

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

LPA-681-2021

Date of Decision:-17.9.2021

Om Pati and another

... Appellants

Versus

Dakshin Haryana Bijli Vitran Nigam and others

... Respondents

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

Present:- Mr. Bhushan Bhatia, Advocate
for the appellants.

KARAMJIT SINGH, J.

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

The instant appeal has been filed by the appellants against the
order dated 29.5.2020 passed by the learned Single Judge in CWP-5644-
2020 whereby the prayer of the appellants for the issuance of a writ of
mandamus directing the respondents to offer appointment to appellant No.2
under *ex-gratia* scheme or any other direction which the Court deems fit was
declined.

The facts as depicted in the writ petition are that deceased Ram Kumar, husband of appellant No.1 and father of appellant No.2 was working as ALM in OP Division, DHBVNL, Charkhi Dadri. He died on 29.6.2001 while in service. On the death of her husband, appellant No.1 submitted an application dated 12.9.2001 (Annexure P-1) to the Managing Director, DHBVNL, Hisar with a prayer to give employment to her son i.e. appellant No.2 on compassionate grounds. In response to the same, appellant No.1 received a communication dated 25.5.2003 (Annexure P-3) to approach the concerned authorities on/about 18.4.2004 when appellant No.2 would be attaining the minimum age of employment and such application was to be submitted before 29.6.2004, failing which the claim for employment would be rejected by the competent authority. Thereafter, appellant No.1 received another letter dated 25.5.2003 whereby she was informed about introduction of the “*Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rule-2003*” as per which *ex-gratia* grant has to be paid to the family of the deceased employee at the rate of ₹2.5 lacs, in case said family did not opt for *ex-gratia* employment. The said communication also clarified that due to non-availability of sufficient posts, the cases of employment on compassionate ground were lying pending since number of years and were likely to take 4-5 years to finalize the said cases as the posts were being reduced due to restructuring in the Nigam, therefore the chances of employment under the *ex-gratia* scheme were very limited. However, appellant No.1 again submitted request dated 26.4.2004 for employment to her son on compassionate ground. The authorities failed to take any action

and in the meantime, the appellants suffered financial distress. The authorities issued letter dated 30.5.2005 (Annexure P-5) stating that the seniority list of *ex-gratia* employment cases has been maintained in the office w.e.f. 1.4.2003. Thereafter *ex-gratia* of ₹2.5 lac was released to appellant No.1 by the authorities vide cheque dated 23.10.2007, without considering the request for employment to her son on compassionate ground. However, appellant No.1 was kept in dark regarding entitlement of her son to get compassionate appointment. Appellant No.1 being illiterate, later on came to know about the right of her son to get employment on compassionate ground, whereupon the appellant No.1 served legal notice dated 9.12.2019, which was responded by the respondents vide reply dated 6.1.2020, justifying grant of financial assistance of ₹2.5 lac in lieu of employment to the son of appellant No.1.

Being aggrieved, the appellants filed writ petition. The learned Single Judge heard the counsel for the petitioners and dismissed the writ petition with the following observations:-

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“I have considered the submission of Ld. Counsel, There is no dispute with the law laid down by the full bench. However, I am unable to agree with the claim of petitioner No. 1 for grant of compassionate appointment to her son i.e. petitioner No. 2 for the reason that the father of petitioner No. 2 unfortunately expired on 29.06.2001. Application for compassionate appointment was submitted on behalf of petitioner No. 2 vide Annexure P-8/1 dated 12. 09. 2001. Petitioner No. 1 was informed vide letter Annexure

P/2 dated 25/03/2002 to submit application on behalf of her son for compassionate appointment on his attaining the age of 17 years i.e. 18.04.2004 but before 29.06. 2004 i.e. within 3 years of death of deceased employee. Thereafter intimation was given to petitioner No. 1 vide Annexure P/3 dated 25. 05. 2003 of the introduction of the “Haryana Compassionate Assistance to the Dependents of Deceased Government Employees, Rules, 2003”. No doubt the petitioner No. 1 sought compassionate appointment for her son but due to nonavailability of posts, petitioner No. 1 eventually sought financial assistance under the “Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees, Rules, 2003” vide option dated 05.06.2007 in lieu of employment as provided under clause 4 (1) (b) and 6 (1) (c) without agitating her grievance for grant of compassionate appointment to her son before a court of law and accepted the payment of Rs. 2.5 lakhs as released to her vide cheque No. 929954 dated 23. 10. 2007. Thereafter, the petitioners maintained a stoic silence and it was only vide Annexure P-3/6 dated 12. 09.2019 that a legal notice was served for grant of compassionate appointment to petitioner No. 2. Although rules applicable on the date of death of petitioner No. 2’s father are the rules on the basis of which rights of petitioner No. 2 were to be determined yet in view of petitioner No. 1 having opted for financial assistance and got the same on 23.10.2007 and petitioners not having agitated their grievance qua non-grant of compassionate appointment to petitioner No. 2 till the filing of the instant writ petition in the year 2020 even though petitioner No. 2 attained the age of employment in 2004 besides even the legal

notice Annexure P/6 dated 12.06.2019 having been served only on behalf of petitioner No. 1, the writ petition is not maintainable, besides is highly belated. Accordingly, the writ petition is dismissed in the light of the observations made above. ”

The appellants being not satisfied, have filed the present appeal.

We have heard the counsel for the appellants.

There is no dispute regarding the fact that deceased Ram Kumar who was working as ALM in DHBVNL died on 29.6.2001 while in harness. Appellant No.1 is his widow while appellant No.2 is his son. The widow received *ex-gratia* compassionate assistance of ₹2.5 lac from the authorities vide cheque dated 23.10.2007 and by that time, appellant No.2 had already attained the age of majority. Admittedly, after 12 years of the receipt of *ex-gratia*, the appellant No.1 served legal notice dated 9.12.2019 seeking compassionate appointment for her son and offered to surrender the aforesaid *ex-gratia*. The authorities gave reply to the said legal notice, as per which the appellant No.1 herself gave option on 5.6.2007 to avail the benefit of lumpsum financial assistance of ₹2.5 lac in lieu of employment to her son on compassionate ground and she accepted the said financial assistance without any objection.

As far as the legal aspect with regard to grant of compassionate appointment is concerned the Hon’ble Full Bench of this Court in **Krishna Kumari vs. State of Haryana and others, 2012(2) SCT 736**, held that the policy which is prevailing at the time, when the deceased employee died, only is required to be considered by the authorities. Recently, the Hon’ble

Supreme Court in Civil Appeal No.8564 of 2015, State of Madhya Pradesh & Others vs. Amit Shrivastava, decided on 29.9.2020, held that 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. Furthermore it is well settled law that whole object of granting compassionate employment is to enable the family of the deceased Government employee to tide over sudden crises faced by it due to untimely demise of the breadwinner of the family. At the same time, it is also manifestly clear that such type of employment cannot be claimed as a matter of right by the members of the family of the deceased Government employee.

In the light of the above, we are of the considered view that appellant No.2 cannot claim appointment on compassionate ground, as a matter of right more so after 15 years of his attaining the age of employment. Thus, we do not find any reason to differ with the conclusion arrived at by the learned Single Judge. Accordingly, the present appeal is hereby dismissed being devoid of merits.

(RAJAN GUPTA)
JUDGE

(KARAMJIT SINGH)
JUDGE

17.9.2021
Gaurav Sorot

Whether reasoned / speaking?

Yes / No

Whether reportable?

Yes / No