

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

CWP No. 3879 of 2021

Date of Decision: February 18, 2021

Gagandeep Singh

..... Appellants(s)

Versus

State of Punjab and others

..... Respondent(s)

CORAM:- HON'BLE MRS. JUSTICE LISA GILL

Present: Mr. Mukand Gupta, Advocate for the petitioner.

LISA GILL, J.

This matter is being taken up for hearing through video conferencing due to outbreak of the pandemic, COVID-19.

This petition has been filed for setting aside order dated 21.09.2020 (Annexure P-39), passed by respondent no.2, whereby petitioner's claim seeking appointment on compassionate ground, has been rejected.

Brief facts necessary for adjudication of this case are that petitioner's father was working as Instructor at the Industrial Training Institute, Budhlada. He unfortunately passed away on 19.10.1996, while in service. Petitioner, whose date of birth is 22.09.1992, was merely 4 years old at that time. Petitioner's mother at that point of time was working as Punjabi Mistress with the Government Girls Secondary Secondary School, Budhlada. Petitioner completed his matriculation in the year 2008 and completed Diploma in Mechanical Engineering in December, 2011 from the

Punjab State Board of Technical Education and Industrial Training. The petitioner sought consideration of his claim for appointment on the basis of compassionate appointment and in this regard representation dated 25.04.2012 (Annexure P-13) was moved by him. Petitioner's mother had earlier submitted representations dated 21.03.1997, 17.09.1997, 28.08.1998, 13.10.1998 and 15.10.1999 to the effect that her son was minor at that time and he be considered for appointment on compassionate basis on attaining majority. Petitioner in 2012 sought appointment to the post of Craft Instructor in Industrial Training Institute, Budhlada. He was informed that appointment on compassionate grounds can be afforded only in group 'C' and 'D' category whereas the post of Instructor fell in group 'C'.

Petitioner moved another representation that instead of the post of Instructor he may be considered for appointment as General Mechanic in Polytechnic Department, which falls in the group 'C' category. Respondent no.2, vide letter dated 08.05.2013 informed the petitioner that all the posts of General Mechanic had been filled up and it was also informed that as per subsequent notification dated 29.09.2014, the post of Instructor fell within group 'C' category. Representation dated 15.01.2015 was again moved by the petitioner. In the meanwhile, petitioner completed his Degree in Bachelor of Technical Computer Science and Engineering from Punjab Technical University, Jalandhar. Various communications in regard to appointment took place between the petitioner and the authorities which are not being referred to for the sake of brevity. A report regarding financial condition of the petitioner was also sought. Petitioner's claim for

appointment on the compassionate basis was rejected vide order dated 24.10.2019 (Annexure P-36).

Petitioner filed Civil Writ petition No. 4993 of 2020, challenging said order dated 24.10.2019, which was set aside vide order dated 25.02.2020 (Annexure P-37) on the ground that it was a non-speaking order. Liberty was granted to the respondents to consider the petitioner's claim and decide the same by passing a speaking order within two months. Pursuant thereto impugned order dated 21.09.2020 was passed, rejecting the petitioner's claim for appointment on compassionate ground. It is observed therein that petitioner's mother is working as a Punjabi Mistress in the Government Girls Senior Secondary School, Budhlada and there is nothing on record to indicate such financial stringency, which calls for appointment of the petitioner on compassionate ground. Aggrieved therefrom present writ petition has been filed.

Learned counsel for the petitioner vehemently argues that at the time of death of petitioner's father, he was only 4 years old and in terms of the policy in question he applied for appointment on compassionate basis on attaining majority and fulfilling the educational qualifications. It is further submitted that as per Clause 11 of the Scheme for Compassionate Appointment, 2002, it is specifically mentioned that appointment on compassionate basis can be afforded even where an earning member in the family is there. Therefore, rejection of petitioner's claim on the basis of the petitioner's mother being gainfully employed is totally unjustified.

