

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

LPA No.160 of 2021 (O&M)

Reserved on : 10.03.2022

Pronounced on: 22.03.2022

Tinku

... Appellant

Versus

State of Haryana and others

... Respondents

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MR.JUSTICE VIKAS SURI**

Present: Ms. Abha Rathore, Advocate for the appellant.

Ms. Palika Monga, DAG, Haryana.

G.S. Sandhawalia, J.

Present letters patent appeal is directed against the order of the learned Single Judge dated 12.01.2021 passed in CWP Nos.19095 of 2009 'Tinku Vs. State of Haryana and others'. The appellant is aggrieved against the dismissal of the writ petition. The relief as such claimed in the writ petition was for appointment on compassionate grounds, since appellant's case had been rejected vide order dated 28.04.2009 (Annexure P-5).

2. The reasoning which weighed with the learned Single Judge was that compassionate appointments is an exception to the general rule and the provision was made to help the bereaving family immediately to tide over immediate crisis, who has lost its bread earner. Reliance was placed upon the judgment of the Apex Court passed in '**Umesh Kumar Nagpal Vs. State of Haryana**', (1994) 4 SCC 138, to come to the conclusion that it was a concession and could not be claimed as a matter of right especially after a passage of time. It was, accordingly, noticed that though the case of the writ petitioner as such had been entered in the concerned register and as

and when he attained the age of majority, his case was to be considered. It was, accordingly, held that there was no such alteration of position for claiming the benefit of estoppel as pleaded by the petitioner who on gaining majority was seeking the said claim. The learned Single Judge noticed that 23 years had elapsed from the time when the petitioner's father died and the writ petitioner was more than 30 years old and, therefore, the writ of mandamus was not likely to be issued. Accordingly, while noticing the judgment of the Apex Court passed in '**Canara Bank and another Vs. M. Mahesh Kumar**', (2015) 7 SCC 412, it was held that the Apex Court was considering interpretation of the scheme framed by the Bank, which was not existing in the facts and circumstances of the present case and neither any scheme had been placed on the file and, therefore, the writ petition was dismissed.

3. Counsel for the appellant has vehemently submitted that the application for appointment should have been considered by keeping in mind the date of death, which was 22.11.1997 and the policy which was in vogue on 08.05.1995 (Annexure P-8), which had been modified on 31.08.1995. It was, accordingly, contended that once the name of the appellant as such had been entered in the minors register as per direction of the DGP on 15.04.1998 (Annexure P-1), the respondents were estopped as such. It had been held out at that time that the son would be given appointment on attaining the age of majority as the wife had not opted for the said

benefit. It is, thus, the case of the counsel for the appellant as such that similarly situated persons were appointed and, therefore, Article 14 of the Constitution of India was violated in the case of the appellant. It is, accordingly, contended that there was no delay on the part of the writ petitioner and when he became major he had filed representations dated 23.01.2009 (Annexure P-3) and 30.10.2009 (Annexure P-4), which have been wrongly rejected vide order dated 28.04.2009 (Annexure P-5).

4. On the contrary counsel for the State Ms. Palika Monga, DAG, Haryana has relied upon the observations of the Apex Court passed in the case of **Umesh Kumar Nagpal (supra)** that the compassionate appointment is given only to get over the death of the bread earner at that point of time and at this belated stage the benefit is not likely to be granted. There was a right of consideration which was duly done and appointment under the head of compassion is only an exception as per the settled law and it is not a normal mode of recruitment. Reliance was placed upon the judgment of the Apex Court passed in '**Union of India and others Vs. Sima Banerjee**', **2017 (1) RSJ 351**. The fact remains that the Apex Court has referred the matter to the Larger Bench in '**State Bank of India Vs. Sheo Shankar Tewari**', **(2019) 5 SCC 600**, vide order dated 08.02.2019, keeping in view the conflict as such *inter se* the views as to whether the scheme was applicable which was in force when the application came for consideration, whereas the other view was

that the original scheme under which the appointment on compassionate grounds was sought would prevail. She also placed reliance upon the judgment of the Three Judges Bench of the Apex Court in '**N.C. Santhosh Vs. State of Karnataka and others**', (2020) 7 SCC 617, wherein the view taken was that there was no vested right and consideration can only be done as per the prevailing policy. Reliance was also placed upon the judgment of the Division Bench of this Court passed in **LPA No.2291 of 2017** titled as **State of Haryana Vs. Sahil** decided on 17.02.2020, wherein though the prayer for compassionate appointments had been rejected, but benefit of the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 had been granted by the learned Single Judge, which was set aside. It is, accordingly, submitted that the Division Bench had noticed that the rejection order dated 03.11.1999 as such sent to the family and, therefore, the case was never pending and benefit under 2003 and 2006 Policy could not be granted.

