

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

CWP-16987-2009 (O&M)

Date of Decision: 06.05.2022

Munish Kumar

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr. Rakesh Nagpal, Advocate,
For the petitioner.

Mr. Saurabh Mohunta, DAG, Haryana.

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ARUN MONGA, J. (ORAL)

Amended petition herein is, *inter alia*, for issuance of a writ in the nature of certiorari for quashing the order dated 13.08.2010 (Annexure P-6) thereby rejecting the petitioner's claim for compassionate appointment. Mandamus is also sought directing the respondents to provide financial assistance as per the Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006 (for short hereafter the 2006 Rules).

2. Succinct facts first. Father of the petitioner was appointed as a Constable on 21.08.1982. He expired in harness on 23.10.1995. At that time, the petitioner was just 9 year old. His widowed mother moved an application for keeping one post vacant under the compassionate policy of the respondent State for the petitioner's appointment on his attaining majority. Respondent No. 3 favorably recommended the case of the petitioner on 17.12.1998. Petitioner's name was kept in the waiting list. On

his attaining majority, the petitioner's mother approached the respondent department. While submitting the application, she also submitted an affidavit of legal representatives of the deceased to the effect that they have no objection if the appointment is given to the petitioner. Yet, when no action was taken, a legal notice dated 10.07.2009 (Annexure P-7) was caused, but to no avail. Hence, the writ petition.

3. Learned counsel for the petitioner submits that that the claims for compassionate appointment of the petitioner and for ex-gratia financial assistance to the family as per the 2006 Rules were wrongly rejected.

4. Learned State counsel opposes the petition and relies on Government instructions dated 03.11.1988 whereby dependents of the deceased employees were required to submit their compassionate assistance applications within a period of three years from the date of death of the employee. It was also mentioned in these instructions that even in the cases of minors, the application for employment should be submitted within a period of three years. Instructions dated 08.05.1995 and 31.08.1995 issued by the Government in this context are also being relied upon. Thereafter, Haryana Government framed Ex-gratia Employment and Ex-gratia Compassionate Financial Assistance of Deceased/Missing Employees Rules dated 28.02.2003, further amended in March 2004 and 2005. Rules were amended in the year-2006 and the amount of compensation of Rs.2.50 lacs was increased to Rs.5.00 lacs. In the amended Rules of 2006, the benefit of compassionate employment has been totally withdrawn and only monthly financial assistance and lump sum amount have been provided.

5. I have heard learned counsel for the parties and gone through the case file.

6. Relevant part of the impugned order dated 13.08.2010 (Annexure P-6) rejecting the petitioner's claim for compassionate appointment is as under:

"In the matter under reference Sat Pal has died in the year 1995, when Munish was 6 years and now he is about 21 years. Widow of Sat Pal was 30 years and now she is about 45 years of age. The only object and purpose of the compassionate appointment is to be provide immediate financial aid to the family in penury. Now after a gap of 15 years, the circumstances have changed. The family has arranged their financial matter is such a long time 15 years. As per the old policy the claim for appointment on compassionate ground was available with in three years, if the dependent becomes eligible for job under Ex-Gratia Scheme. As per 1994(4) SCC 138, as held by Hon'ble Supreme Court that "the Law has been consistent that the compassionate appointment is not another source of recruitment.

In case of General Manager (D &PB) & Ors. V. Kunti Tiwary & Anr. Reported as (2004) 7 SCC, 271, Hon'ble Supreme Court has held as under:-

"Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood."

In case of State of J &K & Ors. V. Sajad Ahmed Mir reported as 2006 (3) SCT 598 the Hon'ble Supreme Court considered the question of delay in the matter and held as under:-

"16. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged about 16 years. Therefore, they have become major. Appellant herself would be aged about 38 years now. She cannot be given any appointment at the age."

So keeping in view the law lay down by the superior courts and latest judgment of Hon'ble Mr. Justice Parmod Kohli, referred above the claim of Munish Kumar is liable to be declined."

7. That apart, in the return filed to the writ petition, stand has been taken that after the death of petitioner's father, his widow (petitioner's mother) did not opt for her own appointment under the ex-gratia scheme but requested to keep in reserve the then minor petitioner's name for appointment on his attaining majority. After the change of policy, no

compassionate appointments are being made and only in the deserving cases, financial assistance is being provided.

8. In these circumstances, I am of the opinion that a fairly reasoned and reasonable conclusion was drawn and acted upon by the competent authority for rejecting the petitioner's claim for compassionate appointment.

