

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

CWP-19095-2009 (O&M)
Date of decision : 12.01.2021

Tinku

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL.

Present: Mrs. Abha Rathore, Advocate for the petitioner.

Mr. Rohit Arya, DAG, Haryana for the respondents.

ANIL KSHETARPAL, J.

The petitioner prays for a writ, in the nature of mandamus, directing the respondents to appoint him in a government job on compassionate basis as his father died in harness, on 22.11.1997. At that time, the petitioner was barely a 7 years old child. The petitioner has pleaded that at the time of his father's death, his mother was promised that he would be given compassionate appointment on attaining the age of 18 years.

It is significant to note that neither the petitioner nor the State has placed on file, the relevant policy as applicable at the time of his father's death. The petitioner has based its entire case on two communications (Annexures P-1 and P-2). Annexure P-1 is a letter written by the Director General of Police, to the Superintendent of Police, directing that the petitioner's name be entered in the minors' register. Annexure P-2 is a memo issued by the office of Superintendent of Police, Rohtak, intimating that the petitioner's

name has been entered in the minors' register and the petitioner's mother should contact the office of Welfare Inspector after he attains the age of majority and get the case prepared.

The petition is opposed by the State. It is contended that as per the clarification dated 22.03.1999, if the dependent attains the majority within a period of three years from the date of death, only then, dependent's case could be considered for compassionate appointment.

This Court has heard learned counsel for the parties at length and with their able assistance perused the paper book.

The petitioner's counsel has asserted that the petitioner's mother was promised that the petitioner would be given job on attaining the age of majority, therefore, a writ is required to be issued. In support of the argument, she relies upon the judgment passed by the Hon'ble Supreme Court in **Canara Bank and another Vs. M. Mahesh Kumar, (2015) 7 SCC 412.**

Per contra, the State Counsel has contended that the compassionate appointment is only to tide over immediate financial difficulties and cannot be considered as largesse. He further pointed out that the widow is getting the pension of Rs.9550/- per month.

This Court has carefully read the judgment passed in Canara Bank (Supra). The Bench, after discussing various previous judgments on the issue, has culled out the following conclusions in para 20, which reads as under:-

“20. Thus, while considering a 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 dehors 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 breadwinner 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 dependants 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."

It is well settled that appointment to public office is required to be made by strictly adhering to the mandatory requirement of the Constitution. Compassionate appointment is an exception to the general rule. Provision has been made in order to help the bereaving family immediately, who has lost its bread earner, to tide over the immediate crisis. Compassionate appointment is not a right but a concession. A government/public employment is not a hereditary office. Such provision

has been made to provide immediate succor to the dependents of the deceased. Moreover, it is also well settled that the compassionate appointment cannot be claimed as a matter of right especially after a passage of time. Reference in this regard can be made to the judgment of the Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana (1994) 4 SCC 138.**

Now let us see as to whether any promise was made to the petitioner's mother. On careful reading of Annexure P-1 and P-2, it is apparent that the communications are that the petitioner's name has been entered in the minors' register. Even in the communication (Annexure P-2), Superintendent of Police has only stated that his mother should contact the Welfare Inspector and get the case prepared when the petitioner attains the age of majority. It is nowhere written that the petitioner shall be given appointment on attaining the age of majority. Still further, the principle of estoppel has evolved from Chapter VIII of the Evidence Act, 1872. Section 115 of the Evidence Act, 1872, provide that the party claiming estoppel should establish that it has changed its position on the promise made by the other party. No doubt, with the passage of time, the principle of promissory estoppel has also evolved, however, the same is also based on equity and good conscious. The petitioner has not pleaded as to how he changed his position. Still further, now 23 years have elapsed from the time when the petitioner's father died. The petitioner is now more than 30 years old. A writ of mandamus can only be issued if the petitioner not only establishes a right but also proves that the respondents are under a corresponding duty to perform. In absence thereof, a writ of mandamus

cannot be issued.

Now let us analyze the arguments of learned counsel representing the petitioner.

First of all, as noticed above, the communications (Annexures P-1 and P-2) do not extend any promise. Thus, the petitioner has failed to establish that the State or its officials made any promise to give him employment on his attaining majority. Secondly, the judgment passed in Canara Bank (supra) is in the facts of that case and the 'ratio decidendi' of the same has already been extracted. In the aforesaid case, the Court was considering interpretation of the scheme framed by the Bank. In para 3.2 of the scheme, it was provided that dependent of the deceased employee would be offered appointment on attaining the age of majority. In the present case, the petitioner has not drawn the attention of the Court to any such provision in the scheme. In fact, the scheme itself has not been placed on the file. In absence thereof, this Court does not find it appropriate to issue the aforesaid writ after a time lag of 23 years from the date of death of late Sh. Jai Parkash, the petitioner's father.

Keeping in view the aforesaid discussion, no ground to issue the writ is made out.

Accordingly, the writ petition is dismissed.

All the pending miscellaneous applications, if any, are disposed of, in view of the aforesaid judgment.

12.01.2021

Pawan

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No