

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-11492-2006

Reserved on 02.09.2023

Decided on 13.12.2023

Pawan Kumar

... Petitioner

VS.

UHBVN & Ors.

... Respondents

CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Chetan Kapoor, Advocate for the petitioner

Mr. Dhananjay Mittal, Advocate for the respondents

Sandeep Moudgil, J.

(1). The petitioner has filed the present writ petition invoking the jurisdiction of this Court under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of *certiorari* for quashing of office order No.316/UH/PEN/E-1233 dated 13.04.2006 (Annexure P17) and for directing the respondents to grant employment to the petitioner under the ex gratia scheme.

(2). Notice of motion was issued on 28.07.2006 and thereafter the respondents have filed reply on 07.02.2009. This Court vide order dated 07.04.2010 admitted the present writ petition and vide order dated 13.07.2023, on the application for early hearing made by the petitioner, it has been listed for hearing.

(3). Learned counsel for the petitioner submitted that he is seeking employment under the *ex gratia* scheme as his father late Lakhmi Chand, while working as ALM with the respondent-Nigam, had died due to illness on 23.11.1987. At that time, the petitioner was minor aged about 11 years and since the time he attained majority, the petitioner is pursuing his case for *ex-gratia* employment, but the respondent vide letter dated 13.11.1997, rejected

the case of the petitioner primarily being time barred. Even the statutory appeal filed by the petitioner before competent authority yielded no result

(4). It is further submitted that the petitioner was pursuing his case for *ex-gratia* employment since 1987 and as such it was not time barred whereas it has occurred due to lackadaisical and clandestine approach in deciding the case by the respondents themselves. The petitioner even filed a Civil Writ Petition No.4062 of 2002 before this Court wherein a direction was issued to decide the petitioner's representation but still the respondents have rejected the case of the petitioner on the same ground of being time barred. It is averred that the petitioner was minor at the time of death of his father and thereafter, his mother also expired and as soon as the petitioner attained the age of majority, he applied for grant of employment under ex-gratia scheme.

(5). Learned counsel further averred that the petitioner filed a Civil Writ petition No. 15934 of 2002 with a prayer for setting aside the order dated 8.3.2002, which was disposed of vide order dated 15.12.2005 (Annexure P16) with the following direction:-

“The learned counsel for the parties are agreed that the respondents shall pass a fresh order with respect to petitioner's claim, but the question of the application for the appointment being filed belatedly will not be in issue. We accordingly dispose of this matter with a direction that the necessary decision be taken by the respondents within a period of three months from the date certified copy of this order is supplied to them.”

(6). However, vide order dated 13.4.2006 (Annexure P17), the respondents rejected the claim of the petitioner primarily on the ground that compassionate appointments can only be granted in exceptional circumstances

of extreme hardship and if the family can survive for 3 years, the same suggests that the family is not without any resources.

(7). The argument raised on behalf of the petitioner is that after the demise of his father and mother, the grandmother of the petitioner submitted an application dated 26.12.1988 (Annexure P-1) to the XEN, HSEB, Karnal to release all pensionary benefits including under ex gratia scheme. Pursuant to application made on 26.12.1988, there has been continuous correspondence between the grandmother of the petitioner and the respondent-Nigam which shows that the petitioner has been actively involved in seeking his rightful claim of ex gratia employment and as such, his case cannot be outrightly rejected on the ground that the family is not in need of any *ex gratia* employment or that the case of the petitioner is time barred. It is contended that the delay, if any, is on the part of the respondent-Nigam and not on the part of the petitioner.

(8). Learned counsel for the petitioner placed reliance on *Hakim Singh vs. Haryana State Electricity Board & Anr. 1995 (5) SLR 274* and *Vishal Sharma vs. Haryana State Electricity Board & Anr. 1995 (5) SLR 306* to contend that the minor dependent cannot be deprived of employment on compassionate ground only due to non-submission of application within 3 years of the death and as such, the petitioner cannot be deprived of relief of providing him employment under the ex gratia scheme.

