

204 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2112-2016
Date of decision: 18.07.2023

Amarjeet KaurPetitioner

V/s

Managing Director, PSPCL and others ...Respondents

CORAM: HON’BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. S.C. Arora, Advocate
for the petitioner.

Mr. Rajiv Malhotra, Advocate
for the respondents-PSPCL.

DEEPAK MANCHANDA J.

1. Through this petition, the petitioner being the widow of the deceased employee has made prayer for the issuance of directions for consideration for her appointment on compassionate grounds on account of the death of her husband.
2. The facts emanated from the pleadings of this case are that the husband of the petitioner, namely, Amarjeet Singh was a workcharge employee with the respondent-Corporation and was expired on 20.02.2004. The petitioner being the widow and family member of the deceased employee made a request for appointment on the compassionate grounds by citing an instance of similarly situated persons who were benefited by the appointment on same ground.

3. Learned counsel for the petitioner contends that the husband of the petitioner was workcharge employee who had worked for over a decade with the respondent-Corporation but the claim of the petitioner for compassionate appointment was not considered on the ground that the petitioner had already received a lump sum amount of Rs.3 lacs as solatium being the financial assistance. He further contends that the respondent-Corporation vide its reply to legal notice dated 17.12.2015 (Annexure P-2) states that as per policy dated 23.11.2004 the petitioner is entitled for solatium only being a workcharge employee and also submits that since husband of the petitioner died on 20.02.2004 and the subsequent policy came in force on 23.11.2004 so, the date of death would be the relevant date for consideration as the subsequent policy does not provide for compassionate appointment and includes only the financial benefits.

4. Per contra, learned counsel for the respondents while referring to its reply dated 25.12.2016 submits that the petitioner has already received an amount of Rs.3 lacs as solatium in 2004 on account of death of her husband and same was duly accepted by the petitioner and simultaneously has also been drawing a monthly pension. Learned counsel for the respondents further submits that as per policy dated 23.11.2004 (Annexure R-2), the whole object was to grant lump sum compensation enabling the penurious family of the deceased employee to tide over the sudden financial crises which the family faces at the time of sudden demise of the sole bread winner. Now the petitioner cannot claim the appointment once she had already accepted the lump sum amount as financial assistance to the family and this petition has been filed with delay hence, petitioner is not entitled to any relief.

5. I have heard learned counsel for the parties.

6. This Court is in agreement with the submissions made by the learned counsel for the respondents that the petitioner has already accepted the lump sum of Rs.3 lacs as compensation and secondly family pension being drawn by the petitioner. Moreover, the husband of the petitioner was expired on 20.02.2004 whereas the claim for compassionate appointment, as sought through this writ petition, has only been made in the year 2016. Further, for the first time the legal notice claiming the compassionate appointment was also sent on 17.10.2015 only (Annexure P-1) which was received on 17.12.2015 by the respondent-Corporation.

7. The question that falls for consideration is whether the claim of the petitioner was inordinately delayed, obsolete, stale and barred by the principle of delay and laches. In this regard, this Court is relying upon the judgment of the Hon'ble Apex Court in case "***State of Himachal Pradesh and another Vs. Shashi Kumar***", (2019) 3 Supreme Court Cases 653, wherein the issue of seeking compassionate appointment with delay is discussed:-

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39. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal (supra), this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

40. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the

*first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including **State of J&K v. Sajad Ahmed Mir, 2006(3) S.C.T. 598 : (2006) 5 SCC 766, para 11** and **Local Administration Department v. M. Selvanayagam, 2011(2) S.C.T. 763 : (2011) 13 SCC 42, para 11, 12 and 13.***

41. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place.

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8. The Hon'ble Division Bench of this Court in ***Tinku vs. State of Haryana and others, 2022(3) S.C.T. 456***, while dealing with a similar issue has held as under:-

“8. In the present case as noticed the employee had died on 22.11.1997 and at that time the appellant was only 7 years old. The mother as such had never opted for compassionate appointment at the time of the death for the reasons best known to her. An adverse inference can be drawn that the family was not suffering from penury and extreme financial distress and it left open its right as such for consideration till more than 10 years and then started agitating for their legal redressal. Then the impugned order dated 28.04.2009 (Annexure P-5) was passed and more than a decade had gone by when the appellant's father had died.

*9. Keeping in view the settled principle that the compassionate appointment cannot be used as a source of appointment and it is only an exception, this Court is of the considered opinion that the claim for appointment at that belated stage was not justified. The Apex Court in '**Shreejith L. Vs. Deputy Director (Education) Kerala & others', (2012) 7 SCC 248**, and in *Sima Banerjee (supra)* has held that compassionate appointment is not to be granted at a belated stage and is only an exception to the general source of recruitment. It is to be noticed that the Three Judges Bench in *N.C. Santhosh (supra)* had also held similarly and gone to the extent that even the consideration in accordance with the norms as applicable on the day of death of the Government employee cannot be asked for as a vested right. Relevant portion of the said judgment read as under:-*

19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the

norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee. 20. In view of the foregoing opinion, we endorse the Tribunal's view as affirmed by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments, the appeals are found devoid of merit and the same are dismissed."

