

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1002 of 2021 (O&M)

Date of decision: 27.10.2021

Gagandeep Singh

... Appellant

Versus

State of Punjab and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAVI SHANKER JHA,
CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI, JUDGE

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

ARUN PALLI, J.

This is an intra-court appeal, under Clause X of the Letters Patent, against an order and judgment dated 18.2.2021, rendered by the learned Single Judge, vide which the writ petition preferred by the appellant seeking appointment on compassionate grounds has since been dismissed.

A brief narration of facts that have led the appellant to the current stage shall be imperative.

Father of the appellant was employed as Tractor Mechanic Instructor at Industrial Training Institute, Budhlada, District Mansa. Unfortunately, he died in harness on 19.10.1996. The deceased was survived by his wife (Manjit Kaur) and a son (appellant). At the time of death of the deceased, Manjit Kaur was already working as Punjabi Mistress in the Government Girls Senior Secondary School, Budhlada. And the appellant, who was born on 22.9.1992, was barely 4 years old. For the

that claim of her son for appointment on compassionate grounds be considered on his attaining majority. Accordingly, years thereafter, vide representation dated 25.4.2012 (Annexure P-13), the appellant required the authorities to consider him for appointment to the post of Craft Instructor. However, he was informed that appointment on compassionate basis could only be made against Group 'C' and 'D' posts, whereas, the post of Craft Instructor was in Group 'B' category. Thus, his claim could not be considered. Likewise, for want of requisite qualification, his representation seeking appointment to the post of General Mechanic in Polytechnic Department was also rejected on 8.5.2013. And, vide order dated 24.5.2016 (Annexure P-24), he was also denied appointment to the post of Workshop Instructor, for he lacked the necessary experience. Whereafter, he submitted another application on 22.6.2016, seeking appointment to the post of Clerk, which was also rejected on 24.10.2019. Whereafter, the appellant approached this Court vide Civil Writ Petition No. 4993 of 2020, and having found that order dated 24.10.2019 was bereft of any reasons, this Court, vide order dated 25.2.2020, set aside the same. Accordingly, the authorities were required to re-examine the claim of the appellant and pass a speaking order. The claim of the appellant was re-examined by the authorities, in terms of the Government instructions dated 18.7.2005. And, it was concluded, for mother of the appellant was already working as Punjabi Mistress and post death of the deceased, a period of 24 years had elapsed, therefore, evaluation of the financial/economic status of the family to consider the appellant for appointment on compassionate basis defied logic. Accordingly, vide order dated 21.9.2020 (Annexure P-39), his claim was rejected. And, as indicated earlier, for the said order was affirmed by the learned Single Judge, thus, this

appeal.

Learned counsel for the appellant submits that authorities as also the learned Single Judge apparently erred in holding the appellant ineligible for consideration, in terms of the 'Scheme for Compassionate Appointments-2002', for his mother was already employed or there was an earning member in the family. He submits that a bare reading of clause 11 of the Policy/Scheme of 2002 shows that even if there is an earning member in the family of the deceased, still other dependent members are eligible to be considered for appointment. Further, the appellant could not be accused of 24 years' delay that had occurred post death of his father on 19.10.1996. It is urged that appellant was barely 4 years old when his father died, and immediately upon attaining majority, he represented to the respondent authorities on 25.4.2012, to consider him for appointment. But, despite repeated representations and communications that were exchanged between the parties, his claim was eventually rejected vide order dated 21.9.2020. Thus, even though he diligently pursued his case, rejection of his claim on the ground of delay was apparently unjustified. He submits that post dismissal of the writ petition, the appellant had even moved a review application, appended therewith certain orders, which showed that similarly situated persons as the appellant, were afforded appointment by the department. However, vide order dated 02.9.2021, the review application was also dismissed by the learned Single Judge.

We have heard learned counsel for the appellant and perused the records.

For, concededly, the appellant staked his claim for appointment,

in terms of the Policy/Scheme of 2002, and his grievance that decision of the

authorities to hold him ineligible for consideration being erroneous, it would be apposite to refer to clause 6 and 11 of the Scheme:-

“6. ELIGIBILITY

(a) The family is indigent and deserves immediate assistance for relief from financial destitution. The authority concerned must consider as to whether the family of deceased employees is unable to meet the financial crisis resulting from 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 Recruitment Rules.

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 fact that the earning member is residing with the family of the Government Servant and whether he should not be a source of support to other members of the family.

(b) In case where any member 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 circumvented and misused by putting forward the

ground that the member of the family already employed is not supporting the family.”

