

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP-21172-2023

Date of decision : 21.09.2023

Ram

... Petitioner

Versus

District & Sessions Judge, Kapurthala and another

... Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Ms.Ishita Negi, Advocate and
Mr.Nimanyu Gautam, Advocate
for the petitioner.

Ms.Sukriti Gupta, Advocate
for respondent no.2.

VIKAS BAHL, J.(ORAL)

1. This is a civil writ petition filed under Articles 226/227 of the Constitution of India for the issuance of an appropriate writ, order or direction especially in the nature of certiorari for quashing the impugned letter dated 02.11.2017 (Annexure P-14) and impugned letter dated 15.11.2017 (Annexure P-12) whereby the application of the petitioner for appointment on compassionate grounds has been rejected.

2. The undisputed facts in the present case are that father of the petitioner late Sh.Varinder Kumar was working as Peon in the Court of Additional Civil Judge (Sr.Div.), Phagwara and on 22.05.2013 he unfortunately died. The father of the petitioner left behind two sons, one of whom is the petitioner and one daughter. The petitioner vide application dated 25.11.2013 had applied for appointment as Peon on compassionate grounds. The case of the petitioner is that the authorities rejected his claim

and informed the petitioner about the same vide letter dated 15.11.2017 (Annexure P-12). The petitioner after a period of more than 5 years and 3 months had filed CWP-4633-2023 in which initially notice of motion was issued and thereafter vide order dated 03.08.2023, the petitioner withdrew the petition with liberty to file a fresh petition after challenging the order dated 02.11.2017. The order/letter dated 02.11.2017 was written by the Registrar General of this Court to the District and Sessions Judge, Kapurthala informing the District and Sessions Judge, Kapurthala that the request of the petitioner for appointment on compassionate grounds as Class IV employee has been considered and declined. The petitioner thereafter filed CWP-19907-2023 in which this court on 11.09.2023 was pleased to pass the following order:-

“1. This is Civil Writ Petition filed under Articles 226/227 of the Constitution of India for issuance of an appropriate writ, order or direction especially in the nature of certiorari for quashing of letter dated 02.11.2017 (Annexure P-14) whereby the application of petitioner for compassionate appointment has been dismissed.

2. Learned counsel for the petitioner has submitted that inadvertently, the order dated 15.11.2017 (Annexure P-12) vide which respondent No.1 had dismissed the said application has not been challenged in the present writ petition and thus, she seeks permission of this Court to withdraw the present Civil Writ Petition with liberty to the petitioner to file a fresh petition after challenging the same.

3. In view of the same, the present Civil Writ Petition is dismissed as withdrawn with liberty aforesaid.

4. It is made clear that in case, any such petition is filed, all the questions including the question of delay would be considered in the same.
11.09.2023”

A perusal of the same would show that while permitting the petitioner to withdraw the said petition with liberty to file a fresh, all the questions including the question of delay were kept open. In pursuance of the liberty granted, the petitioner has filed the present petition.

preliminary objection and has submitted that the present writ petition deserves to be dismissed solely on the ground of delay and laches inasmuch as the father of the petitioner had died on 22.05.2013 and the rejection of the claim of the petitioner for being appointed on compassionate grounds was communicated to the petitioner vide letter dated 15.11.2017 and yet the petitioner had for the first time approached this Court after a delay of more than 5 years and 3 months without any plausible explanation. Reliance has been placed upon the judgment of the Hon'ble Supreme Court of India in ***State of West Bengal vs. Debabrata Tiwari and others*** reported as **2023 SCC OnLine SC 219** in support of the said preliminary objection.

4. In response to the preliminary objection, learned counsel for the petitioner has submitted that the petitioner had moved an application on 25.11.2013 immediately after the death of his father on 22.05.2013. It is submitted that it is the authorities which took more than 3 years and 11 months in deciding the matter and it was only on 15.11.2017 (Annexure P-12) that the petitioner was communicated about the rejection of his claim for appointment on compassionate grounds. It is further submitted that even the authorities are liable for delay and the petitioner's right for appointment cannot be taken away on the ground of delay and laches. Learned counsel for the petitioner has also referred to paragraph 24 of the writ petition in which it has been stated that the petitioner had been continuously representing to the authorities for grant of appointment on compassionate basis but however no action was taken by them.