Moreover, the authorities at an earlier point of time have sought a report

regarding the financial condition of the petitioner and the same was duly sent. The petitioner's mother had also submitted an affidavit regarding her pay scale. It is submitted that the fact that petitioner's application was kept pending from 2012 till today, cannot in any case work to the detriment of the petitioner and mere passage of time in this regard is not a ground for rejection of petitioner's claim. It is thus prayed that impugned order dated 25.09.2020 be set aside.

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

It is a matter of record that the petitioner's father, who was working as an Instructor at the Industrial Training Institute, Budhlada, unfortunately passed away on 19.10.1996, while in service. Petitioner, whose date of birth is 22.09.1992, was admittedly minor at that time. It is submitted that the petitioner stakes his claim for appointment on compassionate basis in terms of Scheme for Compassionate Appointment, 2002. Eligibility conditions as provided in Clause 6 of the said Scheme, attached as Annexure P-3 read as under:-

6. ELIGIBILITY

- (a) The family is indigent and deserve immediate assistance from financial destitution. The Authority concerned must consider as to whatever the family of deceased employees is unable to meet the financial crisis resulting employee's death.
- (b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant rules.

Clause 11, which deals with a situation where there is an earning member reads as under:-

11. WHERE THERE IS AN EARNING MEMBER

(a) In deserving cases even where there is already an earning member may be considered for compassionate appointment with prior approval of the Secretary of the Department concerned, who before approving such appointment will consult the Department of Personnel and satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities left by the government servant income of the earning members as also his liabilities including the past that the earning member is residing with the family of the Government Servant and whether he should not be source of other member of the family.

(b) In case where many members of the family of the deceased servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvent and misused by putting forward the ground that the member of the family already employed is not supporting the family.

Petitioner's claim for appointment on compassionate basis has been rejected vide impugned order dated 21.09.2020 (Annexure P-39) while observing that petitioner's mother is working as a Punjabi Mistress and that after a lapse of 24 years there was no ground to offer appointment to the petitioner on compassionate grounds. Learned counsel for the petitioner is unable to deny that petitioner's mother was employed as a

Punjabi Mistress at Government Girls Senior Secondary School, Budhlada at the time of unfortunate demise of petitioner's father and she has retired in December, 2020. As per petitioner's own case, his mother was in receipt of salary in the pay scale of 10,300 + 34,800 + 5,000, as is mentioned in the writ petition as well as petitioner's communication dated 26.02.2018 (Annexure P-33). It is further not denied that there are 2 Bighas and 3 Biswas of land held jointly by the petitioner with collateral of his father and a residential house has been constructed, though statedly by raising a loan of Rs.12 lacs. A perusal of the writ petition does not reveal the petitioner or his mother to be in a state of penury or in such dire financial straits, which calls for an offer of appointment to the petitioner on compassionate basis. It is a settled position that appointment on compassionate basis is not an alternate source of recruitment but is measure adopted to help the family of a deceased employee to tide over a financial crisis, which may result from the employee's death. Equally settled is the position that appointment on compassionate basis is not a vested right available to any person. The aim is to protect the family members of the deceased employee from financial destitution and to avert the emergent crisis arising from his death. Reliance by learned counsel for the petitioner on Clause 11 is of no avail as it is specifically provided therein that economic distress of the family would be the paramount consideration even where another member of the family is earning. Petitioner's claim for appointment on compassionate basis on the ground of penury or financial stringency is not borne out from the record.

A perusal of the file does not reveal the petitioner and his mother to be in

such a dire financial stress, which would justify appointment of the petitioner on compassionate basis.

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, however, observed that compassionate appointment can't be claimed when the crisis is over and neither can it is offered on an ad hoc basis.

The Hon'ble Supreme Court in State of *Madhya Pradesh and others Vs. Amit Sriwas, 2020(10) SCC 496* has reiterated that there is no inherent right to appointment on compassionate basis. It is a right based on certain criteria and is to provide support to a needy family.

Thus, I do not find any infirmity or illegality in the impugned order dated 21.09.2020 (Annexure P-39), which is upheld.

No other argument has been addressed.

Petition is accordingly dismissed with no order as to cost.

(LISA GILL)
JUDGE

February 18, 2021

'Sunil'

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