

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

CWP No. 3228 of 2021(O&M)

Date of Decision: April 29, 2021

MISHU RANA

..... Petitioner(s)

Versus

STATE OF PUNJAB AND OTHERS

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Gaurav Singla, Advocate
for the petitioner.

LISA GILL, J.

This writ petition has been filed seeking quashing of order dated 03.03.2016 (Annexure P8), whereby petitioner's claim for appointment on compassionate basis has been rejected.

Brief facts necessary for adjudication of the matter are that petitioner is the married daughter of Shri Randhir Singh Rana, who unfortunately passed away on 23.07.2015 while serving as Assistant Engineer with the respondent-Department. Petitioner's marriage is stated to have been solemnized in the year 2011 but after 2 years of her marriage, matrimonial dispute between the petitioner and her husband arose. Thereafter, the petitioner has statedly been living at her parental house and was completely dependent upon her father. Petitioner is stated to have secured a degree of B.A., M.A. as well as M.B.A. Petitioner, it is stated, on the death of her father submitted an application dated 25.08.2015 (Annexure P3) before the Divisional Engineer Punjab Water Resources Management and Development Corporation Ltd., SAS

Nagar, for appointment on compassionate basis while specifically stating she was the only child of her parents with whom she was living and she has no other means of livelihood. It is further stated that petitioner was looking after her mother. Dependency certificate dated 20.08.2015 (Annexure P-5) was issued by the Deputy Commissioner, Panchkula. Petitioner's case was put up before the Committee constituted by the Chairman of the Corporation, which recommended petitioner's case subject to the condition that appointment should not be violative of any Rules. In the meeting of the Board of Directors, held on 18.12.2015, it was decided that opinion regarding grant of appointment to the petitioner on compassionate basis on the post of Clerk be first taken from the State Government. The matter was referred to respondent no.1 by respondent no.3 on 16.01.2016 in view of the decision taken in the meeting held on 18.12.2015. However, petitioner's claim for appointment on compassionate basis was rejected vide impugned order dated 03.03.2016 (Annexure P8) without spelling out any reason.

Learned counsel for the petitioner vehemently argued that impugned order 03.03.2016 (Annexure P6) is totally non-speaking, illegal, unjustified and is liable to be set aside. Learned counsel submits that as per the relevant applicable Scheme for Compassionate Appointments, 2002 (for short '2002 Scheme') dated 21.11.2002 (Annexure P-1), petitioner is entitled to appointment on compassionate grounds. It is submitted that though no reason as such is mentioned in order dated 03.03.2016 (Annexure P-8), petitioner's case has been rejected on the ground that she was married at the time of her father's death and as per the relevant Clause of 2002 Scheme, a married

daughter does not fall within the definition of a dependent family member. Learned counsel for the petitioner referred to decision dated 17.01.2020 in CWP-2218-2017, titled *Amarjit Kaur Vs. State of Punjab and another* (Annexure P9), to submit that instructions dated 21.11.2002 to the extent that the word 'unmarried' has been inserted in the relevant eligibility criteria in the 2002 Scheme while mentioning dependent daughter has to be ignored. It is vehemently argued that it has been specifically held in the case of Amarjit Kaur as well as in *Jai Narain Jakhar Vs. State of Haryana and others, 2012 (1) RSJ 430* that no discrimination can be meted out to a dependent daughter only on the ground that she is married. What has to be shown to the authorities is that the daughter whether married or unmarried, is totally dependent upon the father i.e. the deceased employee and it has to be shown that there is no other source of livelihood available to the said daughter, whether married or unmarried. It is, thus, prayed that this petition be allowed and appointment be afforded to the petitioner on compassionate basis as she is fully dependent upon her father, who passed away while working as Assistant Engineer with the respondent-Department on 23.07.2016.

I have heard learned counsel for the petitioner and have gone through the file with his assistance.

