

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

RSA-3275-2016 (O&M)

Date of Decision: 18th January, 2019

Rakesh Kumar

...Appellant

Versus

Union of India & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. S.K. Choudhary, Advocate,
for the applicant-appellant.

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-8704-C-2016

Prayer in this application for condonation of delay of 4 days in re-filing the appeal. The application is duly supported by the affidavit of the Clerk of the counsel for the appellant.

For the reasons mentioned in the application, the same is allowed. Delay of 4 days in re-filing the appeal stands condoned.

RSA-3275-2016

Challenge in this appeal is to the judgment and decree dated 18.09.2013 passed by the Civil Judge (Senior Division), Pathankot, whereby, suit for declaration preferred by the appellant – plaintiff to the effect that he being one of the legal representatives and son of deceased – Mohinder Pal is entitled for appointment on compassionate ground after the death of his father on 15.03.1992 having rendered 9 years 5 months and 24 days of service with the respondents, appeal against which preferred by the appellant – plaintiff has been dismissed by the Additional District Judge, Pathankot, vide judgment dated 17.11.2015.

2. It is the contention of the learned counsel for the appellant that the Courts below have failed to appreciate that none of the family members has been appointed under the provisions or instructions, which entitle appointment on compassionate ground on the death of an employee during service. He contends that merely because the mother of the appellant – plaintiff was getting monthly pension would not debar consideration of his claim for appointment to the service on compassionate ground. His submission is that an official of the respondent – Department, in his cross-examination, has denied the factum of offer of appointment having been made to the eldest brother of appellant – plaintiff, namely, Ashok Kumar and thus, he contends that the appellant – plaintiff was entitled to the declaration as has been prayed for. He, thus, contends that the impugned judgments deserve to be set aside and the suit of the appellant – plaintiff decreed.

3. I have considered the submissions made by the learned counsel for the appellant and with his assistance have gone through the impugned judgments.

4. What has been emphasized upon by the learned counsel for the appellant is that the appellant – plaintiff has been denied the relief as claimed in the civil suit based upon the grant of family pension to the mother of the appellant – plaintiff and therefore, the judgment cannot sustain. This contention of the learned counsel for the appellant may be correct, however, keeping in view the fact that the eldest brother of the appellant, namely, Ashok Kumar had applied for appointment on compassionate basis in the Department, which application was accepted and

he was offered appointment to the post of Safaiwala, which offer has been declined, claim made by the appellant – plaintiff cannot be accepted.

5. The assertion of the counsel for the appellant that in the cross-examination, a witness of the respondent – Department has stated that no appointment was offered to Ashok Kumar, the eldest brother of the appellant, also cannot be accepted in the light of the fact that it is an admitted case of the appellant – plaintiff in his pleadings that Ashok Kumar had applied for the appointment on compassionate ground which was offered to him and he had not accepted the same. Not only this, even during the cross-examination, the appellant – plaintiff has admitted this factum as also his mother, namely, Nirmala Devi, who appeared as PW-4. The instructions provide for a bar with regard to a claim having been raised, on which, offer has been made and declined. That apart, the judgments on which reliance has been placed by the Courts below i.e. **Bhawani Prasad Sonkar Vs. Union of India & others** 2011 (4) SCC 2009 and **Umesh Kumar Nagpal Vs. State of Haryana & others** 1994 (4) SCC 138, would deny the claim as has been made by the appellant – plaintiff, which has been rightly applied to the case in hand.

6. In view of the above, finding no merit in the present appeal, the same stands dismissed.

18th January, 2019
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No