

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

LPA-229-2021(O&M)
Date of Decision:-26.02.2021

Rawel Singh and another

... Appellants

Versus

State of Punjab and others

... Respondents

**CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA
HON'BLE MR. JUSTICE KARAMJIT SINGH**

Present:- Mr. Manu K. Bhandari, Advocate
for the appellants.

KARAMJIT SINGH, J.

Case has been heard through video conferencing on account of
COVID-19 Pandemic.

CM-629-LPA-2021

This is an application under Section 5 of the Limitation Act for
condonation of 25 days delay in filing of the appeal.

For the reasons stated in the application, the same is hereby
allowed and delay in filing of appeal is condoned.

LPA-229-2021 (O&M)

This appeal has been filed by the appellants against the order
dated 10.12.2020 passed by the learned Single Judge in CWP-1728-

2019(O&M), whereby the claim of appellant No.2-Mandeep Singh son of Rawel Singh for compassionate appointment was rejected.

The case of the appellants is that appellant No.1-Rawel Singh was the regular Class-IV employee of the Excise and Taxation Department, Punjab and later on he was promoted to Class-III post of Clerk. At the time of filing of the writ petition, he was serving as Junior Assistant at sub-office, Rajpura. In the year 2012, he developed some neurological problem, which kept on deteriorating and ultimately he suffered permanent disability to the extent of 75%. In this regard the medical board issued disability certificate dated 29.4.2015. The office of respondent No.3 stopped payment of salary to appellant No.1-Rawel Singh w.e.f. 1.7.2017, on which appellant No.2-Mandeep Singh being his son, gave a representation dated 13.9.2017 (Annexure P-5). On this the Social Security and Women & Child Development, Department, Punjab sent communication Annexure P5/A to respondent No.3 to send comments on the representation made to it. Thereafter vide letter dated 1.11.2017 (Annexure P-6), respondent No.3 was asked to take appropriate action in accordance with existing instructions. Even the Excise and Taxation Department of Punjab Government sent letter dated 7.11.2017 (Annexure P-7) asking respondent No.3 to take action in accordance with the relevant rules. On this, the office of respondent No.3 sought guidance from the Government vide letter dated 25.1.2018 (Annexure P-8), whereupon the Government sent letter dated 13.7.2018 (Annexure P-9) making reference to communication issued by the Social Security and Women & Child Development, Department, Punjab dated

30.4.2013 which was issued pursuant to judgment passed in CWP-5436-2009 titled as **Roshni Devi vs. Harayan Vidyut Prasaran Nigam Ltd. (HVPNL)** dated 6.3.2012. After examining the issue, the office of respondent No.3 issued order dated 21.9.2018 (Annexure P-12) directing the release of salary of appellant No.1 w.e.f. 1.7.2017 and for continuation of service till the date of his retirement. However, the request of his son for compassionate employment was declined. The order was impugned by the appellants by invoking writ jurisdiction under Article 226 of the Constitution of India.

The learned Single Judge after hearing both the parties, dismissed writ petition vide impugned order dated 10.12.2020.

The appellants have challenged the said order dated 10.12.2020 in the present appeal.

We have heard the counsel for the appellants.

The counsel for the appellants submitted that the issue with regard to entitlement of providing employment to the dependents of disabled employees was considered by the learned Single Judge of this Court in **CWP-5436-2009** titled as **Roshni Devi vs. Haryana Vidyut Prasaran Nigam Ltd. (HVPNL)** decided on 6.3.2012, wherein the Hon'ble Court passed the following orders:-

“7. The copy of this judgment is directed to be circulated to the Central Ministry of Social Justice & Empowerment as well as to the and State Co-ordination Committees constituted under the 1995 Act for them to issue appropriate guidelines to the

Departments of Labour, Human Resources Development and the State Agencies dealing with empowerment of persons with disabilities that no employer shall terminate the services of an employee who has become mentally ill during the service, without due consideration of suitability of the employee to any other post and without properly counselling the employee about his rights. It is also further directed that wherever compassionate assistance scheme exists that contains provision for giving employment to any dependent to such employee, the employer shall counsel the dependent for appropriate application in that regard and adjust such dependent for suitable employment.

