

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

CWP-21582-2017

Date of decision: 21.11.2023

Nanak Singh

.....Petitioner

V/s

Punjab State Power Corporation Limited and others

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. B.D. Sharma, Advocate
for the petitioner.

Ms. Akshita Chauhan, Advocate
for the respondents/PSPCL.

DEEPAK MANCHANDA J.

This instant petition has been filed under Article 226/227 of the Constitution of India for issuance of a writ in the nature of mandamus or any other writ, order or direction for directing the respondents to consider and appoint the petitioner on compassionate ground on account of death of his father while in service to the post as per his qualification under the scheme/policy for compassionate appointment in the respondent-Corporation.

The brief facts emanating from the pleadings of the present case are that father of the petitioner died on 17.06.2014 who was in service with respondents-Corporation and petitioner is the son of the deceased employee who is eligible for compassionate appointment in view of the Policy dated 21.11.2002 (Annexure P-1). The qualification of the petitioner is 10+2 and diploma in Civil

application on 16.02.2015 for compassionate appointment whereas respondent No.3 vide Memo dated 05.10.2015 raised objections regarding the educational qualification of the petitioner and sought clarification from the concerned office.

In response to the memo dated 05.10.2015, the Assistant Manager/HR Border Zone, Amritsar vide its Memo dated 09.02.2016 replied to the same along with original certificate of the diploma in Civil Engineering and other requisite document i.e. copy of ration card of the deceased-Sawinder Singh. Thereafter, the petitioner was appointed to the post of RTM vide Memo dated 07.09.2016 on the basis of educational qualification and he joined as such with the respondents-Corporation. However, the petitioner being aggrieved with the action of the respondents in ignoring his educational qualification of diploma in Civil Engineering while granting the appointment sought information under the RTI regarding the procedure applied by the respondents, leading to the offer of appointment to him and also the comments of concerned officers on his application. The information was supplied to the petitioner vide memo dated 03.07.2017 and as per the said information, the original provisional certificate of Diploma in Civil Engineering was submitted by the office of Chief Engineer/Distribution Border Zone, Amritsar, vide Memo No.151 dated 09.02.2016 and it was further mentioned in the comments to decide his application as per the educational qualification of diploma in Civil Engineering. However, the respondents appointed the petitioner on Group-D post ignoring his educational qualification whereas he was required to be appointed on a Group-C post on the basis of his educational qualification. Thus, this petition.

Learned counsel for the petitioner contends that while appointing the petitioner on Group-D post the educational qualifications of the petitioner were

ignored who was having diploma in Civil Engineering and he should have been

appointed on a Group-C post. He further contends that the petitioner approached the respondents and submitted an application for compassionate appointment as per his educational qualifications. The additional S.E. West Division, PSPCL, Amritsar, vide Memo No.6130 dated 16.09.2016, forwarded the application of the petitioner to the Chief Engineer Border Zone, Amritsar for appointment to the post as per his educational qualification.

Vide order dated 21.09.2017, notice of motion was issued. Thereafter, respondent No.5 filed a short reply by way of an affidavit dated 15.10.2022, which is on record.

Learned counsel for the respondents while referring to the said reply submits that the educational qualification for compassionate appointment is to be seen at the time of applicant making an application for compassionate appointment and petitioner while moving his application dated 16.12.2015 submitted his qualification as a martic and 10+2 and it is only on the basis of said qualification he was appointed on the post of RTM. Hence, the claim of the petitioner for appointment on the post of Group-C is afterthought which is not sustainable. Further, as per condition-15(a) of the (ibid) policy the person who has already been appointed on compassionate grounds to a particular post and have already accepted the same thereafter, even acquiring higher qualification the request for change in post cannot be accepted.

I have heard learned counsel for the parties.

The object of framing rules/policy for compassionate appointment is to relieve the family of the deceased employee from immediate financial distress and claim of compassionate appointment is not a right of a person and thus cannot be claimed as a matter of right. It is in fact a concession in favour of dependent of

the deceased employee under a statutory rule/policy framed with the sole purpose and object to redeem the family of the deceased employee from penurious cause on account of sudden death.

