

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**
(108) **LPA-569-2023**
Decided on : 22.02.2024

Kuldeep SinghAppellant(s)
Versus
State of Punjab & othersRespondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI**

Present:- Mr.Sanjeev Kumar Arora, Advocate for the appellant.
Mr.Salil Sablok, Sr.DAG, Punjab.

G.S. Sandhawalia, ACJ (Oral)

1. Consideration in the present appeal is to the judgment passed by the Learned Single Judge passed in CWP-2009-2023 dismissing the writ petition on 02.02.2023 whereby the claim of the appellant for compassionate appointment was rejected.

2. The reasoning which weighed with the Learned Single Judge was that the appellant was nearly 41 years of age and his father died on 26.12.2015 during his period of extension in service as he superannuated on 30.04.2014 and thus he would have served on extension of service till 30.04.2016. It was noticed that on an earlier occasion, CWP-20704-2016 had been dismissed in the light of instructions dated 21.10.2014 (Annexure P-5) which provided that the legal heirs of officials/employees dying during extension in service were not entitled for compassionate appointment. It is only on account of subsequent policy dated 27.12.2016 (Annexure P-7), the State had taken a decision that it would give compassionate appointment to the

dependents of the employees/officers dying during extension in service with retrospective effect from 08.10.2012. The said instructions were thereafter again withdrawn on 29.03.2017 (Annexure P-8) after reconsideration of the matter. It is in such circumstances the second writ petition was filed.

3. Apparently, the appellant thereafter started filing applications for consideration on that basis leading to passing of the order dated 02.08.2022 (Annexure P-9) wherein on account of withdrawal of the instructions dated 27.12.2016, the case of the appellant was rejected which was reiterated on 21.12.2022 (Annexure P-10) which lead to filing of the writ petition. The reasoning given by the Learned Single Judge is that compassionate appointment is an exception to the general rules of recruitment and to help the family of the employee who died in harness and the concession does not result in creation of a right and it is to be in the nature of immediate relief to the family of the deceased employee and the sole purpose being to tide over the sudden financial crisis. The argument that the right had accrued on 26.12.2015 was accordingly rejected by noticing that the appellant was 41 years of age.

4. The consideration of the right of compassionate appointment has always been subject matter of dispute. The law was crystallized in **Umesh Kumar Nagpal Vs. State of Haryana & others, 1994 (4) SCC 138** whereby it has been observed that appointments under the scheme of compassionate appointment are not appointments in the normal mode but are an exception and it is for the purpose to enable the penurious family of the deceased-employee to tide over the sudden financial crises and not

to provide employment as a normal course. The relevant observations read as under:-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of Applicationns and met-it. No other mode of appointment nor any other consideration is 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 dependent 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.”

5. In **State Bank of India & others Vs. Jaspal Kaur, 2007 (9)**

SCC 571 the date of death was held to be the relevant date and not the subsequent scheme which was to be kept in mind.

6. In **State Bank of India & another Vs. Raj Kumar, 2010**

(11) SCC 661 the Apex Court held that the date of consideration would be the cut-off date for the application of policy on the date of death and the subsequent scheme would be applicable only if the first scheme stood abolished as the purpose would be to help the family of the deceased employee in financial difficulty and not for other regular appointment.

7. In the present case, as noticed, apparently the death took place during the extension period beyond the date of superannuation. The first writ petition was dismissed way-back on 20.12.2016. It is only on account of the instructions which have come into force on 27.12.2016, the second round of litigation had been initiated. The issue before the Full Bench of this Court in **Krishna Kumari Vs. State of Haryana &**

others 2012 (2) SCT 736, was whether the Rules in operation at the time of death of the employee would be the Rules applicable or the date of consideration by the appropriate authority, as such. Reference was accordingly answered by holding that the object of the policy was to rescue the family from sudden event plunging it into penury and therefore, the date of death was the relevant date for considering the case of the applicant. The Special Leave Petition filed by the State of Haryana was dismissed but question of law raised was kept open to be agitated in an appropriate case.

8. Apparently, the father of the appellant died on 26.12.2015 and the relevant instructions in force dated 21.10.2014 created a bar for consideration of legal representatives of the employees who expired during extension. In such circumstances, we are of the considered opinion that appointment on compassionate basis during extension period and the fact that the writ petition had already been dismissed earlier and the crisis issue had already long gone by, the Learned Single Judge was well justified in rejecting the claim of the appellant in the peculiar facts and circumstances.

9. Resultantly, in view of the above discussion, finding no ground to interfere in the judgment of the Learned Single Judge, the present appeal is hereby dismissed.

(G.S. SANDHAWALIA)

ACTING CHIEF JUSTICE

February 22nd, 2024

(LAPITA BANERJI)

Sailesh

JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No