5. A perusal of the paper-book would go on to show that on the death of Jai Parkash, the father of the appellant on 22.11.1997, who was working as a constable with Haryana Police, a claim had been made for compassionate appointment for the minor son. The Policy as such dated 08.05.1995 (Annexure P-8) was in force, which provides that ex-gratia employment shall be confined to Class-III and Class-IV posts only and which was for one step lower

than of the deceased employee. The application as such had to be moved within 3 years of the death of the employee as per Clause-2 (v) of the said policy. It is not disputed that the necessary application was filed as such, as the name of the appellant was put in the minors register. The said policy as such was modified on 31.08.1995, which provided that seniority list of pending ex-gratia cases have to be maintained by every Head of the Department till the time appointment is offered against a vacancy either in that department or some other department. The one step lower employment clause still remained in force and the appointing authority had the discretion to grant relaxation in age for appointment under ex-gratia scheme.

6. On the attaining of majority in the year 2009, the application dated 23.01.2009 (Annexure P-3) was then filed wherein the claim was sought for appointment as a Constable in the Haryana Police on the same post as the father of the appellant had been working, though as noticed above there is no such provision of appointment on the same post. The same was rejected vide order dated 28.04.2009 (Annexure P-5) by placing reliance upon Government Instructions dated 22.03.1999 (Annexure P-6) that the job under ex-gratia scheme can be provided if the dependent is minor at the time of the death and he can be offered job provided he becomes major in age during the time limit of 3 years. The said instructions dated 22.03.1999 (Annexure P-6) reads as under:-

“In reference to your letter No.2189/E-5, dated 12.2.99 on the subject noted as above.

2. It is informed that as per the instructions of the Govt., the jobs under Ex-gratia Scheme can be provided, if the dependents of the deceased officials submit their claims for appointed (sic. appointment) within three years of the death. If the dependent is minor at the time of death, he/she can be offered job provided he/she becomes major in age during this time limit of three years.”

7. A perusal of the above would go on to show that the same have been incorporated for the purpose that the minor as such had to be offered appointment within three years of the death, keeping in view the law laid down in **Umesh Kumar Nagpal's case (supra)**, which reads as under:-

“2.The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and met-it. No other mode of appointment nor any other consideration is Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the

fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the Change in the

status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

8. In the present case as noticed the employee had died on 22.11.1997 and at that time the appellant was only 7 years old. The mother as such had never opted for compassionate appointment at the time of the death for the reasons best known to her. An adverse inference can be drawn that the family was not suffering from penury and extreme financial distress and it left open its right as such for consideration till more than 10 years and then started agitating for their legal redressal. Then the impugned order dated 28.04.2009 (Annexure P-5) was passed and more than a decade had gone by when the appellant's father had died.

9. Keeping in view the settled principle that the compassionate appointment cannot be used as a source of appointment and it is only an exception, this Court is of the considered opinion that the claim for appointment at that belated stage was not justified. The Apex Court in '**Shreejith L. Vs. Deputy Director (Education) Kerala & others**', (2012) 7 SCC 248, and in **Sima Banerjee (supra)** has held that compassionate appointment is not to be granted at a belated stage and is only an exception to the general source of recruitment. It is to be noticed that the Three Judges Bench in **N.C. Santhosh (supra)** had also held similarly and gone to the extent that even the consideration in accordance with the norms as applicable on the day of death of the

Government employee cannot be asked for as a vested right.

Relevant portion of the said judgment read as under:-

“19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments, the appeals are found devoid of merit and the same are dismissed.

10. The Apex Court took the said view even while noting that the matter had been referred for consideration to a Larger Bench in **Sheo Shankar Tewari (supra)** and thus the said judgment as such is binding upon this Court.