8. The writ petition is disposed off with the above directions.”

The counsel for the appellants further argued that in response to the representation made by appellant No.2, necessary directions were given by the Social Security and Women & Child Development, Department, Punjab to respondent No.3 to deal with the matter in the light of the aforesaid directions given by the Hon’ble High Court in Roshni Devi’s case (supra). In this context, the counsel for the appellants referred to Annexure P-3 and Annexure P-6.

The counsel for the appellants further argued that respondent No.3 while passing the order Annexure P-12, totally ignored the aforesaid directions issued by the High Court. It is further contended that appellant No.1 became totally disabled while in harness and was unable to perform his duties. In the given circumstances, it was the responsibility of the Government to give employment to his son on compassionate ground to

prevent family from plunging into penury. The counsel for the appellants further prayed that the appeal be allowed and necessary directions be given to the Government to consider the case of the appellant No.2 for compassionate appointment.

We have considered the submissions made by counsel for the appellants.

Before advertng to the facts of the present case, we are firstly taking into consideration the settled position of law relating to appointment in public services on compassionate ground. In **Umesh Kumar Nagpal vs. State of Haryana, 1994(4)SCC 138**, the Hon'ble Apex Court observed as follows:-

“.....The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.”

In **Bhawani Prasad Sonkar vs. Union of India & Ors.,**
2011(4) SCC 209, the Hon'ble Apex Court held that while considering claim for employment on compassionate ground the following factors have to be borne in mind:-

“(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”

The Hon'ble Full Bench of this Court in **Krishna Kumari vs. State of Haryana and others, 2012(2) SCT 736**, held that keeping in view the very object and purpose of the policy, the application for compassionate employment must be made and decided without any unreasonable delay because the delay in deciding the same would defeat the very purpose of the policy to tide over the sudden financial crises in the family on account of the demise of the sole breadwinner.

Recently, the Hon'ble Supreme Court in **Civil Appeal No.8564-2015, State of Madhya Pradesh & Others vs. Amit Shrivastava** decided on 29.9.2020, observed as follows:-

“It is trite to say that there cannot be any inherent right to compassionate appointment but rather, it is a right based on certain criteria, especially to provide succor to a needy family. This has to be in terms of the applicable policy as existing on the date of demise, unless a subsequent policy is made application retrospectively.”

So, it is well settled law that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to meet the crises in the family on account of sudden demise or medical invalidation of the breadwinner. Furthermore, the compassionate appointment could not be claimed as a matter of right by the dependents of the deceased/incapacitated employee.

In the present case the counsel for the appellants has placed reliance upon **Roshni Devi's** case (supra) to prove the claim of appellant

No.2 regarding compassionate employment on account of the medical incapacitation of his father. In **Roshni Devi's** case (supra), the employee had fallen mentally ill and was not found fit for service by the Medical Board and finally he was given premature retirement. Later on the wife challenged the said order of premature retirement of her husband. While disposing of the writ petition the learned Single Judge of High Court directed the respondents to consider her claim for compassionate assistance as though the retirement had been made by the establishment on account of his physical unfitness. The copy of the judgment was directed to be circulated to the Central Ministry of Social Justice and Empowerment as well as to the State Coordination Committees constituted under the 1995 Act with certain directions which have been reproduced in the earlier part of this judgment.

Now adverting to the facts of the present case, there is no dispute regarding the fact that appellant No.1 was a Government employee and while in service he suffered mental disability and found unfit to perform his duties. Initially his pay was stopped w.e.f. 1.7.2017. However, subsequently vide order dated 21.9.2018 Annexure P-12 the order regarding stoppage of his salary was revoked and his salary was released from July, 2017, (without deducting any leave), with further direction that he be given salary till the date of his retirement without any obstructions. During arguments the counsel for the appellants admitted that appellant No.1 retired from service on attaining the age of superannuation in 2019 and now he is getting pension.

In the light of the above, we are of the view that there was no sudden financial crises in the family of appellant No.1 on account of his medical invalidation, the reason being he was given full salary till his retirement and now he is getting regular pension.

Also in the given circumstances, the learned Single Judge rightly observed that either the employee continues in service till the date of superannuation in accordance with rights under the Act or his dependent is granted compassionate appointment. Both reliefs are not permissible.

The facts and circumstances of **Roshni Devi's** case (supra) are totally different from that of the present case. In the said case the husband of the petitioner (therein) was prematurely retired, which is not so in the present case.

Consequently, we do not find any illegality in the impugned order. The appeal being devoid of merits is hereby dismissed.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

26.02.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No