9. In **State Bank of India v. Raj Kumar (2010) 11 SCC 661**, the Apex Court held as under-

“6. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant”

10. Further, relying upon the judgment *ibid*, in **MGB Gramin Bank v. Chakrawarti Singh (2014) 13 SCC 583** the Apex Court held thus:

“13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his

case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In State Bank of India & Anr. (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.
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11. In the light of reasoned and reasonable factual conclusion drawn and acted upon by the competent authority and the law laid down by the Apex Court, I am of the opinion that the impugned order dated 13.08.2010 (Annexure P-6) rejecting the petitioner's claim for compassionate appointment does not warrant judicial interference in exercise of the writ jurisdiction of this Court.

12. As regards the claim for ex gratia financial assistance, the stand taken by the respondents is that in terms of the changed policy, petitioner was to apply for the financial assistance within three years of the death of the deceased employee and having not done so, his case which sought to be considered as per the changed policy is time barred.

13. As per Rule 6 of The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees' Rules, 2006 Annexure P-4(for short the 2006 Rules) notified on 01.08.2006, all pending cases of ex-gratia assistance shall be covered under the aforesaid new Rules.

14. There is nothing on record to show that case of the petitioner was dealt with as per the new policy of 2006 (Annexure P-6) or any formal order was passed for rejecting the claim on account of delay being beyond of 3 years. It is, in any case, a conceded position that widow of the deceased employee had indeed approached the department well in time immediately on his death seeking compassionate appointment for her son(the petitioner

herein). Indisputably, at the time of death of the petitioner's father, as per the then prevailing policy, compassionate appointments were being given to the deserving family members of the deceased employee. Later on, the policy was changed in the year-2006 and it was decided that only financial assistance is to be given. When mother of the petitioner sought financial assistance, her case was casually rejected on the ground that it is time barred as she had not sought the financial assistance within 3 years of the death of the deceased employee.

15. In the aforesaid premise, petitioner cannot be faulted for delay, if any, caused by his mother to seek financial assistance from the respondent-Department. His mother had submitted application for petitioner's appointment. Case was kept pending on the ground that compassionate appointment shall be offered as and when decision qua the same is taken. On the one hand, no decision was taken till the passing of the impugned order dated 13.08.2010 (Annexure P-6) rejecting the claim for petitioner's appointment and on the other hand, the case for financial assistance was/has been wrongly rejected being time barred.

16. Petitioner's father died in harness on 23.10.1995. Undisputably, at that time, the policy/instructions of the State were in place for providing compassionate appointment to a member of the deceased family in deserving cases and/or for ex-gratia financial assistance. Before enforcement of the 2006 Rules, the claim of the petitioner/his family for ex-gratia financial assistance was, therefore, required to be dealt with in accordance with the relevant policy/instructions applicable to claims which had arisen upto 23.10.1995.

17. It needs to be determined whether the claim of the petitioner or his mother for ex-gratia financial assistance was pending on 01.08.2006, at the time of the commencement of the said Rules.

18. In para 6 of the petition, it has been stated that after the death of petitioner's father, the family had received some amount. The written statement filed by the respondents is silent on this point. Neither the petitioner has pleaded that the claim for ex-gratia financial assistance on account of death of his father on 23.10.1995 admissible under the then prevailing policy/instructions had not been paid till 01.08.2006 nor have the respondents pleaded/shown that the same stood paid before 01.08.2006. It is not clear from record as to what actual amount was paid to the family of the petitioner, on what account and when. If it was on account of the ex-gratia financial assistance admissible to the family as per the policy/instructions prevailing on 23.10.1995 and was paid before 01.08.2006, then it cannot be said that the claim for ex-gratia financial assistance was pending on 01.08.2006, so as to attract the applicability of the 2006 Rules qua the claim for financial assistance. Conversely, if the amount of ex-gratia financial assistance admissible to the family as per the policy/instructions prevailing on 23.10.1995 had not been paid before 01.08.2006, the claim therefore would be treated as pending on 01.08.2006 and would necessarily attract the applicability of the 2006 Rules. The factual position in this behalf needs being ascertained by the respondents from their own records/resources, to obviate overpayment.

19. Resultantly, the writ petition is allowed to the extent that the respondents are directed to ascertain from their records/sources whether or not the claim of the petitioner/the family of the deceased for ex-gratia

financial assistance admissible as per the policy/instructions prevailing on 23.10.1995 had been paid before 01.08.2006 and if it not paid, then to consider and decide the case of the petitioner/family of his deceased father for financial assistance in accordance with the changed policy dated 01.08.2006 (Annexure P-6) by condoning the period of delay, if any, by passing a speaking order within a period of 60 days.

(ARUN MONGA)
JUDGE

06.05.2022
Vandana

Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No