Ex facie, the purport and intent to afford employment on compassionate grounds and the object that is sought to be achieved vide clause 6 (*ibid*), is to mitigate the unforeseen crisis or an emergency the family is faced with, owing to the sudden demise of the deceased employee, and to secure his family from any financial destitution. As regards clause 11 (*ibid*), undoubtedly, a bare analysis thereof reveals that even if there is an earning member in the family, yet the other dependent family member of the deceased, is entitled to seek appointment, under the Scheme of 2002. However, consideration of any such claim is subject to multiple checks and balances, as envisaged under Clause 11 (*ibid*) itself. Which is why, the fact that mother of the appellant was already employed as Punjabi Mistress (in the scale of 10300+34800+5000), at the time of death of the deceased and was slated to retire on 31.12.2020, was one and not the only factor that formed part of the decision of the authorities. Other than that, delay of 24 years, post death of the deceased, the appellant being a co-sharer in a land measuring 2 bighas and 3 biswas and a residential house (though constructed by raising a loan of Rs.12 lakhs), he was possessed of, were also the factors that were factored in, while evaluating his claim. For, suffice it to say, clause 11 (*ibid*), can never be read in isolation but in conjunction with the spirit and essence of clause 6 of the Scheme. Thus, the authorities, upon evaluation of the existing facts, circumstances and every possible factor that is germane, while considering the claim for appointment on compassionate basis, concluded that family of the deceased was neither in a state of penury nor under any economic crisis and rejected the claim of the appellant. Thus, the

grievance of the appellant that just because his mother was employed or there was already an earning member in the family, he was declared/termed ineligible for consideration is wholly misplaced and unfounded.

Adverting to the argument that authorities apparently erred in accusing the appellant for delay of 24 years, post his father's death, in staking his claim and denying him the appointment is equally erroneous. This is not the case where the authorities declined to afford employment to the appellant, for his claim suffered from gross/inordinate delay or was barred by time or was merely speculative to revive a stale or a dead cause. Rather, the records show that the authorities were considerate to the cause of the appellant all through. Which is why, even though his father had passed away on 19.10.1996, when he was barely 4 years old, the authorities examined each of his representations, submitted post attaining majority, in the right earnest. As indicated earlier, vide representation dated 25.4.2012, the appellant required the authorities to consider him for appointment as Craft Instructor. However, post of Craft Instructor being a Group 'B' post, his representation was turned down, as appointment on compassionate grounds could only be made against the posts in Group 'C' and 'D' category. Whereafter, he sought appointment to the post of General Mechanic in Polytechnic Department. However, for want of requisite qualification, the authorities had no option but to reject his representation on 8.5.2013. Similarly, for he lacked the necessary experience for appointment to the post of Workshop Instructor, vide order dated 24.5.2016, his representation was rejected. And eventually, the authorities, for the reasons cited in the order dated 21.9.2020, of course, the time lapse of 24 years, post death of the deceased, being one of those, declined to award him appointment on

compassionate grounds.

Having said that, we may also address another short but a significant question: even though the appellant was a minor, being 4 years of age at the time of the death of his father, did he possess any indefeasible or hereditary right to seek appointment upon attaining majority?

The answer is: No. It would be apposite to refer to the observations recorded by the Supreme Court, in similar circumstances, in

Jagdish Prasad V. State of Bihar, 1996 (1) SCC 301, (Para 3):-

“.....The very object of appointment of a dependent of the deceased employees who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules.”

Likewise, a Division Bench of this Court in **Bijender Singh Vs. State of Haryana, 1999(3) SCT 98, (Para 20)** concluded:

“One of the principles which is clearly discernible from the various judicial precedents referred to above, is that the minor dependent of deceased employee cannot claim appointment as of right on his/her attaining majority unless the rules or the administrative instructions which regulate ex gratia employment/compassionate appointment provide for consideration of the claim of such dependent after he/she becomes major, the Court cannot issue a writ in the nature of mandamus directing the public

employer to appoint such dependent after lapse of many years. It is also consistent view of the Courts that long time gap between the date of the death of the employee and the date of submission of application by an eligible dependent is sufficient to draw an inference that the family of the deceased was not in dire need of assistance in the form of ex-gratia employment/compassionate appointment.”

We may hasten to add, at this stage itself, that in terms of the observations recorded by the Division Bench (*ibid*), neither any rule nor any provision in the Policy/Scheme of 2002, which provides for consideration of claim of a minor upon attaining majority, was referred to.

We have also examined the orders (Annexures P-5, P-8 and P-10), appended with the review application, on the basis whereof it was sought to be urged that persons who are similarly situated as the appellant, were offered appointments on compassionate grounds. Suffice it to say that none of those orders has any bearing on the matter in issue.

Though, the void, the appellant and his mother had to bear with upon death of Naranjan Singh, could never be filled. But, analysing the position from a limited standpoint of considering a claim for appointment on compassionate basis, the factors that would assume significance are: A quarter of a century has gone by, post death of the deceased. Mother of the appellant was already employed as Punjabi Mistress at the time of death of her husband. And, she retired from service on 31.12.2020. Concededly, the appellant qualified Matriculation from Punjab State Education Board in the year 2008, and completed Diploma in Mechanical Engineering from the Punjab State Board of Technical Education and Industrial Training in December, 2011. Whereafter, he even acquired a degree in Bachelor of

University, Jalandhar. He was 4 years old, when his father died, and is over 29 years of age today. The position of law is settled that appointment on compassionate basis is not an alternate source of recruitment. Nor does the consideration for such employment is a vested right, which can be exercised at any time in future.

In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge.

The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

October 27, 2021
AK Sharma

Whether speaking / reasoned: **YES**
Whether Reportable: **YES/NO**