(9). In counter, the respondents have averred that the case of the petitioner was reconsidered on the basis of facts/records. The father of the petitioner expired on 23.11.1987 and was only survived by son i.e. the petitioner. The date of birth of petitioner is 18.08.1976 and he attained the age

of 17 years on 18.08.1993. It is submitted that as per instructions dated 02.08.1995 prevalent at the time of submission of application for employment, case for ex gratia employment was open for three years from date of death of employee and the petitioner had not attained the age of 17 years within a period of three years of the date of death of his father and thus as per the instructions in vogue at the relevant time, the petitioner is not entitled for compassionate appointment under the exgratia scheme. It is further mentioned in the impugned order dated 13.04.2006 that Haryana Compassionate Assistance to the Dependents of Deceased Govt. Rules, 2003 were framed and were duly adopted by the respondent-Nigam and as per provisions contained under Rule 16 (D) of the 2003 instructions, the dependent of the deceased employee shall be required to apply for appointment within three years of the death of the employee. He shall be eligible within this period with respect to the requirement of Recruitment Rules.

(10). Learned counsel for the respondent further averred that the claim of the dependent of deceased Govt. employees regarding his appointment is required to be considered on the basis of circumstances prevailing on the date of death of Govt. employee or on the date of application of the dependent which shall strictly be within three years of the date of death of the employee.

(11). Reliance has been placed on **Umesh Kumar Nagpal Vs. State of Haryana reported as 1994 (3) SCT 174** wherein the Supreme Court clearly observed that any administrative instructions which conceives appointment even after a lapse of 15 years or more can be held to be invalid on the touchstone of Articles 14 and 16 of the Constitution of India and as such the compassionate appointment cannot be granted to the petitioner after a lapse of

reasonable period. The consideration for such employment is not a vested right which can be exercised at anytime in future and cannot be claimed after unreasonable lapse of time and after the crisis is over.

(12). Heard learned counsel for the parties and gone through the record.

(13). It is the case of the petitioner that at the time of death of his father namely, Sh. Lakhmi Chand who was serving in HSEB at Indri as Assistant Lineman, on 23.11.1987, he was 11 years of age and his mother had already expired before the death of his father and as such, his grandmother had submitted an application dated 26.12.1988 i.e. approximately after 1 year, to XEN, HSEB, Karnal for payment of all dues and “also requested that on attaining the age of majority, the petitioner may also be given employment in the respondent-Department”. The respondent-Nigam vide letter dated 22.06.1988 (Annexure P-2) called upon the grandmother of the petitioner to submit ‘guardianship certificate’ which she submitted on 19.04.1989 (Annexure P-3). Still, the respondent-Nigam did not bother to release the payment of service/retiral dues in favour of the grandmother of the petitioner which prompted the petitioner to make another representation for payment of dues on 08.03.1995 (Annexure P-4). The respondent-Nigam sought succession certificate, which was submitted by the petitioner on 06.12.1995 (Annexure P-5).

(14). The petitioner on 26.03.1996 (Annexure P-6) submitted yet another representation to the XEN, HSEB seeking compassionate appointment under the *ex-gratia* scheme stating that at the time of death of his father, the petitioner was minor aged 11 years. The said representation was responded to

vide letter dated 04.04.1997 (Annexure P-8) asking the petitioner to submit his school leaving certificate for date of birth proof which the petitioner submitted by way of an affidavit dated 23.06.1997 (Annexure P9) i.e. within 1½ months. However, to the utter dismay of the petitioner, the respondent-Nigam vide impugned letter dated 13.11.1997 (Annexure P-10), rejected the claim of the petitioner for being considered for *ex gratia* appointment, being “time barred”. It is worthwhile to highlight that by 02.03.1998, the respondent-Nigam had not released all the GPF and other dues in favour of the petitioner. Similar was the stand taken by the respondent-Nigam in the order dated 05.09.2002 (Annexure P15) whereby the respondent-Nigam, in pursuance to the directions issued by this Court in CWP-4062-2002, had rejected the claim of the petitioner for compassionate appointment on the ground that the same is time barred.

(15). Ultimately, the petitioner filed another CWP-15934-2002 challenging the order dated 05.09.2002 (Annexure P15) which led to the passing of the impugned order dated 13.04.2006 (Annexure P17) vide which the respondent-Nigam again rejected the claim of the petitioner primarily on the ground that the appointment on compassionate grounds can only be granted in exceptional circumstances of extreme hardship and since the petitioner is pulling his life together from the death of his father, therefore, no case for compassionate appointment of the petitioner is made out.