It is a matter of record that the petitioner's father died on 23.07.2016 and her claim for appointment on compassionate basis was rejected wayback on 03.03.2016. Learned counsel for the petitioner is unable to point out any cogent explanation for the delay in taking any steps for impugning order dated 03.03.2016. It is sought to be explained that immediately after

passing of order dated 17.01.2020 by this High Court in *Amarjit Kaur's* case (Annexure P9), the petitioner moved representation dated 10.09.2020 (Annexure P10) but the respondents-authorities have illegally not taken any action thereon. Learned counsel for the petitioner is unable to deny that since rejection of her claim on 03.03.2016, the petitioner admittedly took no steps to impugn the same till submission of her representation dated 10.09.2020 (Annexure P10) and thereafter, present writ petition has been filed in January 2021.

It is a settled position of law that though there is no limitation in so far as writ petition under Article 226 and 227 of the Constitution of India is concerned, at the same time, it is equally true that in-ordinate and inexplicable delay would always be taken into consideration by the Writ Court. There is indeed no explanation coming forth in the writ petition or even at the time of arguments to explain this delay on the part of petitioner. The only explanation set forth is that petitioner moved a representation after passing of order dated 17.01.2020 and once similar relief has been afforded to a similarly situated person, the authorities are bound to afford such a relief to the petitioner as well. However, this argument is clearly untenable and hence rejected, as similar treatment cannot be sought by the petitioner, who chose to accept rejection of her claim on 03.03.2016, sleep over her rights for four and a half years, but now seeks to revive the cause after passing of order dated 17.01.2020. At this stage, it is relevant to refer to a decision of Hon'ble Supreme Court in *Chairman/Managing Director UP Power Corporation Ltd. and others Vs. Ram Gopal, 2020 SCC Online SC 101* wherein it is held that:-

16. Whilst it is true that limitation does not strictly apply to proceedings under Articles 32 or 226 of the Constitution of India, nevertheless, such rights cannot be enforced after an unreasonable lapse of time. Consideration of unexplained delays and inordinate laches would always be relevant in writ actions, and writ courts naturally ought to be reluctant in exercising their discretionary jurisdiction to protect those who have slept over wrongs and allowed illegalities to fester. Fence-sitters cannot be allowed to barge into courts and cry for their rights at their convenience, and vigilant citizens ought not to be treated alike with mere opportunists. On multiple occasions, it has been restated that there are implicit limitations of time within which writ remedies can be enforced. In *SS Balu vs. State of Kerala*, (2009) 2 SCC 479 this Court observed thus:

“17. It is also well-settled principle of law that “delay defeats equity”. ...It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment.” (emphasis supplied)

Another relevant fact which is required to be noted in this case is that admittedly, appointment on compassionate basis is not an alternate mode of recruitment and neither is it a vested right available to any person. The same is a measure adopted by an employer to help the family of the deceased employee to tide over an immediate crisis which may arise on his/her death and overcome the state of penury which may visit the family on such death. The Hon'ble Supreme Court in *Umesh Kumar Nagpal Vs. State of Haryana and others*, 1994(3) SCT 174 has 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. It is further observed that compassionate appointment can't be claimed when the crisis is over and neither can it be offered on an ad hoc basis.

It is pertinent to note that there is no averment in the writ petition that at this point of time, petitioner and her mother are in such dire straits or such state of penury making it difficult to make two ends meet. A perusal of representation dated 10.09.2020 (Annexure P10) also reveals that there is no such averment therein, which would indicate dismal financial status of the petitioner. Petitioner has admittedly secured a degree of Bachelor of Arts, Master of Arts and an MBA. Petitioner's father had passed away in August 2016 and her claim for appointment on compassionate basis rejected on 03.03.2016. There is nothing on record to indicate such financial crisis calling for appointment on compassionate basis.

Doubtlessly, right of a married daughter to appointment on compassionate basis when she is dependent upon her father, has been upheld in *Jai Narain* and *Amarjit Kaur's* case (supra) and relevant Clause in the Scheme held to be null and void, however, keeping in view the facts, circumstances and reasons as discussed in the foregoing paras, I do not find any ground what-so-ever to interfere in the present writ petition, for directing the respondent-authorities to reconsider the case of the petitioner for appointment on compassionate basis.

No other argument has been addressed.

Petition is accordingly dismissed with no order as to cost.

(**LISA GILL**)
JUDGE

April 29, 2021

'Sunil'

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No