

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**CWP-18268-2018 (O&M)**

DATE OF DECISION: OCTOBER 17, 2023

SANTRA

...PETITIONER

VERSUS

STATE OF PUNJAB AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA.PRESENT: MR.V.K. SHUKLA, ADVOCATE FOR THE PETITIONER.
MR. T.P.S. WALIA, AAG, PUNJAB.
NONE FOR RESPONDENT NO.3.**DEEPAK MANCHANDA, J.(ORAL)**
CM-11258-2021

Replication filed by the petitioner is taken on record.

CWP-18268-2018

The petitioner has filed this writ petition under Article 226 of Constitution of India for issuance of a writ in the nature of mandamus directing the respondents to consider her case for compassionate appointment on account of death of her husband, namely, Madan Lal who died in harness, in view of the Policy dated 21.11.2002 (Annexure P-1) and Memo dated 2.6.2004 (Annexure P-2).

It is the case of the petitioner that her husband, namely, Madan Lal was working as Safai Sewak (Sweeper) with respondent No.3-Municipal Corporation, Moga on regular basis since 15.10.1980, who died in harness on 3.1.2006 after rendering 26 years of service and despite applying well in time, her case for appointment on compassionate ground has not been considered and she has not been given employment in place of deceased husband.

Learned counsel contends that despite there being a Policy dated

21.11.2002 (Annexure P-1) issued by the Government of Punjab for giving employment on compassionate grounds to one of the family members of the deceased employees, which was applicable to all the Boards, Corporations and Local Body Institutions, the rightful claim of the petitioner for grant of compassionate appointment has not been considered by the respondents and the petitioner has not been given employment in place of deceased husband, who died in harness.

Notice of motion was issued on 26.7.2018 and respective replies have been filed on behalf of respondents No.1 and 2 as well as respondent No.3.

Learned counsel for the State while referring to the reply filed on behalf of respondents No.1 and 2 has argued that the husband of the petitioner expired on 3.1.2006 and as per Rule, the petitioner was supposed to file an application for grant of compassionate appointment within 6 months from the death of her husband and in case of genuine belated requests with cogent reasons for compassionate appointment can be entertained only within a period of 5 years from the date of death with special approval of the Personnel Department and Finance Department. However, as agitated by the petitioner, no such application for grant of compassionate appointment has been placed on record to show that the same was submitted within time and was not considered. Rather, the present petition praying for aforesaid relief has been filed after a gap of 12 years. Therefore, it has been submitted that on this count alone, the petition deserves to be dismissed.

None has appeared on behalf of respondent No.3. However, a perusal of the reply filed on its behalf shows that similar stand has been taken by respondent No.3 that no application has been filed by the petitioner

for compassionate appointment within the prescribed time period and for the first time through the present petition, the claim for compassionate appointment has been raised after more than 12 years from the date of death of husband of the petitioner.

Agitating the stand taken by respondent No.3 in its reply, replication was filed by the petitioner reiterating her stand that she filed her application for compassionate appointment well within time and it was respondent No.3 who caused the inordinate delay in considering the case of the petitioner.

Heard learned counsel for the parties and perused the file.

The question which needs to be answered is with regard to appointment on compassionate grounds. 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. The Hon'ble Apex Court in the case of *State of Himachal Pradesh & Anr. vs. Shashi Kumar, 2019(3) SCC 653*, has held as under:-

“19. 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. The basis of the policy is that it recognizes that a family of a deceased employee may be placed in a position of financial hardship upon the untimely death of the employee while in service. 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 dependant member of the family could be considered. The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfill the terms of the Policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependant member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State.

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22. *The decision in Govind Prakash Verma (supra) 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 Vs. State of Haryana, 1994(3) S.C.T. 174 : (1994) 4 SCC 138**. The principles which have been laid down in Umesh Kumar Nagpal (supra) have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract:*

“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.”

The second 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, and to trace out the answer to the question formulated above, some facts need to be repeated. The petitioner's husband died on 03/01/2006 and as per policy she should have applied

within 6 months from the death of her husband i.e 03/07/2006 and further as per the policy period of 5 years which entitles the applicant to apply under special circumstances, the same had also expired by 03/01/2011. Moreover there is nothing on record to show that petitioner ever moved an application within the prescribed limit of 6 months or within 5 years, rather she raised her claim to be appointed on compassionate grounds 1st time by filing of the present writ petition in the year 2018, means after 12 years of the death of her husband. It leaves no room for doubt that the petitioner slept over her rights and allowed the grass to grow under her feet for a long duration of over 12 years. 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 person might be legal and valid or it might not be. That 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."

14. *The latest judgment of the Apex Court passed in R. Muthukumar (supra) also expounds the same principle. Relevant portion of the said judgment reads as under:-*

*"28. A principle, axiomatic in this country's constitutional lore is that there is no negative equality. In other words, if there has been a benefit or advantage conferred on one or a set of people, without legal basis or justification, that benefit cannot multiply, or be relied upon as a principle of parity or equality. In **Basawaraj & Anr. v. Special Land Acquisition Officer, (2013) 14 SCC 81**, this court ruled that:*

"8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated."

In the present case neither the aspect of delay was kept in mind nor the terms and conditions of the policy under which the petitioner has sought the relief has been complied with.

In light of the above, the present petition is devoid of merits and accordingly is dismissed.

Any pending application is also disposed off.

October 17, 2023
Gulati

(DEEPAK MANCHANDA)
JUDGE

Whether Reportable

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Yes/No

Whether Speaking/Reasoned

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Yes/No