(16). It is an admitted position that the petitioner, after he became major, had applied on 17.08.1995, for appointment under *ex-gratia* scheme. A perusal of the impugned order dated 05.09.2002 (Annexure P-15) shows that the case of the petitioner was considered in the light of the instructions

circulated by erstwhile HSEB vide memo dated 02.08.1995 read with instructions dated 13.11.1995, in terms whereof, the dependent of a deceased employee was required to apply for employment within 3 years of the death of the employee. The relevant clauses of the instructions dated 02.08.1995 (Annexure R2), read as under:-

2. *The adoption of the ibid State Government circulated dated 8.5.95 has been approved by the Board in its meeting held on 22-7-95 with the following conditions that:-*

- i) the cases prior to 1-4-85 are not to be reopened.*
- ii) Cases prior to adoption of this circular shall be treated as are being done here-to-fore.*
- iii) For those cases where death occurred from 1.4.85 till date of adoption persons of circular and the persons have not applied for employment, they shall be given option to apply within a period of one year, after which no case shall be considered.”*

(17). From the perusal of above, it can be seen that the said Instructions providing for ex gratia appointment would be applicable in cases where the death of an employee has occurred from 01.04.1985 till 02.08.1995. In the present case, the death of the father of the petitioner admittedly occurred on 23.11.1987 i.e. within the period envisaged under the Instructions. Meaning thereby that the instructions dated 02.08.1995 (Annexure R/2) read with 13.11.1995 is fully applicable in the case of the petitioner.

(18). The question that arises for adjudication is whether the application seeking job/appointment of the petitioner was time barred and whether the case of *ex gratia* appointment of the petitioner is made out or not?

(19). The objective behind framing the scheme of compassionate appointment is to provide social security that now exists in almost all states, under which appointments can be made on compassionate grounds to the legal heirs or successors of the deceased government servants who died in service or retirement on medical grounds. The purpose of the Rules providing for compassionate appointment is welfare legislation, intended to benefit a class of person, namely the dependents of the deceased employee. There is no uniform practice so far that is followed in providing such appointments since it does not have a statutory basis.

(20). The issue of compassionate appointment obtains its origin from Article 16(2) of the Constitution. It was reconsidered in the case of the **State of Haryana and Ors. v. Rani Devi and Anr. 1996 SCALE (5) 338**, wherein the Supreme Court held that it is not necessary to point out that the claim of a person for appointment on compassionate ground is based on that he was dependent on the deceased employee and this claim strictly cannot be upheld on the criterion of Article 14 and 16 of the Constitution. However, such a claim is considered reasonable and permissible based on the sudden crisis that occurs in the family of such an employee who serves the state and dies while in service or retires due to medical reasons and due to this, the authorities must frame rules and regulations or issue such administrative orders which can stand the test of Article 14 and 16, to relieve the hardships due to the death of the bread earner of the family and the immediate misery faced by the members the family of such employee.

(21). The Supreme Court in **Malaya Nanda Sethy v. State of Odisha and others, reported in AIR 2022 SC 2836** while considering the peculiar

facts and circumstances of that case held that the rule prevalent at the time of death of the deceased employee shall be applicable to the claim made by the dependent family members and the norms prevailing on the date of consideration of the application should be the basis for consideration of claim for compassionate appointment.

(22). The date of birth of petitioner – Pawan Kumar is 18.08.1976 and he attained the age of majority i.e. 17 years on 18.08.1993. As per instructions dated 02.08.1995 prevalent at the time of submission of application made by or on his behalf, the petitioner had not attained the age of 17 years within a period of three years of the date of death of his father. Evidently, the first application for compassionate appointment was made by the grandmother of the petitioner on 26.12.1988 i.e. one year after the death of the employee on 22.11.1987. It becomes equally noticeable that both the parents of the petitioner had already died and by that time, the petitioner was only 11 years of age and was being looked after by his grandmother. The petitioner became major on 18.08.1993 and as such he made an application on 17.08.1995 for compassionate appointment i.e. within 2 years of attaining the age of 17 years.

(23). The Government Instructions dated 02.08.1995 provides for employment and other facilities under the ex gratia scheme wherein clause (iii) stipulated that the scheme would be applicable for those whose death occurred from 01.04.1985 till 02.08.1995 and those persons who have not applied for compassionate employment, they were given an option to apply within a period of one year. On bare application of the Instructions dated 02.08.1995 in the case of the petitioner, it is crystallized that the petitioner

could have applied for compassionate appointment upto 01.08.1996 i.e. the period of one year for those employees who had died between 01.04.1985 till 02.08.1995.

