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2023:PHHC:095694

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-6122-2016
DECIDED ON:27.07.2023

KITABO DEVI

.....PETITIONER

VERSUS

MANAGING DIRECTOR & ORS.

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Ms. Priyanka Vij, Advocate for
Mr. Amit Kumar Jain, Advocate for the petitioner.

Ms. Shivani Sahni, Advocate for
Mr. Saurabh Goel, Advocate for respondent No.4.

SANDEEP MOUDGIL, J (ORAL)

1. This Civil Writ Petition is preferred under Article 226/227 of the Constitution of India for issuance of a writ in the nature of *certiorari* for quashing of the impugned action of the respondent authorities in not granting the compassionate appointment to the petitioner being wife of deceased employee of the respondent Board and even not deciding the claim presented by the son of the petitioner now expired, as the petitioner has no other male member to look after her because the other children i.e., 5 daughters have already been married.

2. Learned counsel for the petitioner contends that husband of the petitioner was appointed as Assistant Line Man on 01.12.1970 and was promoted as lineman, who during the posting at Sub Division Garhi, Division Narwana, District Jind expired on 14.12.1995. Thereafter, the petitioner presented an application on 15.01.1996 before the respondent No.4 seeking compassionate appointment to her

son namely Ramesh Kumar, who was of 12 years of age at that time, but the application was never decided and on 21.09.2008, the son of the petitioner also passed away. Till date, that application has not been decided by the respondent-authorities to grant the employment to the dependant of the deceased under the ex gratia scheme.

3. He further contends that petitioner being an old lady, who has already lost her son and husband, is entitled for compassionate appointment/financial assistance.

4. Learned counsel appearing for respondent No.4 has referred to para 3 & 4 of the written statement, which reads as under:-

“3. That the contents of para 2 (wrongly numbered again) of the writ petition are wrong and vehemently denied. The son of the petitioner namely Sh. Ramesh Kumar was only 12 years old in the year 1995 and was only 15 years after 3 years of the death and therefore, no application for considering him for compassionate appointment after more than 5 years of the death of his father on attaining age of 17 years could have been considered. As per the existing instructions dated 1.10.1986, application for appointment could have been made within a period of 3 years from the date of death of an employee. The applicant should have been more than 17 years of age. The application for compassionate appointment of her son who was only 12 years of age at the time of death of her husband could not be considered as he was not covered under the existing instructions. Copy of the said decision dated 12.07.2000 was duly sent to the petitioner in year 2000 itself.

4. That the contents of para 4 of the writ petition are wrong and vehemently denied. It is wrong and denied that the answering respondents have denied any lawful benefit to the petitioner. It is pertinent to mention here that there was no provision of providing any financial assistance as per the policy prevailing at the time of death of

husband of the petitioner. Further, it is pertinent to mention here that the petitioner was paid lump-sum family pension.”

5. Heard learned counsel for respective parties.

6. 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.

7. The reason for making such a benevolent scheme by the State or the public sector undertaking is to see that the dependants of the deceased are 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.

8. 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 at 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.

9. In view of the above submissions 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.

10. Hence, no ground is made out for compassionate appointment/financial assistance, since the basic principle of granting any financial assistance or the compassionate appointment to the family of deceased is to provide help in meeting out hardship on account of untimely death of the husband of the petitioner, which accrued in the year 1995. Moreover, an application for compassion appointment can be considered only if the same is made within a period of three years from the death of the employee and the applicant should be more than 17 years of age. The

petitioner was also granted lump-sum family pension as her son could not be given appointment, because he was only 12 years of age at the time of death of his father, which has fulfilled the object.

11. Now added with the aspect that after 21 years since the death of her husband, the petitioner has no right, which is badly time barred, in the light of facts and circumstances hereinabove.

11. Petition stands dismissed being devoid of merits.

27.07.2023

Meenu

(SANDEEP MOUDGIL)
JUDGE

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