

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

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**CWP No.21797 of 2020
Decided on : 22.04.2021**

Baljit Singh

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA

Present: Mr.Manu K.Bhandari, Advocate, for the petitioner.

Mr.R.K.S.Brar, Addl.A.G., Haryana.

(The proceedings have been conducted through video conferencing, as per instructions.)

G.S. Sandhawalia, J.

Prayer in the present writ petition filed under Article 226 of the Constitution of India is for compassionate appointment on the basis of the fact that father of the petitioner, Tarvinder Singh, who was working as Assistant Sub-Inspector with the Haryana Police had died on 10.08.2005, while in service. The claim is based on the policy dated 28.02.2003 and directions are sought for deciding the justice demand notice dated 27.08.2016 (Annexure P-8) and the subsequent representation dated 26.07.2019 (Annexure P-11).

The case came up for preliminary hearing on 17.12.2020 and counsel for the petitioner was asked to file an affidavit explaining the present financial position of the petitioner and his family, including the details of his family members. The affidavit was also to address as to how the family was able to tide over the crisis of losing the bread-winner as long back as in 2005 and whether they had other sources of livelihood. The necessary affidavit though has not been filed.

However, counsel for the petitioner submits that delay had occurred on account of the fact that a suit had been filed by Gurcharan Kaur, the second wife of the deceased employee, who had claimed right to the retiral benefits and the suit was dismissed on 11.11.2020. On 30.07.2014 (Annexure P-6), the appeal was partly allowed to the extent that Kanwaljit Singh, minor son from the second marriage was also held entitled for the share in the service retiral benefits since it was noticed that Gurcharan Kaur had not got divorced from her previous husband before she started living with Tarvinder Singh, the deceased employee and therefore, she was not the legally wedded wife. However, the legitimate son was held entitled to inherit the property. It has further been submitted that the entitlement for compassionate appointment would be on the strength of the policy which was in force at the time of death, while placing reliance upon the judgment of the Full Bench in **Krishna Kumari Vs. State of Haryana & others 2012 (2) RSJ 473** and therefore, the stand of the State upon the Haryana Compassionate Assistance to the Dependents of Deceased Government Employee Rules, 2006, would have no applicability.

The State, in its reply, has clarified that the first wife, Jaswant Kaur had expired on 16.06.1989 i.e. 14 years before the date of death of father of the petitioner and a male child, namely Kanwaljit Singh was born on 13.07.1994 from the second marriage with Gurcharan Kaur who was given the benefit by the Lower Appellate Court to the share in the service retiral benefits. Therefore, the Treasury Officer, Ambala had

been asked to divide the family pension. However, it was brought to the notice by the Accountant General, Haryana that the present petitioner had already attained the age of 25 years before the death of his father as his date of birth was 01.03.1978 and therefore, was not entitled for the share of the family pension.

Reliance by the State was also placed upon the judgment of the Apex Court in **Union of India Vs. Sima Banerjee 2017 (1) RSJ 351** to submit that compassionate appointment should not be granted after a period of so many years. Similarly, reliance was also placed upon the judgment in **CA-897-2021** titled **Central Coalfields Limited through its Chairman and Managing Director & others Vs. Smt Parden Oraon**, decided on 09.04.2021 wherein the Apex Court had set aside the judgment of the High Court wherein relief had been granted on the application for compassionate appointment which had been filed after more than 10 years of the employee going missing.

A perusal of the file would go on to show that apart from the claim of pension made on 08.11.2005 (Annexure P-2), the petitioner had also claimed the benefit of compassionate appointment though not followed it up at that point of time and though he was more than 25 years of age at that point of time. He woke up only on 29.06.2011, i.e., 6 years thereafter, after the decision of the Civil Suit, which was decided against the second wife. No explanation has been given as to what kept him waiting for all those long years to press the claim of compassionate appointment at that point of time if the family was in urgent need of any

such financial assistance. The legal notice itself was sent only on 27.08.2016 (Annexure P-8) i.e. after 11 years from the date of death of the deceased employee which was followed up by representation dated 26.07.2019 (Annexure P-11) and the writ petition was filed on 14.12.2020.

The Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana & others 1994 (4) SCC 138** has held that recruitment by way of compassionate appointment is not modum of recruitment and it is only meant to provide immediate succor to the family and the right cannot be claimed and offered whatever the lapse of time and after the crisis is over. The said view was followed in **HSEB Vs. Naresh Tanwar & another 1996 (8) SCC 23**. The employee therein had died in 1980 and around 1992, representation was made which had been allowed by this Court. Resultantly, the appeal was allowed and directions issued for appointment, were set aside. In Sima Banerjee (supra) also, the claim for appointment was filed within 3 years before the Central Administrative Tribunal and the said claim had been allowed, which was set aside by the Apex Court. The same view has been taken by the Supreme Court in **Shreejith L. Vs. Deputy Director (Education) Kerala and Others (2012) 7 SCC 248** and **State of Himachal Pradesh & another Vs. Shashi Kumar 2019 (3) SCC 653**. Thus, the said precedents would squarely cover the issue of delay.

Similarly, the claim of counsel for the respondents that the scheme which was in force at the time of death is binding at the time of

consideration and would be the relevant scheme and not at the time when the case is considered is without any basis. The Apex Court in **State Bank of India Vs. Raj Kumar 2010 (11) SCC 661** has held that the scheme which would be applicable at the time of consideration would be relevant and not the scheme at the time of death. Recently, in **N.C.Santhosh Vs. State of Karnataka & others (2020) 7 SCC 617**, the same has been reiterated that the scheme which would be binding at the time of consideration would be the relevant scheme and not when the death had occurred. Therefore, reliance upon the Full Bench in Krishna Kumari (supra) would be of no use to counsel for the petitioner, rather the observations on the issue of delay are against the petitioner. Relevant portion of the said judgment reads as under:-

“In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognized by the apex court in its recent judgment in *Bhawani Prasad Sonkar's case*. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic

requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly.”

Even otherwise, this Court is of the view that this aspect has become academic keeping in view the delay and laches which has occurred and no directions can be issue at this point of time to consider the representations on account of the inordinate delay which has taken place since the petitioner was 25 years old in 2005 and at the present point of time, he is admittedly 42 years old.

The Apex Court in the case of **Government of India and another Vs. P. Venkatesh 2019 (2) SCT 173** has held that directions issued by the Court to decide representations are leading to fueling of litigation and the said principle was in a case of compassionate appointment. Relevant part of the said judgment reads as under:-

“8. These successive orders of Tribunal for re-consideration of the representation cannot obliterate the effect of the initial delay in moving the Tribunal for compassionate appointment over a decade after the death of the deceased employee. This ‘dispose of the representation’ mantra is increasingly permeating the judicial process in the High Courts and the Tribunals. Such orders may make for a quick or easy disposal of cases in overburdened adjudicatory institutions. But, they do no service to the cause of justice. The litigant is back again before the Court, as this case

shows, having incurred attendant costs and suffered delays of the legal process. This would have been obviated by calling for a counter in the first instance, thereby resulting in finality to the dispute. By the time, the High Court issued its direction on 9 August 2016, nearly twenty one years had elapsed since the date of the death of the employee.”

The said principle can also be held applicable in the present facts and circumstances, as the petitioner has chosen not to agitate for his grievances for 11 long years and no direction is liable to be issued to decide the representation at this point of time.

In such circumstances, no case is made out to exercise the extraordinary writ jurisdiction under Articles 226 of the Constitution of India and the present writ petition is, accordingly, dismissed.

April 22, 2021
sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No