(24). In the present case, death of the father of the petitioner occurred on 23.11.1987; the petitioner attained majority on 18.08.1993 and thereafter he applied for compassionate appointment on 17.08.1995. In this scenario, the application for compassionate appointment made by the petitioner cannot be said to be beyond the specified period as the petitioner derives benefit of one year from the Instructions dated 02.08.1995.

(25). Even otherwise, there is no delay on the part of the petitioner as the grandmother of the petitioner, after the death of deceased employee, had in clear terms requested for grant of all dues with an additional prayer that on attaining the age of majority, the petitioner may be given employment. In the peculiar facts and circumstances of the present case, where both the parents of the petitioner had already expired and by that time, he was only 11 years of age and was being looked after by aged and illiterate grandmother, it is unimaginable to expect the petitioner to have applied within 3 years of death of employee. The inaction on the part of the respondent-Nigam equally requires to be reprimanded on the ground that the respondent-Nigam took years to release all the service/retiral/post-death benefits to the petitioner and keeping in view the fact that the petitioner is minor and there is no one to look after minor child. The respondent-Nigam, being an extended hand of the Government, was incumbent upon to swing into action and release salary and other dues to the survivor of the family in distress and not to call upon the petitioner, through his grandmother to prove her guardianship and succession

by constraining her to knock at the doors of the Nigam for the release of the legitimate dues on account of sudden demise of his son and father of the petitioner.

(26). In **Sushma Gosain v. Union of India (1989) 4 SCC 468** it was observed that in the claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship caused due to the death of the breadwinner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

(27). If the purpose of granting appointment on compassionate basis is to tide over the financial crisis due to the death of the bread winner, then there is no rational of having a period of three years within which the application has to be made. What has to be seen is the indigent circumstances which the family has been put into and whether such indigency continues on the date on which the application is made and, if the indigency continues, then the object of the policy to hold the family to tide over in the crisis has not been achieved and therefore a three year limitation is dispensable.

(28). Another aspect which requires grave attention is that no time limit has been fixed for the employer within which the employer is bound to grant compassionate appointment or posthumous dues. This Court cannot overlook the fact that the dependants, like the petitioner, keep waiting endlessly until the benefits are actually granted and as such, till the time limit is not fixed for an employer within which he has to give employment to the dependant of the deceased employee, no purpose would be served in fixing

the time limit only for the dependants within which the application should be made.

(29). This Court also is not oblivious of the fact that majority of the employees who have died in harness are uneducated and not aware of their rights. When the children attain the age of majority and get aware of their rights, then such children must not be deprived of their right seeking appointment on compassionate basis provided the indigent circumstances in the family continues. Besides, the time limit should be open ended and provisions conferring power on the employer to relax, not only the educational qualifications required for appointment on compassionate basis but also the time limit within which such an application can be filed, should be made. If a *bona fide* application is made by a dependant of an employee who has died in harness where his illiterate family members did not know about the existence of a policy/scheme for appointment on compassionate basis, and the fact that such a policy exists came to the knowledge of the family only when the child attained majority, then such claims should not be denied by the employer only on the ground that the application has been filed beyond the period of three years.

(30). It is well settled that appointment on compassionate grounds is not a source of recruitment and an exception to general rule. The appointment to a service in a State can be made only in accordance with Article 14 and 15 of the Constitution of India. It is also now settled that the dependants of the employees who died in harness do not have any right to employment except by way of concession, that is under the service rules or by a separate scheme to enable the family of the deceased to get over financial crisis and

destination. The claim of appointment on compassionate basis is therefore traceable only to the service rule permitting such appointment on compassionate basis or a scheme framed for this purpose. The appointments are therefore to be made strictly in accordance with the same. (Ref. **Canara Bank Vs. M.Mahesh Kumar (2015) 7 SCC 412** and **Bhawani Prasad Sonkar Vs. Union of India & Ors., (2011) 4 SCC**). In none of the cases, the scheme or the Government orders has been challenged and there are various loop-holes, referred to above, which requires immediate revamp.

