

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

**CM-76-LPA-2022 in/and
LPA No.468 of 2017
Decided on: 27.04.2022**

Harjit Kaur & another

... Appellants

Versus

State of Haryana & others

... Respondents

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

Present: Mr.R.S.Chahal, Advocate, for the applicant-appellants.

Ms.Palika Monga, DAG, Haryana.

G.S. Sandhawalia, J.(Oral)

CM-76-LPA-2022

Application has been filed for fixing actual date of hearing of the main appeal, which is at Sr.No.1117 in the Regular List, for final disposal.

Accordingly, in view of the averments made in the application, duly supported by affidavit, same is allowed and the main appeal is taken on Board today itself.

CM stands disposed of.

LPA-468-2017

The present appeal arises out of the judgment passed by the learned Single Judge in CWP-18659-2012 on 10.03.2017, whereby the writ petition filed for seeking compassionate appointment on account of death of husband of appellant No.1 and father of appellant No.2, had been dismissed.

The reasoning given was that the employee died on 27.07.1987 when the son was only one year old. An application was filed in August,

1987 by the first appellant that as and when the minor son would attain majority his case be considered for compassionate appointment. When the second appellant attained majority in the year 2004, he submitted another application and it was in such circumstances, the learned Single Judge has held that there is no absolute right for compassionate appointment as per the judgments of the Apex Court. It had further been noticed that appointment was to be given only to meet the hardship of the family and once the family had survived from 1987 to 2004, there was no right or entitlement of compassionate appointment since the claim was made only in 2004. However, the fact that no orders had been passed on the application, costs of Rs.50,000/- were liable to be paid to appellant No.1 for approaching this Court. While admitting the appeal on 11.10.2017, the Co-ordinate Bench, at that point of time, directed that costs as determined by the learned Single Judge be paid to the appellants.

Counsel for the appellants has vehemently argued that the case was pending consideration and therefore, the appellants should have been paid the ex-gratia amount which the learned Single Judge had failed to consider and refers to para No.4 of the writ petition to this extent.

A perusal of the reply filed by the State would go on to show that the husband of appellant No.1 was employed as a Constable on 03.10.1979 and expired on 27.07.1987. Appellant No.2

was born on 09.02.1986, about 1½ years prior to the death of the deceased. It has specifically been averred that there was no provision of reservation of post for a minor dependent till the attaining of majority by the dependent. The application for grant of Government service was to be made within 3 years of death of the employee. The claim for ex-gratia was only made on 25.03.2008. It has further been averred that the policy which provided for ex-gratia financial assistance to the dependent(s) of the employee who had died in service came in force on 01.08.2006. However, it has been averred that the case of the appellants was not pending, as the death of the deceased had occurred on 27.07.1987 and no application was made by the appellants for the benefit of ex-gratia scheme.

State Counsel has further pointed out that as per the additional affidavit filed of the Additional Superintendent of Police, Bhiwani dated 06.07.2016, payments had already been made to the wife of the deceased and family pension was also being paid to her. The necessary averment reads as under:

“3. That as far as the payments made to the petitioner at the time of death of the husband of the petitioner an Ad-hoc Ex-Gratia grant amounting to Rs.11537/- (equivalent to ten times the last monthly emoluments drawn by the deceased subject to a minimum of Rs.5000/- and a maximum of Rs.15000/-) was paid to the petitioner in 1988. Apart from this amount, the other payments such as GPF amount of Rs.10663/- Central Police Welfare Fund amounting to Rs.8600/-, DCRG amounting to Rs.14700/- and an amount of Rs.2469/- as Salary in lieu

of the balance earned leave were paid. The family pension is being paid to the petitioner.”

Another affidavit filed by the Superintendent of Police, Bhiwani dated 19.12.2016 would go on to show that the policy at the time of death was dated 22.12.1970, which had been clarified on 13.07.1971. It is in such circumstances, State Counsel has submitted that payments had already been made of the amounts which were due under the said policy and thus, there was no claim pending of the appellants. Therefore, the benefit of Clause 6 of the 2006 policy would not come into play that pending cases would be covered under the new policy.

We are in agreement with the submissions made by the State Counsel. Once appellant No.1 accepted the benefits under the then applicable policy and all necessary payments had been made, merely by filing an application for reagitating the issue would not revive the case. Even otherwise, the judgment of the Full Bench in **Krishna Kumari Vs. State of Haryana, 2012 (2) SCT 736**, would cover the case that the policy at the time of death of the employee would be applicable. In such circumstances, the claim for benefit under the subsequent policy would not be maintainable.

It is settled principle that the right for compassionate appointment is recognized only for the purpose of providing succor to the family at the time of death of the employee and to ensure that they do not go into a state of penury. In the facts as noticed above, the family had survived for almost 2 decades before the application

was filed. It has also been settled by the Apex Court that the right under compassionate appointment is only an exception to the normal recruitment and thus, it is not an absolute right which can be enforced and thus, the scope would be limited in view of the policy as per the law laid down in **Umesh Kumar Nagpal Vs. State of Haryana & others, (1994) 4 SCC 138** and **Union of India and others Vs. Sima Banerjee, 2017 (1) RSJ 351**.

Resultantly, in view of the above discussion, we are of the opinion that the order of the learned Single Judge dated 10.03.2017 does not suffer from any infirmity or illegality, which would warrant interference by this Court. The present appeal is accordingly dismissed.

(G.S. SANDHAWALIA)
JUDGE

(VIKAS SURI)
JUDGE

April 27, 2022
Sailesh

Whether speaking/reasoned:

Yes/No

Whether Reportable:

Yes/No