

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

CWP-5058-2015

DECIDED ON: 16.12.2023

MUKUL PANT

.....PETITIONER

VERSUS

STATE OF HARYANA AND ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Ravindra Jain, Advocate
for the petitioners.

Mr. Sandeep Singh Mann, Addl. A.G., Haryana.

Mr. Prateek Mahajan, Advocate for respondents No. 2 to 4.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court has been invoked under Article 226/227 of the Constitution of India for quashing the order dated 09.05.2014 (Annexure P-4) and order dated 29.09.2014 (Annexure P-6) passed by the respondents and seeking directions to release the amount to the tune of Rs. 2,50,000 as financial Assistance as per Haryana Compassionate Assistance to the dependents of Deceased Government Employee's Rules, 2006.
2. Brief facts of the case leading to the filing of present case folds as under:-

In the year 1981, the father of the petitioner was appointed as Meter Reader with the respondent/department and was posted at Gulachikka, Tehsil and District Pehowa. He was to superannuate on 03.11.2022 but unfortunately he disappeared in the year 2000 and nobody had any clue about his absence. The family members in search for their father got lodge an FIR No. 17 dated 19.10.2001. However, he was untraced by the police. Consequently, in the year 2010, the wife of the deceased made representation to the department for releasing pensionary and other retiral benefits and also made a representation to appoint her eldest son on compassionate basis at the place of her deceased husband. However, respondents failed to consider the representation and the wife was forced to file CWP-3490-2010 wherein it was directed to release the pension and other benefits vide order dated 30.08.2010 and again the respondents defaulted in the same. Thereafter, the son of the deceased i.e. the present petitioner sent a legal notice to the respondents but that was also not responded to and the petitioner filed a CWP-4137-2013 which was decided vide order dated 06.12.2013 with a direction to consider the claim of the petitioner for compassionate appointment within three months. The respondents while deciding the representation stated that the benefit of ex-gratia employment is not applicable in terms of Ex-Gratia Rules, 2006 as the presumption of death of the petitioner's father arose in the year 2008-09 and therefore, his claim was again declined.

3. Learned counsel for the petitioner contends that the order dated 09.05.2014 (Annexure P-4) and 29.09.2024 (Annexure P-6) passed by respondents are totally arbitrary, illegal and unconstitutional and are against the provisions framed under the Haryana Compassionate Assistance to the dependents of Deceased Government Employee Rules, 2006 and deserves to be set aside. He further contends that the orders dated 11.02.2005, 07.09.2006 and 09.02.2006 vide which the family pension and other retiral benefits were declined on the ground that the services of the petitioner were terminated due to his absence from the duty w.e.f. 03.04.2000 is also illegal.

4. He further vehemently argues that the claim of the present petitioner for the grant of ex-gratia employment under 2006 Rules rejected by the respondents is totally unwarranted as the respondents have denied the claim merely on the ground that the presumption of death of the deceased father came in the year 2008 and 2009 and therefore, the benefit of ex-gratia benefit is not admissible in terms of Ex-Gratia Rules, 2006. Therefore, the orders passed by respondents dated 09.05.2014 and 29.09.2014 are liable to be set aside.

5. Lastly, he submits that according to the rules if employment to the concerned person cannot be made due to his non-eligibility for the said post, then an amount of Rs. 2,50,000/- fixed as per Rules, 2006 shall be released to the family member of the deceased. However, in present case neither any financial assistance has been released nor any appointment has

been made.

6. On the other hand learned counsel appearing for the respondents vehemently argue that the present petition is liable to be dismissed on the ground of delay and laches as the father of the petitioner went missing in the year 2000 and the present petition has been filed in the year 2015 and the same is time barred. Moreover, they made reference to paragraphs No. 1, 2 and 4 of their reply wherein they have specifically denied the claim of the petitioner in detail. Relevant part of the reply is reproduced herein below :-

“That the present writ petition is not maintainable in law. The father of the petitioner Sh.Govind Parshad allegedly went missing on 3.4.2000. Initially Sh.Govind Parshad was charge sheeted for willful absence from duty and removed from service after conducting a regular inquiry vide order dated 11.7.2005 (copy enclosed as Ann.R-1). The mother of the petitioner Smt.Urmila Devi represented to the Nigar for grant of pension and other retiral benefits of Sh.Govind Parshad but her claim was declined vide order dated 7.9.2006 on the ground that the employee had been removed from service before the receipt of untraced report from the police. The petitioner alongwith his mother, younger brother and sister filed CWP No.17271 of 2009 challenging the said order dated 7.9.2006.