(31). Thus, from the aforesaid, it can be seen that there was no fault and/or delay and/or negligence on the part of the petitioner at all. He was fulfilling all the conditions for appointment on compassionate grounds under the prevailing Rules and Instructions. For no reason, his application was kept pending and/or no order was passed on one ground or the other. Therefore, when there was no fault and/or delay on the part of the petitioner and all throughout there was a delay on the part of the department/Nigam, the petitioner should not be made to suffer. Not appointing the petitioner under the Rules/Instructions would be giving a premium to the delay and/or inaction and absolute callousness on the part of the department/Nigam. In fact, the petitioner has been deprived of compassionate appointment, which he was otherwise entitled to under the Instructions dated 02.08.1995.

(32). That apart, the ground taken by the respondent-Nigam vide order dated 13.04.2006 (Annexure P17) to extent stating that since the petitioner is pulling his life for the last many years and if the family can survive for a period of almost three years is indicative of the fact that the family is not without resources, is also ill-founded and hypothetical. The respondent-

Nigam gave a total go-bye to the fact that both the parents of the petitioner, who at that time, had expired and was being looked after by age-old grandmother and thereafter by his uncle who was working as labourer. In these peculiar circumstances when the petitioner has been imposed to be a liability on the grandmother and his labourer uncle, it is hard to believe that the petitioner has been able to tide over the emergent situation caused by the untimely death of both his parents and that there is no extreme hardship being faced by the petitioner only on the ground that the petitioner has been able to survive for a period of three years. The conditions stipulated in the *ex gratia* policy has to be analysed depending on the peculiar situation and the mitigating circumstances being faced in a particular case. There cannot be unmindful application of a policy/scheme which has been framed by the State for the benefit of a family member, minor or major, to overcome and fill in the vacuum due to sudden demise of the sole bread-earner of the family. The provision of *ex gratia* financial assistance to the bereaved family would be incomplete and cannot be read in isolation of *ex gratia* compassionate appointment. The *ex gratia* financial assistance must be granted to the family of the deceased employee who is in extreme financial distress due to loss of the deceased (Government employee) who dies in harness. This favorable treatment to the dependent of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. Financial assistance is the immediate help which the employer as a welfare State injects to the distressing family and is temporary in nature whereas the compassionate appointment is magnanimous gesture shown by the State to

help the distressed family to overcome the ensuing hardship due to loss of a life while in the service of the State.

(33). The respondents cannot be permitted to take advantage of their own wrong inasmuch as the petitioner had become eligible for being appointed on compassionate ground on the date when he applied for compassionate appointment i.e. on 17.08.1995 after attaining the age of 17 years on 18.08.1993. It was duly recommended/processed by the competent authorities also but was found to be time barred without there being any valid justification. The very purpose of compassionate appointment is to render assistance to the family whose sole bread winner has died.

(34). It is worthwhile to mention that the initial application seeking compassionate appointment to the petitioner was made by the grandmother of the petitioner on 26.12.1988 (Annexure P1) to the XEN, HSEB, Karnal wherein she specifically mentioned that *“on attaining the age of majority, the petitioner may also be given employment in the respondent-Department”*. As per Rule 16(d) of the 2003 Rules, it is provided that the dependent of the deceased employee shall be required to apply for appointment within 3 years of the death of the employee. Meaning thereby that the application for compassionate appointment was made on behalf of the petitioner (being minor) well in time and before the expiry of three year period stipulated under the Rules *ibid*.

(35). Moreover, there has been a consistent correspondence between the grandmother and respondent-Nigam which shows that the claim of the petitioner for compassionate appointment has been actively pursued by the grandmother of the petitioner and as such, his case cannot be outrightly

rejected on the ground that the family is not in need of any *ex gratia* employment or that the case of the petitioner is time barred. The delay, if any, is on the part of the respondent-Nigam and not on the part of the petitioner.

(36). For the reasons aforestated, this writ petition is allowed and the order dated 13.04.2006 (Annexure P17) is hereby quashed. The respondents are directed to consider the candidature of the petitioner for appointment on compassionate ground from the date he made the application, on a suitable post, along with all benefits.

13.12.2023
V.Vishal

(Sandeep Moudgil)
Judge
Yes/No
Yes/No

- 1. Whether speaking/reasoned?
- 2. Whether reportable?