5. This Court has heard learned counsel for the parties and has perused the paper book and is of the opinion that the present writ petition deserves to be dismissed on the ground of delay and laches. It is not in dispute that the father of the petitioner had died on 22.05.2013 and the

petitioner was informed about the rejection of his claim for being appointed on compassionate grounds on 15.11.2017 (Annexure P-12) but the petitioner filed the first petition in this Court after a delay of more than 5 years and 3 months from the date the said information regarding the rejection of his claim was received by the petitioner. No explanation has been tendered to explain the said delay of more than 5 years and 3 months. The averments made in paragraph 24 of the writ petition, which have been highlighted by learned counsel for the petitioner, are absolutely vague as no reference has been made to any particular representation having been given nor any such representation has been annexed with the present writ petition moreso, after the communication of the order of rejection vide letter dated 15.11.2017. The cause of action to the petitioner at any rate had arisen on 15.11.2017 and as per settled law, even in case repeated representations were given by the petitioner, the same would not extend the period of limitation. It has been averred in paragraph 21 of the writ petition that the petitioner had received all terminal / retiral dues of his late father Varinder Kumar from the respondent department, which fact has also not been disputed before this Court. It has been repeatedly held by the Hon'ble Supreme Court that the object of granting compassionate appointment is to give succor to the family to tide over the sudden financial crisis on account of the untimely demise of the earning member and that in case the family has survived in spite of the death of the employee, then grant of compassionate appointment after a lapse of considerable amount of time after the death of the government employee would not be in furtherance of the object of the scheme of compassionate appointment. It has further been held that in case of long delay either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such a claim, the

sense of immediacy is diluted and lost and that appointment on compassionate grounds is not a source of recruitment and no person can claim it as a vested right and that the same cannot be claimed or offered after a lapse of considerable time and after the crises is over.

6. That the Hon'ble Supreme Court of India in the case of ***State of West Bengal vs. Debabrata Tiwari and others*** (supra) has held as under:-

“35. Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost.

....Since compassionate appointment is not a vested right and the same is relative to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee.

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48. The question as to whether a direction issued several years after an application for compassionate appointment, to consider and decide such application, is in consonance with the object of a policy/scheme for compassionate appointment, has been answered in the negative.

60.second, assuming that there was such a policy, it would be of no redeeming purpose to direct that the applications for appointment on compassionate grounds be considered and decided several years after they were filed.”

In the above said paragraphs, the Hon'ble Supreme Court of India after considering several judgments came to the conclusion and answered the question “as to whether a direction issued several years after an application for compassionate appointment, to consider and decide such application, is in consonance with the object of a policy/ scheme for compassionate appointment” in the negative. The Hon'ble Supreme Court in paragraph 31 of the above said judgment has referred to various judgments of the Hon'ble Supreme Court in which it was repeatedly held

that compassionate employment cannot be claimed and offered after a lapse of considerable amount of time and after the crisis is over and that compassionate appointment was an exception to the general rule which required 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. The Hon'ble Supreme Court had culled out various principles which were detailed in paragraph 32 of the judgment. Paragraphs 31, 32 and relevant portion of paragraph 33 of the said judgment are reproduced herienbelow:-

“31. It may be apposite to refer to the following decisions of this Court, on the rationale behind a policy or scheme for compassionate appointment and the considerations that ought to guide determination of claims for compassionate appointment.

i. In [Sushma Gosain vs. Union of India](#), (1989) 4 SCC 468, this Court observed that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. That the purpose of providing appointment on compassionate grounds is to mitigate the hardship caused due to the death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress.

ii. In [Umesh Kumar Nagpal vs. State of Haryana](#), (1994) 4 SCC 138, this 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. That 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, 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. That

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.

iii. In *Haryana State Electricity Board vs. Hakim Singh*, (1997) 8 SCC 85, (“Hakim Singh”) this Court placed much emphasis on the need for immediacy in the manner in which claims for compassionate appointment are made by the dependants and decided by the concerned authority. This Court cautioned that it should not be forgotten that the object of compassionate appointment is to give succour to the family to tide over the sudden financial crisis that has befallen the dependants on account of the untimely demise of its sole earning member. Therefore, this Court held that it would not be justified in directing appointment for the claimants therein on compassionate grounds, fourteen years after the death of the government employee. That such a direction would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

iv. This Court in *State of Haryana vs. Ankur Gupta*, AIR 2003 SC 3797 held that in order for a claim for compassionate appointment to be considered reasonable and permissible, it must be shown that a sudden crisis occurred in the family of the deceased as a result of death of an employee who had served the State and died while in service. It was further observed that appointment on compassionate grounds cannot be claimed as a matter of right and cannot be made available to all types of posts irrespective of the nature of service rendered by the deceased employee.