Copy of the order dated 8.3.2011, a letter written by Sr. Accounts Officer to Executive Engineer (Op. Divn.), UHBVN Ltd., Pehowa giving details of PPO and GPO of Sh.Govind Parshad is enclosed as Ann.R-6. Thus, it is evident that the petitioner himself represented that the date of death of his missing father be taken as 3.4.2000 and all benefits as per Rule have been paid to him. The petitioner never made any claim for compassionate assistance in the previous 2 writ petitions and is now estopped from claiming the same by virtue of the provisions of Order 2 Rule 2 CPC.

That the present petition is liable to be dismissed on the ground of delay and laches. The father of the petitioner disappeared on 3.4.2000 and even the presumption of death, if any, any arose in the year 2007. The petitioner or his mother have not made any claim for compassionate appointment until the year 2012. The delay in the present case defeat the purpose of compassionate appointment. It is a settled law that the purpose of compassionate

appointment/financial assistance is to enable the family to get over sudden financial crises. Compassionate assistance is given solely on humanitarian ground with the sole object to provide immediate relief to the employee's family to overcome the sudden financial crisis.

That the petitioner is even otherwise not eligible for compassionate appointment/ financial assistance as his case is not covered by any of the instructions/ Rules relating to compassionate appointment/financial assistance. The petitioner himself claimed in previous CWP No.3490 of 2010 that the retiral benefits of his father be paid w.e.f. 3.4.2000, thereby implying that the date of death of his father should be taken as 3.4.2000. If the date of death is taken as 3.4.2000, the case of the petitioner is to be considered under the 1995 instructions, keeping in view the Full Bench judgment of this Hon'ble Court in Krishna Kumari Vs. State of Haryana 2012 (2) SCT 736. The petitioner is not eligible for ex-gratia employee employment under these instructions since he has not applied for employment within 3 years of the date of death of the employee and also not produced any proof as to whether he fulfils the income criteria. A copy of the 1995 Instruction for ex-gratia employment is enclosed as Ann.R-8. ”

7. Heard learned counsel for respective parties.
8. That a provision for compassionate appointment makes a departure from the general provisions providing for appointment to a post by following a particular procedure of recruitment. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions and must be resorted to only in order to achieve the stated objectives, i.e., (i) to enable the family of the deceased to get over the sudden financial crisis. (ii) Appointment on compassionate grounds is not a source of recruitment.
9. The reason for making such a benevolent scheme by the State or

not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis. Since, compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependants of the deceased Government employee as a consequences of his death, a claim for compassionate appointment may not be entertained after lapse of of considerable period of time, since the death of the employee.

10. In *Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138*, the Apex Court observed that the object of granting compassionate employment is to enable the family of a deceased government employee to tide over the sudden crisis by providing gainful employment to one of the dependants of the deceased who is eligible for such employment. 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 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, provided a scheme or rules provide for the same. This Court further clarified in the said case that compassionate appointment is not a vested right which can be exercised at any time after the death of a government servant. The object being to enable the family to get over the financial crisis which it faces the time of the death of the sole breadwinner, compassionate employment

cannot be claimed and offered after lapse of considerable amount of time and after the crisis is overcome.

11. Coming back to the present case in hand wherein order dated 08.03.2011, a letter written by Senior Account Officer to Executive Engineer, (Op. Division), UHBVNL giving details of PPO and GPO of the petitioner's deceased/father makes it evidentiary clear that the petitioner had himself represented that year of the death of his missing father to be taken as 2000 and all benefits to be released in accordance with the relevant rules. Moreover, the petitioner has never made any claim for compassionate assistance in the previous two writ petitions filed by him and now is therefore, estopped from claiming the same by the virtue of provisions of Order 2 Rule 2 CPC. Further, the present petition has been filed in the year 2015 and the said occurrence is of the year 2000, therefore, another ground to dismiss the case of the petitioner is on delay and laches. As it is settled principle of law that the purpose of compassionate appointment is to enable family to get over from sudden financial crunches and in the present case, the petitioner has himself submitted that he is working as a helper in a private company. Hence, the emergent situation is over and the petitioner and his family members are no longer in need of any compassionate appointment.

12. However, keeping in view that though the claim of the petitioner cannot be considered for an appointment on the compassionate basis, the other claim to release Rs. 2,50,000/- can be acceded by this Court.

Therefore, the respondents are directed to release the said amount to the

petitioner within a period of four weeks from the date of receipt of certified copy of this order.

13. In view of the above observation made and in light of the judgment rendered by Supreme Court in ***Civil Appeal No. 8842-8855 of 2022 titled as State of West Bengal vs. Debabrata Tiwari and Others***, wherein the same principle as was held in Umesh Kumar Nagpal's case (supra) has been reiterated that compassionate appointment is not a vested right to be claimed under Article 226/277 of the Constitution of India and if it needs to be claimed then it has to be made to the appropriate authorities within the reasonable time without there being any delay or laches on the part of the petitioner.

14. Petition stands disposed of.

16.12.2023
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(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No