Further the exception to the rule made in favour 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.

Looking to the object and the purpose underlying the provision for grant of compassionate appointment, which is in the nature of exception to general provision and care has to be taken while enforcing such provisions so that it does not unduly interfere with the right of other persons to whom the post would otherwise be available.

Strict construction of rules/schemes for compassionate appointment has been re-emphasized by the Supreme Court in ***Bhawani Prasad Sonkar v. Union of India and others (2011) 4 SCC 209***, in the following words:-

"Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our Constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve."

Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with.

Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

In *National Institute of Technology & Ors. v. Niraj Kumar Singh, 2007(1) SCT 854 : 2007(1) R.A.J. 606: [2007(2) SCALE 525]*, this Court has stated the law in the following terms:-

"16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder."

Again in *State of Haryana and Another v. Ankur Gupta, 2004(1) SCT 165: [(2003)7 SCC 704]*, this Court held:

"6. As was observed in State of Haryana v. Rani Devi, 1996(4) SCT 63: AIR 1996 Supreme Court 2444 it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi case it was held that the scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In LIC of India v. Asha Ramchandra Ambekar, 1995(4) SCT 298: AIR 1994 Supreme Court 2148 it was pointed out that the High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect

*thereof do not cover and contemplate such appointments. It was noted in **Umesh Kumar Nagpal v. State of Haryana, 1994(3) SCT 174** that as a rule, in public service appointments should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."*

Thus, the petitioner could be offered an appointment only to the post for which he was suitable.

Furthermore, petitioner accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible thereof. A person cannot be appointed unless he fulfills the eligibility criteria. Nothing has been shown before this Court that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power.

The observations of the Hon'ble Supreme Court in case of ***State of Rajasthan v. Shri Umrao Singh 1995 (1) S.C.T. 46***, would be relevant and are reproduced hereunder:-

"Admittedly the respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of 'endless compassion. Eligibility to be appointed as Sub-Inspector of Police is one thing; the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under

proviso to Rule 5 of Rules which has no application to the facts of this case.

Since both the sides relied on Naresh Kumar Bali's case (supra), we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under:

"Though the respondent claimed that he had applied for the post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a Teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a Clerk and his claim for consideration for the post of Teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed."

Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise.

It is true that in the decision cited, the direction by the High Court was a positive direction to make the appointment but here the direction was to consider the case. Nevertheless, we find that the High Court was not legally justified in directing a further consideration of the candidature of the respondent for the post of Sub-Inspector. The Civil Appeal will stand allowed and in reversal of the orders of the courts below respondent's writ petition is dismissed. There shall be no order as to costs."

Since the petitioner was appointed as RTM on the basis of the qualifications he had mentioned in his application dated 16.02.2015 for compassionate appointment i.e. Matric and 10+2 and the same was duly accepted. Thereafter, claiming for appointment on the post of Group-C after acquiring higher qualification subsequently i.e. 05.02.2016 is in violation of the policy. Moreover, even after accepting the said post as RTM if petitioner was aggrieved by the said appointment he could have challenged or could not have accepted the same to have a claim on the higher post which was not done and now after accepting the post on Group-D, claiming for appointment on the post of Group-C on the basis of diploma in Civil Engineering is in violation of the policy (ibid) cannot be accepted.

The petitioner having been offered appointment to the post of RTM on compassionate basis and he having accepted the same, joined without protest, the objective of compassionate appointment stood achieved. Therefore, the

post would be in the nature of asking for endless compassion, which is not permissible.

Keeping in view the settled proposition of law and for the reasons recorded above, the present petition is devoid of merit and is hereby dismissed.

Pending application(s), if any, also stand disposed of accordindly.

21.11.2023
Sapna

(DEEPAK MANCHANDA)
JUDGE

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