v. There is a consistent line of authority of this Court on the principle that appointment on compassionate grounds is given only for meeting the immediate unexpected hardship which is faced by the family by reason of the death of the bread earner vide *Jagdish Prasad vs. State of Bihar*, (1996) 1 SCC 301. When an appointment is made on compassionate grounds, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion, vide I.G. (Karmik) vs. Prahalad Mani Tripathi, (2007) 6 SCC 162. In the same vein is the decision of this Court in *Mumtaz Yunus Mulani vs. State of Maharashtra*, (2008) 11 SCC 384, wherein it was declared that appointment on compassionate grounds is not a source of recruitment, but a means

to enable the family of the deceased to get over a sudden financial crisis.

vi. In *State of Jammu and Kashmir vs. Sajad Ahmed Mir*, AIR 2006 SC 2743, the facts before this Court were that the government employee (father of the applicant therein) died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned Single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. This Court remarked that the said facts were relevant and material as they would demonstrate that the family survived in spite of death of the employee. Therefore, this Court held that granting compassionate appointment after a lapse of a considerable amount of time after the death of the government employee, would not be in furtherance of the object of a scheme for compassionate appointment.

vii. In *Shashi Kumar*, this Court speaking through Dr. D.Y. Chandrachud, J. (as His Lordship then was) observed 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. That 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. That it is the immediacy of the need which furnishes the basis for the State to allow the benefit of compassionate appointment. The pertinent observations of this Court have been extracted as under:

“41. 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.”

32. On consideration of the aforesaid decisions of this Court, the following principles emerge:

i. 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., 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. 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.

iii. Compassionate appointment is not a vested right which can be exercised at any time in future. Compassionate employment cannot be claimed or offered after a lapse of time and after the crisis is over.

iv. That compassionate appointment should be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

v. In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family, its liabilities, the terminal benefits if any, received by the family, the age, dependency and marital status of its members, together with the income from any other source.

33. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment

to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome....”

It would be relevant to note that in the above said judgment in the year 2014, the Chairman, Burdwan Municipality-respondent no.5 therein had forwarded the list of the eligible candidates for appointment on compassionate grounds and requested the Director of Local Bodies to look into the matter sympathetically and since the Director of Local Bodies did not take any further action, thus, a writ petition was filed by Debabrata Tiwari (respondent no.1 before the Hon’ble Supreme Court of India) which was disposed of on 17.03.2015 with a direction to the Director of Local Bodies to take a decision on the recommendation of the Chairman of the Municipality within a period of 10 weeks from the date of communication of the said order and to communicate such decision to the Chairman of the Municipality within a week thereafter. The subsequent decision taken was thereafter challenged in a writ petition filed in the year 2016 and the Division Bench of the High Court vide judgment dated 30.09.2019 had accepted the plea of the petitioner and had directed to consider the application of the writ petitioner seeking appointment on compassionate ground. The Hon’ble Supreme Court however after considering the facts and circumstances of the case, allowed the appeals and set aside the judgment of the Division Bench. While doing so the doctrine of laches and the judgments on the same were also considered. The relevant portion of the above said judgment on the said aspect is reproduced hereinbelow:-

“37. Whether the above doctrine of laches which disentitled grant of relief to a party by Equity Court of England, could disentitle the grant of relief to a person by the High Court in the exercise of its power under [Article 226](#) of our Constitution, came up for consideration before a

Constitution Bench of this Court in [Moon Mills Ltd. vs. M. R. Meher, President, Industrial Court, Bombay, AIR 1967 SC 1450](#). In the said case, it was regarded as a principle that disentitled a party for grant of relief from a High Court in the exercise of its discretionary power under Article 226 of the Constitution.

