

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

CWP-16639-2016

Date of decision: 09.10.2023

Gurpreet Singh

.....Petitioner

 V/s

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. G.S. Bal, Sr. Advocate with
Mr. T.S. Randhawa, Advocate
for the petitioner.

Mr. TPS Walia, AAG Punjab.

Mr. Anupam Singla, Advocate
for the respondents No. 2 and 3.

DEEPAK MANCHANDA J.(Oral)

1. Present petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ of certiorari quashing the impugned order (Annexure P-9) dated 16.06.2016 vide which the claim of the petitioner for appointment on compassionate basis has been rejected against the provisions of Scheme for Compassionate Appointment-2002 and further prayer for issuance of a directions to the respondents to consider the claim of the petitioner under the Scheme for Compassionate Appointment-2002 and to give appointment to the petitioner on compassionate basis.

2. Learned Sr.counsel for the petitioner contends that father of the petitioner Sh. Mahinder Singh was a regular employee working as Pump Operator in the office of XEN (Civil Cell) PRTC, Patiala, who died while in service on 12.12.2012. The petitioner and his mother were totally dependent

upon the father of the petitioner and as such, applied to the respondents for appointment on compassionate basis vide application dated 24.12.2012 (Annexure P-1). He further contends that respondent No.2 prepared the case of the petitioner and sent a letter to the Deputy Commissioner, Patiala to submit a dependency certificate in prescribed proforma after due verification so that the dependent members may be identified and the benefit be granted. According to the petitioner, the Ration Card of his elder brother shows that he lives separately with his family. Learned Sr.counsel also submits that respondent No.2 again sought an affidavit from the mother of the petitioner to the effect that she wants appointment on compassionate basis only for her son namely, Gurpreet Singh, the petitioner and her other son and daughter will not raise any claim for compassionate appointment, but vide order dated 16.06.2016, the case of the petitioner for providing Government service/compassionate appointment has been denied stating that once one of the family members of the deceased is already in Government service, hence petitioner is not entitled to the benefit of compassionate appointment.

3. Upon notice of motion, learned counsel for the respondents No.2 and 3 filed written statement, wherein it has been stated that after receiving all the requisite documents from the petitioner and his family, the respondent-Corporation had constituted a Committee comprising of General Manager (Administration), General Manager (Operation), ACFA (Bills), Senior Legal Advisor and Superintendent (Personnel). On perusal of all the documents received from the petitioner, the Committee found that the elder brother of the petitioner i.e. Sh. Ajeet Singh is working in Indian Army and Sh. Mahinder Singh, father of the petitioner, got treatment from Army Hospital, Delhi, who died in the Army Hospital itself from where the death certificate of Sh. Mahinder

Singh was issued. The petitioner wants to get an appointment on compassionate ground by misleading the respondent-Corporation that the elder son namely, Sh. Ajeet Singh is residing separately and they are not dependent upon him, whereas, the above narrated facts shows that the petitioner and his family is dependent upon Sh. Ajeet Singh and they are not in any financial crisis after the death of Sh. Mahinder Singh, and when one of the family member is already in Government service, hence the petitioner cannot seek appointment on compassionate ground.

4. I have heard learned counsel for the parties and have gone through the material available on record.

5. The appointment of a candidate on compassionate basis does not create any vested right and that it is only when a candidate is covered under all clauses of the Scheme applicable at the relevant point of time that he/she could be considered for compassionate appointment.

6. The Apex Court in “General Manager (D&PB) Vs. Kunti Tiwary”, (2004) 7 SCC 271 observed that when a deceased employee left his family in penury and without any source of livelihood and when the employee died in harness, compassionate appointment can be considered. Since appointment by way of compassionate basis is an exception to the general rule for appointment on the basis of an open invitation, the exception has to be resorted to only when the candidate and his family is in penury so as to provide immediate aid on the death of the employee in harness.

7. Further, the Hon’ble Supreme Court took note of “State of Himachal Pradesh Vs. Shashi Kumar”, (2019) 3 SCC 653 wherein it was observed that compassionate appointment being an exception to the general rule,

the dependents of deceased government employee are made eligible by virtue of the policy of compassionate appointment, and they must fulfil the terms of the policy which are framed by the States/Employers. The relevant paragraph is extracted below:-

“.....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.”

8. In the present case, the respondent contends that as Ajeet Singh, who is brother of the petitioner, is already working in the Indian Army and the family is not dependent, who is not facing any financial crisis.

9. This Court is of the view that while considering the rival submissions, it is necessary to bear in mind that compassionate appointment is an exception to the general rule that appointment to any public post in the service of the State has to be made on the basis of principles which accord with

Articles 14 and 16 of the Constitution. Dependants of a deceased employee of the State are made eligible by virtue of the policy on compassionate appointment. It is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. Where the authority finds that the financial and other circumstances of the family are such that in the absence of immediate assistance, it would be reduced to being indigent, an application from a dependent member of the family could be considered.

10. In light of the above discussion, the petitioner is not entitled for the relief as claimed by way of this present petition.
11. Accordingly, the writ petition is dismissed.
12. Any pending application(s), if any, is also disposed off.

09.10.2023
Sapna/vanita

(DEEPAK MANCHANDA)
JUDGE

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