11. Recently in '**The Secretary to Government Department of Education (Primary) & others Vs. Bheemesh @ Bheemappa**', 2022 (1) SCT 204, the Apex Court took the view that

the principle of appointment on compassionate basis was an exception and the Apex Court had always been applying the modified scheme after diluting the existing benefits and where the modified scheme granted larger benefits, the old scheme was made applicable. Resultantly, the judgment of the Division Bench of the Karnataka High Court which had held that the benefit of compassionate appointment to the un-married dependant brother would have retrospective effect, was set aside, by holding that there can be no vested right for appointment since the death had taken place on 08.12.2010 and the amendment had been done on 20.06.2012, whereas the rejection was on 21.11.2012. It was, accordingly, held that the High Court was not correct to hold that the said amendment would apply retrospectively. Relevant portion of the said judgment reads as under:-

“17. Keeping the above in mind, if we critically analyse the way in which this Court has proceeded to interpret the applicability of a new or modified Scheme that comes into force after the death of the employee, we may notice an interesting feature. In cases where the benefit under the existing Scheme was taken away or substituted with a lesser benefit, this Court directed the application of the new Scheme. But in cases where the benefits under an existing Scheme were enlarged by a modified Scheme after the death of the employee, this Court applied only the Scheme that was in force on the date of death of the employee. This is fundamentally due to the fact that compassionate appointment was always considered to be an exception to the normal method of

recruitment and perhaps looked down upon with lesser compassion for the individual and greater concern for the rule of law.

18. If compassionate appointment is one of the conditions of service and is made automatic upon the death of an employee in harness without any kind of scrutiny whatsoever, the same would be treated as a vested right in law. But it is not so. Appointment on compassionate grounds is not automatic, but subject to strict scrutiny of various parameters including the financial position of the family, the economic dependence of the family upon the deceased employee and the avocation of the other members of the family. Therefore, no one can claim to have a vested right for appointment on compassionate grounds. This is why some of the decisions which we have tabulated above appear to have interpreted the applicability of revised Schemes differently, leading to conflict of opinion. Though there is a conflict as to whether the Scheme in force on the date of death of the employee would apply or the Scheme in force on the date of consideration of the application of appointment on compassionate grounds would apply, there is certainly no conflict about the underlying concern reflected in the above decisions. Wherever the modified Schemes diluted the existing benefits, this Court applied those benefits, but wherever the modified Scheme granted larger benefits, the old Scheme was made applicable.”

12. Resultantly, keeping in view the above discussion, this Court is of the opinion that on all accounts including the issue of delay and the fact that the wife of the deceased had never applied for appointment and after a decade, there was no vested right as such to claim appointment. As per the instructions as noticed above, the

right could have been enforced within three years of the death of the Government employee, which is in consonance with the view of the Apex Court as noticed above. The purpose is only to tide over the extreme exigencies at the time of death of employee and there is no vested right which shall carry on for all times to come.

13. The argument raised that similarly situated persons as such were appointed and, therefore, Article 14 of the Constitution of India would come into play, would not as such carry much weight. Even otherwise it is the settled principle that Article 14 is a positive concept and not a negative concept and it has been time and again observed as such. Reliance can be placed upon the judgment passed in **Shanti Sports Club (supra)**, wherein in para No.71 it was held as under:-

“Article 14 of the Constitution declares that:

14. Equality before law.— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its agencies/instrumentalities. In other words, Article 14

cannot be invoked for perpetuating irregularities or illegalities. In Chandigarh Administration v. Jagjit Singh (1995) 1 SCC 745, this Court made a lucid exposition of law on this subject. The facts of that case were that the respondents, who had given the highest bid for 338 sq. yds. Plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court, which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, the Administrator had restored the plot despite dismissal of the writ petition filed by her. While reversing the order of the High Court, this Court observed as under:-

"8.....We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is

unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be

followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course—barring exceptional situations—would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

14. The latest judgment of the Apex Court passed in **R. Muthukumar (supra)** also expounds the same principle. Relevant portion of the said judgment reads as under:-

"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon

as a principle of parity or equality. In *Basawaraj & Anr. v. Special Land Acquisition Officer*, (2013) 14 SCC 81, this court ruled that:

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

15. Resultantly, there is no merit in the present appeal and the same is dismissed. All pending civil miscellaneous applications also stand disposed off.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

March 22, 2022
Naveen

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No