession in favour of a dependent of the deceased employee under a statutory rule/policy framed with the sole purpose and object to redeem the family of the deceased employee from penurious cause on account of sudden death. In this connection it may be relevant to quote the following observations made by the Hon'ble Apex Court in case of ***Umesh Kumar Nagpal v. State of Haryana and others*** (1994) 4, SCC, 138:

“.....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..... 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.”

8. Looking to the object and the purpose underlying the provision for grant of compassionate appointment, which is in the nature of exception to general provisions, the Apex Court has observed in the case of ***Director of Education (Secondary) and another v. Pushpendra Kumar and others (1998) 5 SCC 192***, that care has to be taken while enforcing such provisions so that it does not unduly interfere with the right of other persons to whom the post would otherwise be available. In paragraph-8 of the judgment, it has been observed as follows:-

“Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment of seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee.”

9. Apex Court in catena of decisions while approving the general principles of interpretation that beneficial legislation should be liberally construed but in the case of compassionate appointment, the same being an exception to Articles 14 and 16 has held that it should receive a strict construction. Reference may be made to the decision of the Apex Court in

the case of ***General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi and others, 2009(7) SCC, 259***, wherein it has been observed as under:-

“.....The provision of law which ex facie violates the equality clause and permits appointment through the side door being unconstitutional must be held to be impermissible and in any event requires strict interpretation.”

10. In the case of ***State of Jharkhand and others v. Shiv Karampal Sahu (2009) 11, SCC, 453***, while considering the scheme for grant of appointment on compassionate grounds to the dependents of those killed in terrorist attacks, it was held by the Apex Court as under:-

“Appointment on compassionate ground, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate ground must, therefore, receive a strict construction.”

11. Strict construction of rules/schemes for compassionate appointment has been re-emphasized by the Supreme Court in ***Bhawani Prasad Sonkar v. Union of India and others (2011) 4 SCC 209***, in the following words:-

“Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public

employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.”

12. Tested in the light of the settled legal proposition by the aforesaid pronouncements of the Hon’ble Apex Court, since the policy/guideline framed by the State of Punjab for compassionate appointment does not include the married daughter to be eligible for being considered for appointment on compassionate grounds, there can be no manner of doubt that the petitioner-appellant being a married daughter, stands excluded from the zone of consideration. Thus, the order passed by the respondents rejecting her claim on the ground that she was a married daughter and affirmation of the same by the learned Single Judge cannot be faulted with.

13. The next question which arises for our consideration is whether the eligibility is to be seen on the date when the right accrues to make a claim for compassionate appointment or when the appointment is to be actually offered. For an effective adjudication of this issue being raised before us, it is relevant to notice certain undisputed facts of the case in hand which are culled out from the pleadings of the parties.

Admittedly, the father of the petitioner-appellant died in harness on 17.08.2011. The date of birth of the petitioner-appellant is 07.11.1984. Thus, there is no doubt about the fact that at the time of death of her father she was a minor. It has been asserted by the petitioner-appellant in her pleadings that she made an application for compassionate appointment in the year 2001 itself. Admittedly, she was a minor at that point of time and could not be given compassionate appointment. Further case set up by her is that the application was returned with some objections which were removed and another application was made on 07.05.2002. Again at that point of time, she was the minor. No material has been brought on record by the petitioner-appellant to demonstrate the efforts made by her or action taken by her after making the alleged application on 07.05.2002. Lastly she made another application for compassionate appointment in May-2012 on the post of Science Mistress. The aforesaid facts make it clear that at the time when initial applications were made by the petitioner-appellant in the years 2001 and 2002, she was a minor and thus not eligible for being offered any appointment. The pleadings and record do not indicate that any steps were taken by her till May-2012 even after she attained majority. The period between her attaining the majority and May-2012 when she made a fresh application for compassionate appointment seems to have been happily spent by her in acquiring higher qualification and getting married.

14. On account of the divergent opinion expressed by different Benches with respect to the issue whether it would be the rules in operation at the time of death of the employee or the rules applicable on the date when the case is considered by the appropriate authority for compassionate appointment was referred for a decision by a Full Bench in the case of

considering the pronouncements of the Hon'ble Apex Court in the case of ***Kuldip Kumar v. State of Haryana 2008(2) SCT, 254*** and ***Bhawani Prasad Sonkar v. Union of India and others*** case (supra), answered the issue as under:-

“In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed.”

However, the Full Bench further observed as under:-

“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.”

15. From discussion of the facts discussed hereinabove, it is thus clear that when the father of the petitioner-appellant died, she being a minor was ineligible. When the right to make an application accrued to her on attaining majority, no efforts at all were made thereafter by her for a considerable long period. It is only after a long lapse of time of about 10 years an application seeking compassionate appointment was made by her in January-2012. No doubt, in view of the dictum of the Full Bench in the case of ***Krishna Kumari's case (supra)***, the policy applicable at the time of death of her father would be applicable but inordinate delay in making the application would disentitle her from being considered for compassionate appointment.

16. Besides the above noted factors are for sure a positive indication of the fact that the family of the deceased was not living in penury inasmuch as during this period not only the petitioner-appellant acquired higher education but also got married on 19.02.2012. Inordinate delay in making a claim for compassionate appointment after attaining majority again disentitles her from being considered for compassionate appointment for the simple reason that the very purpose and object for grant of compassionate appointment, which is to enable the family to tied over the financial crisis which it faces on account of death of the sole bread earner, stands frustrated. The factors clearly indicate that the period of crisis, if any, after the sudden death was over. It is well settled that compassionate appointment cannot be claimed and offered after a long lapse of time and after the crisis is over. A reference may be made again to the observations in this regard made by the Hon'ble Apex Court in the case of ***Umesh Kumar Nagpal's*** case (supra).

17. Another important aspect to be taken into consideration apart from the fact that a married daughter is not included in the definition of the family is the fact that after the marriage, there is a presumption that married daughter must have settled with her husband comprising a separate family unless established to the contrary. In this view of the matter, compassionate appointment to the married daughter may not lead to any financial help for the other members of the family left behind by the deceased. Compassionate appointment in such circumstances would apparently frustrate the very laudable object and purpose of granting compassionate appointment. Apart from the above, the petitioner-appellant also stands disqualified from being considered for compassionate appointment in the absence of even alleging that the family still continuous to be in penury.

18. In view of the settled legal position and the facts of the case discussed hereinabove, the claim made by the petitioner-appellant after more than 15 years of the death of her father and after getting married is not liable to sustain and has rightly been rejected by the respondents. Thus we do not find any fault with the judgment of the learned Single Judge dismissing the writ petition.

19. The appeal is thus bereft of merits and accordingly stands dismissed in limine.

(KRISHNA MURARI)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

21.08.2018
ravinder

Whether speaking/reasoned	√Yes/No
Whether reportable	√Yes/No