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12. Resultantly, keeping in view the above discussion, this Court is of the opinion that on all accounts including the issue of delay and the fact that the wife of the deceased had never applied for appointment and after a decade, there was no vested right as such to claim appointment. As per the instructions as noticed above, the right could have been enforced within three years of the death of the Government employee, which is in consonance with the view of the Apex Court as noticed above. The purpose is only to tide over the extreme exigencies at the time of death of employee and there is no vested right which shall carry on for all times to come.

13. The argument raised that similarly situated persons as such were appointed and, therefore, Article 14 of the Constitution of India would come into play, would not as such carry much weight. Even otherwise it is the settled principle that Article 14 is a positive concept and not a negative concept and it has been time and again observed as such. Reliance can be placed upon the judgment passed in Shanti Sports Club (supra), wherein in para No.71 it was held as under:-

"Article 14 of the Constitution declares that:

14. Equality before law.— The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India."

The concept of equality enshrined in that Article is a positive concept. The Court can command the State to give equal treatment to similarly situated persons, but cannot issue a mandate that the State should commit illegality or pass wrong order because in another case such an illegality has been committed or wrong order has been passed. If any illegality or irregularity has been committed in favour of an individual or a group of individuals, others cannot invoke the jurisdiction of the High Court or of this Court and seek a direction that the same irregularity or illegality be committed in their favour by the State or its

agencies/instrumentalities. In other words, Article 14 cannot be invoked for perpetuating irregularities or illegalities. In **Chandigarh Administration v. Jagjit Singh (1995) 1 SCC 745**, this Court made a lucid exposition of law on this subject. The facts of that case were that the respondents, who had given the highest bid for 338 sq. yds. Plot in Section 31A, Chandigarh defaulted in paying the price in accordance with the terms and conditions of allotment. After giving him opportunity of showing cause, the Estate Officer cancelled the lease of the plot. The appeal and the revision filed by him were dismissed by the Chief Administrator and Chief Commissioner, Chandigarh respectively. Thereafter, the respondent applied for refund of the amount deposited by him. His request was accepted and the entire amount paid by him was refunded. He then filed a petition for review of the order passed by the Chief Commissioner, which was dismissed. However, the officer concerned entertained the second review and directed that the plot be restored to the respondent. The latter did not avail benefit of this unusual order and started litigation by filing writ petition in the High Court, which was dismissed on March 18, 1991. Thereafter, the respondent again approached the Estate Officer with the request to settle his case in accordance with the policy of the Government to restore the plots to the defaulters by charging forfeiture amount of 5%. His request was rejected by the Estate Officer. He then filed another writ petition before the High Court, which was allowed only on the ground that in another case pertaining to Smt. Prakash Rani, the Administrator had restored the plot despite dismissal of the writ petition filed by her. While reversing the order of the High Court, this Court observed as under:-

"8We are of the opinion that the basis or the principle, if it can be called one, on which the writ petition has been allowed by the High Court is unsustainable in law and indefensible in principle. Since we have come across many such instances, we think it necessary to deal with such pleas at a little length. Generally speaking, the mere fact that the respondent authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner on the plea of discrimination. The order in favour of the other has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to pass another unwarranted order. The extraordinary and discretionary power of the High Court cannot be exercised for such a purpose. Merely because the respondent-authority has passed one illegal/unwarranted order, it does not entitle the High Court to compel the authority to repeat that illegality over again and again. The illegal/unwarranted action must be corrected, if it can be done according to law—indeed, wherever it is possible, the Court should direct the appropriate authority to correct such wrong orders in accordance with law—but even if it cannot be corrected, it is difficult to see how it can be made a basis for its repetition. By refusing to direct the respondent-authority to repeat the illegality, the Court is not

condoning the earlier illegal act/order nor can such illegal order constitute the basis for a legitimate complaint of discrimination. Giving effect to such pleas would be prejudicial to the interests of law and will do incalculable mischief to public interest. It will be a negation of law and the rule of law. Of course, if in case the order in favour of the other person is found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioners' case is similar to the other persons' case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief. Is it not more appropriate and convenient to examine the entitlement of the petitioner before the Court to the relief asked for in the facts and circumstances of his case than to enquire into the correctness of the order made or action taken in another person's case, which other person is not before the case nor is his case. In our considered opinion, such a course— barring exceptional situations— would neither be advisable nor desirable. In other words, the High Court cannot ignore the law and the well accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise. Each case must be decided on its own merits, factual and legal, in accordance with relevant legal principles. The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

9. The aforesaid facts reveal that the petitioner approached this Court after the inordinate delay of about 12 years and on the other hand, once the petitioner as per the policy dated 23.11.2004 (Annexure R-2) accepted the amount of solatium as financial assistance and also getting monthly pension, now she has no right to claim the compassionate appointment which would amount to dual benefit on account of death of her husband. Further, even after the acceptance of said amount, petitioner does not have any right to question the applicability of policy which also effected in the year 2004.

10. It is apparent on the record that the petitioner waited for about 12 years to move this petition under Article 226 of the Constitution whereas the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of

immediacy is evidently lost by the delay on the part of the petitioner in seeking compassionate appointment.

11. In the light of the above discussion, the present writ petition is dismissed being devoid of any merits.

18.07.2023
sapna

(DEEPAK MANCHANDA)
JUDGE

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