

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-28742-2022
Date of Decision : 14.12.2022

Pushpa Devi and another

..... Petitioners

Versus

State of Haryana and others

..... Respondents

CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL

Present : Ms. Amanpreet Kaur, Advocate and
Mr. Narender Pal Bhardwaj, Advocate
for the petitioners.

Mr. Pankaj Middha, Addl. Advocate General, Haryana.

VIKRAM AGGARWAL, J (ORAL)

The petitioners are the widow and son of one Late Sh.Kewal/Kewala Nand who was a peon in the Public Health Department, Government of Haryana. He worked as such w.e.f. 01.12.1978 till 03.05.2011 when he unfortunately expired in harness. Petitioner No.1 is stated to be bed ridden on account of paralysis for the last 15 years. Petitioner No.2 was a minor when his father unfortunately expired which led to the financial break down of the family. By way of the present writ petition, the petitioners seek quashing of the impugned order dated 02.08.2022 (Annexure P-2), compassionate appointment for petitioner No.2, interest on delayed pensionary benefits and release of remaining financial service benefits i.e. Family pension, death-cum-retirement gratuity and ex-gratia alongwith interest @ 12% per annum.

A representation dated 03.06.2022 (Annexure P-1) had been

Submitted by petitioner No.2 in this regard in compliance of the directions issued

by this Court vide order dated 18.05.2022 (Annexure P-2) in CWP-33676 of 2019. The said representation has been dismissed by way of the impugned order dated 02.08.2022 (Annexure P-6).

It is the case of the petitioners that even prior to the submission of the representation dated 03.06.2022 (Annexure P-1), multiple representations dated 15.07.2016 and 15.01.2019 (Annexures P-3 to P-5) had been submitted to various authorities seeking the same relief. The petitioners have averred that the impugned order wrongly places reliance upon the Haryana Compassionate Assistance to the Dependent of Deceased Government Employee of Rules 2006 (hereinafter referred to as 'the 2006 Rules') (Annexure P-7) whereas the Haryana Civil Services (Compassionate Financial Assistance or Appointment) Rules, 2019 (hereinafter referred to as 'the 2019 Rules') would be applicable. It is also the case of the petitioners that the remaining financial benefits have also not been granted and those which have been granted are delayed and, therefore, the respondents would be under a legal obligation to pay the entire financial benefits to the legal representatives of Sh. Kewal (deceased) alongwith interest @ 12% per annum from the date of his death till the date of payment.

Learned counsel for the petitioner has strenuously urged that the impugned order dated 02.08.2022 (Annexure P-6) is not sustainable. She contends that as per the 2019 Rules, the family of a deceased employee has an option of either availing the financial benefits or opting for compassionate appointment. It has been contended that the matter was under consideration of the Government and the same has been decided now and, therefore, the 2019 Rules would be applicable and not the 2006 Rules as has been wrongly stated by the respondents in the impugned order. To support this contention, learned counsel has relied upon the judgment dated 12.01.2018 of this Court in Sushila Devi vs. State of

that the interest on the delayed payments is liable to be paid from the date of death of Sh.Kewal till the date of payment and the unpaid financial benefits are also liable to be paid with interest @ 12% per annum from the date of death till the date of payment.

I have considered the submissions made by Ms. Amanpreet Kaur, Advocate, learned counsel for the petitioners and with her able assistance have gone through the case file.

Before advertng to the merits, it would be essential to examine the law on compassionate appointment. It is now well settled that compassionate appointment is provided to assist the family in tiding over the immediate financial crisis which the family of the deceased employee finds itself in on the death of such employee. It is also well settled that compassionate appointment is an exception to the general Rule of appointment in public services and would come to the aid of the dependents of the deceased employee dying in harness and leaving his family in penury without any means of livelihood. It has been repeatedly held that the object of compassionate appointment is not to give such family a post much less a post held by the deceased. Reliance can be placed upon a latest judgment of the Hon'ble Apex Court in **Fertilizers and Chemicals Travancore Ltd. & Ors. vs. Anusree 2022 (4) S.C.T. 292.** In this case, the concerned Government had been directed by the High Court to consider the case of the family of a deceased employee for apointment on compassionate grounds. The employer went to the Hon'ble Apex Court wherein, after examining the law on the subject and the facts of that case and finding that the employee in that case had expired in 1995 whereas the recommendation for compassionate appointment was 24 years thereafter, the Hon'ble Apex Court set aside the judgment of the High Court. The Hon'ble Apex Court held as under:-

down by this Court on compassionate ground on the death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of *Director of Treasuries in Karnataka and Anr. v. V. Somyashree*, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in *N.C. Santhosh v. State of Karnataka*, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

- (i) that the compassionate appointment is an exception to the general rule;
- (ii) that no aspirant has a right to compassionate appointment;
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles [14](#) and [16](#) of the Constitution of India;
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment.

8. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right.

8.1 In the case of ***State of Himachal Pradesh and Anr. v. Shashi Kumar reported in (2019) 3 SCC 653***, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of ***Govind Prakash Verma v. LIC, reported in (2005) 10 SCC 289***, in paras 21 and 26, it is observed and held as under:-

"21. The decision in ***Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289]***, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in ***Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]***. The principles which have been laid down in ***Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]*** have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (***Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]***, SCC

pp. 139-40, para 2)

"2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. 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 dependant 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."

26. The judgment of a Bench of two Judges in ***Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384]*** has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in ***Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590]*** has been duly considered, but

the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

9. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and 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 such family a post much less a post held by the deceased.

9.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and considering the observations made hereinabove and the object and purpose for which the appointment on compassionate ground is provided, the respondent shall not be entitled to the appointment on compassionate ground on the death of her father, who died in the year 1995. After a period of 24 years from the death of the deceased employee, the respondent shall not be entitled to the appointment on compassionate ground. If such an appointment is made now and/or after a period of 14/24 years, the same shall be against the object and purpose for which the appointment on compassionate ground is provided.

9.2 Under the circumstances, both, the learned Single Judge as well as the Division Bench of the High Court have committed a serious error in directing the appellants to reconsider the case of the respondent for appointment on compassionate ground. The impugned judgment and order passed by the High Court is unsustainable.

Coming to the facts of the present case, the employee Sh. Kewal unfortunately expired in harness on 03.05.2011. Though the petitioners have averred that they had submitted representations earlier also in 2016 and 2019 which are on record as Annexures P-3 to P-5, it does not appear so. When the petitioners earlier approached this Court by way of CWP-33676-2019 which was disposed of vide order dated 18.05.2022 (Annexure P-2), a request was made to the Court that they would file a representation before the respondents. Liberty was granted to them and the representation has now been rejected by way of the order dated 02.08.2022 (Annexure P-6). Even if it is assumed that such representations had been moved, they were moved more than 05 years after the death of Late Sh.

Kewal. If the family of the deceased Kewal was in extreme financial crisis, it should have approached the respondents at that point of time. After the death of Sh. Kewal, the 2006 Rules (Annexure P-7) were in force as per which the financial assistances was provided to the family of deceased employees. The petitioners have nowhere stated as to why they did not avail of the financial benefits as envisaged by the 2006 Rules. The Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees Rules, 2005 (hereinafter referred to as 'the 2005 Rules') were in force when Sh. Kewal expired but no application was moved under the same. At least, neither the petitioners have averred about this nor is there any document on record to suggest that the petitioners had ever moved under the said Rules. Thereafter, the 2006 Rules came into force, as noticed above. Applying the ratio of the judgment of Hon'ble Apex Court, referred to above, the petitioners would not be eligible for appointment on compassionate basis almost 11 years after the death of deceased Kewal.

The judgment referred to by learned counsel for the petitioners in **Sushila Devi's case** (supra) would not apply to the present case because in the said judgment it was held that since the case of the petitioners therein was pending beyond 2006, the 2006 Rules would apply. It was observed that correspondence between the petitioners therein and the department was in progress since 2004 but had not yielded any result except the Authority having declined the request by way of the impugned order. This judgment would not help the petitioners because in the present case, the petitioners have not been able to show that they had been pursuing their case with the respondents since 2005. Even as per their own case, though not proved, their first representation was moved in the year 2016 when the 2006 Rules were in force. Coming to the issue of the financial benefits, the impugned order dated 02.08.2022 states that the succession certificate of the deceased was submitted on 22.05.2017 and accordingly the death-cum-retirement

gratuity and pension were released in April, 2022. It also states that interest w.e.f. 23.05.2017 to 20.04.2022 was also payable and the same was, therefore, accepted. There is no illegality in the same as interest would be payable only after completion of formalities by the family of the deceased till the payment and not for the period for which the department was not at fault.

The impugned order mentions only the death-cum-retirement gratuity and pension. Rejecting the claim of the petitioners for compassionate appointment and payment of interest from the date of death, a direction is issued to the respondents to release the entire financial benefits, if any, due towards the legal heirs of deceased (in accordance with law) within a period of 08 weeks from today alongwith interest @ 7.5% from the date of submission of the succession certificate i.e. 22.05.2017 till the date of payment.

The writ petition is accordingly disposed of.

(VIKRAM AGGARWAL)
JUDGE

14.12.2022
mamta

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