

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

CWP-13637-2016 (O&M)

Date of decision: 15.1.2019

Naib Singh

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE JITENDRA CHAUHAN

Present: Mr.JPS Sidhu, Advocate for the petitioner

JITENDRA CHAUHAN, J.

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of direction to the respondents to appoint the petitioner as Constable in Punjab Police on compassionate ground as per the State Government Policy regarding appointments of “Honour and Gratitude”, as the petitioner is the ward/ dependent of deceased Government employee.

The brief facts of the case are that the real paternal uncle of the petitioner namely, PHG Hari Singh No.21830, was serving in Punjab Home Guard Departments at District Mansa and during militancy days, he was killed by the terrorists on 30.3.1991 while he was on duty. Thereafter, he was declared Martyr.

Learned counsel for the petitioner submits that deceased PHG Hari Singh, who was declared as Martyr, was unmarried and had been residing with the family of the petitioner. The whole family of the petitioner was dependent upon the deceased and there is no other legal heir of the deceased

except the petitioner. The petitioner being the dependent of PHG Hari Singh

No.21830, who served in Punjab Home Guard Departments at District Mansa has laid his claim to the post of Constable in Punjab Police as per the State Government Policy regarding appointments of “Honour and Gratitude”.

Heard.

Hon'ble Full Bench of this Court in **Krishna Kumari vs. State of Haryana** 2012(2) S.C.T. 736 has held as under:-

“11. In view of above judgment of the apex court and principles laid down therein, it is clear that the employer is within its power to lay down a policy for compassionate employment. It has to strictly adhere to the such policy. Though compassionate employment is in an exception to the general rule, power of the Government or public authority to frame policy to offer compassionate employment has been accepted by the courts in the interest of justice and to meet sudden crisis which befalls the family when an employee dies in harness or is incapacitated. The question whether the policy in operation at the time of death of the employee would be applicable or that at the time of consideration of application would operate, arises for consideration. In Raj Kumar's case (supra) decided by the apex court it was held that there being no vested right for compassionate employment scheme in force at the time application is actually considered would apply, not the scheme in force earlier to said date. Subsequent policy would impliedly abolish the

earlier policy. In this case, scheme which was in operation at the time of consideration of the application specifically provided that all pending applications would be considered under the new scheme. In a later judgment in Bhawani Prasad Sonkar's case (supra) the apex court took the view that the scheme in operation at the time of incapacitation of the employee would be applicable and not the scheme framed subsequently. In our considered view date of death of an employee is an important factor to be taken into consideration as schemes for compassionate appointment are floated with a view to provide immediate relief to families of deceased employees to meet the financial crisis they face on death of sole bread winner. Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognised as an exception to the general rule for offering public

employment would necessarily be applicable strictly in the parameters laid down therein and accepted by the apex court in its various decisions. Particular reference may be made here to *Umesh Kumar Nagpal v. State of Haryana & Ors, 1994(3) S.C.T. 174 : (1994) 4 SCC 138*, wherein it was held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to dependent of the deceased employee was accepted as it bore a rationale nexus to the object sought to be achieved viz. relief against destitution. The Supreme Court held:-

"6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

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.

Needless to observe it is upto the authority to consider the

application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognised by the apex court in its recent judgment in Bhawani Prasad Sonkar's case. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. 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.”

Vide order dated 23.4.2018, the petitioner was directed to place on record the ration card and other necessary documents to show that his uncle

had been residing in the joint family with the petitioner. In this regard, no such document was placed on record by him. Again, vide order dated 11.7.2018, the learned counsel for the petitioner was asked to make a statement as to who were the nominees of deceased PHG Hari Singh. No response was received. The uncle of the petitioner died on 30.3.1991 and petitioner sought compassionate appointment in the year 2013. Thus, there is inordinate delay in seeking compassionate appointment. Accordingly, the petitioner has not made out a case to seek a direction to the respondents to consider his name for compassionate appointment.

In view of the above, the present petition being devoid of merit is dismissed.

15.1.2019
gsv

(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned?	Yes	/	No
Whether reportable?	Yes	/	No