

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

107

(1) LPA-381-2023 (O&M)

Jaspal Singh Brar & anotherAppellant(s)

Versus

Narinder Singh & othersRespondent(s)

(2) LPA-380-2023 (O&M)

Jaspal Singh BrarAppellant(s)

Versus

Pawan Kumar & othersRespondent(s)

(3) LPA-383-2023 (O&M)

Jaspal Singh Brar & anotherAppellant(s)

Versus

Lakhwinder Singh & anotherRespondent(s)

Decided on : 04.04.2024

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

Present: Mr.Karmanbir Singh Kharbanda, Advocate for the appellants.

G.S. Sandhawalia, Acting Chief Justice (Oral)

1. Consideration in the present appeals is to the judgment dated 17.02.2023 passed by the Learned Single Judge in 4 writ petitions bearing CWP-20267-2020, CWP-25-2023, CWP-9641-2016 and CWP-25300-2017 whereby same were allowed and the seniority list dated 22.03.2012 was quashed and directions were issued to prepare a fresh seniority list in accordance with the Punjab Naib-Tehsildars (Class-III) Service Rules, 1984 (for short, the 'Rules') within a period of 3 months. Thus the appellants herein are adversely affected.

2. The reasoning which weighed with the Learned Single Judge while allowing the writ petitions is that the order dated 09.10.2009 (Annexure P-10) had been passed by the Commissioner whereby the date of seniority/enlistment of the present appellants had been taken from the date of receipt of applications for the post of Naib Tehsildars on compassionate ground. Resultantly, the Learned Single Judge kept in mind Rule 16 of the Rules wherein it is provided that seniority is to be in the order of appointment to the service and merely because the applications had been given for the job and accepted by the competent authority on 09.10.2009, the same could not be incorporated in the final seniority list dated 23.03.2012. The rule thus provided governing of the inter se seniority between the members of the cadre.

3. The defence taken that on an earlier occasion, the Division Bench had directed that the seniority list of aspirants for compassionate appointment is to be maintained and the instructions were duly issued on 30.09.1996 and the factum of delay and laches, was rejected on the ground that firstly the order was never circulated and the moment fresh seniority list had been issued, it was challenged. It was accordingly held that the instructions could only supplement the rules but could not supplant the same. The statutory service rules never provided or envisaged seniority from the date of submission of application seeking appointment and the same were given to help the families who suffered due to the unexpected tragedy and not to give the benefit of seniority never having been born in the cadre. Resultantly, it was held that seniority could not be given prior to the day when they were born in the cadre and merely on account of the delay in appointment would not give them a cause of action to claim

seniority over and above the other employees. The first writ petition having been filed in December, 2012 and numbered in January, 2013 was the reason to reject the plea of delay and laches as has been sought to be raised by the appellants herein before the Learned Single Judge.

4. Counsel for the appellants has sought to convince us that appointment on compassionate ground had been given on account of the inaction of the State, there was delay in appointment which had prejudiced the present appellants.

5. We are of the considered opinion that the reasoning given by the Learned Single Judge was very well justified. The statutory rules govern the service conditions and in the absence of any rules retrospective effect to the date of appointment could not be given which would be alien to the issue of seniority in service law. It would mean that a large number of aspirants would step in and persons appointed in service by regular selection would be faced with the ignominy of being placed junior to a subsequent appointee. Rather, the delay in processing the applications would go on to give enormous benefits to a person and the misuse of such methodology would rather lead to a morphing affect in the service conditions. The argument raised that policy was framed to maintain the seniority list was only for the purpose of appointment on compassionate ground inter se the persons similarly situated. It does not give any right of seniority of appointment to persons which has to be reckoned from the date of appointment.

6. The Apex Court has time and again held that employment by way of compassionate appointment is an exception to the general rule.

Reliance can be placed upon the observations of the Apex Court 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 Applications and merit. No other mode of appointment nor any other consideration is permissible. 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.”

7. In such circumstances, Learned Single Judge was justified in coming to the conclusion and rather rectified the error apparent which the Commissioner, Ferozepur had committed in tinkering with the settled seniority list while passing the order.

8. Thus, we are of the considered opinion that the reasoning which had been adopted by the Learned Single Judge does not suffer from any infirmity. Resultantly, in view of the above discussion, finding no merit in the present appeals, the same are hereby dismissed in limine. All pending application(s) also stand disposed of.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

04.04.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No