38. In [State of M.P. vs. Nandlal Jaiswal](#), (1986) 4 SCC 566 this Court restated the principle articulated in earlier pronouncements in the following words:

“9. ... the High Court in exercise of its discretion does not ordinarily assist the tardy and the indolent or the acquiescent and the lethargic. If there is inordinate delay on the part of the Petitioner and such delay is not satisfactorily explained, the High Court may decline to intervene and grant relief in exercise of its writ jurisdiction. It was stated that this Rule is premised on a number of factors. The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring, in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third-party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.”

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40. Further, simply because the Respondents-Writ Petitioners submitted their applications to the relevant authority in the year 2005-2006, it cannot be said that they diligently perused the matter and had not slept over their rights. In this regard, it may be apposite to refer to the decision of this Court in [State of Uttaranchal vs. Shiv Charan Singh Bhandari](#), (2013) 12 SCC 179, wherein the following observations were made:

“19. From the aforesaid authorities it is clear as crystal that even if the court or tribunal directs for consideration of representations relating to a stale claim or dead grievance it does not give rise to a fresh cause of action. The dead cause of action cannot rise like a phoenix. Similarly, a mere submission of representation to the competent authority does not arrest time.”

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44. As noted in the said case, the operation of a policy/scheme for compassionate appointment is founded on considerations of immediacy. A sense of immediacy is called for not only in the manner in which the applications are processed by the concerned authorities but also in the conduct of the applicant in pursuing his case, before the authorities and if needed before the Courts.

45. In the present case, the applications for compassionate appointment were made by the Respondents-Writ Petitioners in the year 2005-2006. Admittedly, the first concrete step taken by the Chairman of the Burdwan Municipality was in the year 2013, when the said authority forwarded a list of candidates to be approved by the Director of Local Bodies, Burdwan Municipality. The Respondents-Writ Petitioners knocked on the doors of the High Court of Calcutta only in the year 2015, i.e., after a lapse of nearly ten years from the date of making the application for compassionate appointment. The Respondents-Writ Petitioners were not prudent enough to approach the Courts sooner, claiming that no concrete step had been taken by the Appellant-State in furtherance of the application by seeking a Writ in the nature of Mandamus.

46. The sense of immediacy in the matter of compassionate appointment has been lost in the present case. This is attributable to the authorities of the Appellant-State as well as the Respondents-Writ Petitioners. Now, entertaining a claim which was made in 2005-2006, in the year 2023, would be of no avail, because admittedly, the Respondents-Writ Petitioners have been able to eke out a living even though they did not successfully get appointed to the services of the Municipality on compassionate grounds. Hence, we think that this is therefore not fit cases to direct that the claim of the Respondents-Writ Petitioners for appointments on compassionate grounds, be considered or entertained.”

7. In view of the above reproduced judgment of the Hon’ble Supreme Court and the settled law, there is no merit in the present writ petition and the same deserves to be dismissed.

8. Before parting, it would also be relevant to refer to the judgment of the Hon’ble Supreme Court of India in **Chennai Metropolitan Water Supply and Sewerage Board and others vs. T.T. Murali Babu** reported as **2014(4) SCC 108** in which one of the ground for setting aside

the judgment of the High Court was the fact that the petitioner therein had approached the High Court after a delay of 4 years and it was observed by the Hon’ble Supreme Court that it was the duty of the Court to scrutinise whether such enormous delay is to be ignored without any justification and the Hon’ble Supreme Court came to the conclusion that interference by the High Court after a lapse of 4 years was unjustified and that the writ petition should not have been entertained. The Hon’ble Supreme Court of India in the case *State of Uttaranchal and another vs. Sri Shiv Charan Singh Bhandari and others* reported as *2013(12) SCC 179* had observed that repeated representations or reply to such representations cannot furnish a fresh cause of action or revive a stale or dead claim and that the issue of limitation or delay should be considered with reference to the original cause of action and not with reference to the date on which an order was passed in compliance of Court’s directions and neither a court’s direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches. In *Chairman, U.P. Jal Nigam and Anr. vs. Jaswant Singh & Anr.* reported as *2006(11) SCC 464*, the Hon’ble Supreme Court had rejected the claim of the persons who were guilty of delay and had approached the Courts after some years and had sought to raise the plea that similarly situated persons, who had filed the writ petitions earlier, had been granted the relief.

9. Keeping in view the above said facts and circumstances, the present writ petition is dismissed solely on the ground of delay and laches.

September 21, 2023

Davinder Kumar

(VIKAS BAHL)
JUDGE

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No