

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

LPA No.888 of 2024 (O&M)

Date of Decision : 08.04.2024

Sumeet Saini

...Appellant

Versus

State of Haryana and others

...Respondents

CORAM : HON'BLE MR. JUSTICE G. S. SANDHAWALIA, ACTING CHIEF
JUSTICE

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Ashwarya Bajaj, Advocate,
For the appellant.

Ms. Shruti Jain Goel, Sr. DAG, Haryana.

LAPITA BANERJI, J.

Consideration in the present Letters Patent Appeal is to an order dated January 24, 2024 passed by an Hon'ble Single Judge in CWP No.21549 of 2023, '**Sumeet Saini Vs. State of Haryana and others**'. The Hon'ble Single Judge dismissed the writ petition by refusing to issue a writ of certiorari quashing the order dated October 4, 2016 whereby the appellant was appointed as a '*Laboratory Attendant*' and correspondingly declined the appellant's prayer for issuance of a writ of mandamus directing the respondent authorities to consider the appointment of the appellant on compassionate grounds as a '*Laboratory Assistant*' instead of '*Laboratory Attendant*'.

2. The facts of the present appeal as culled out are narrated hereinafter:-

i) The governing body of respondent No.3-College vide its meeting dated September 8, 2000 recommended the name of the petitioner/appellant as '*Laboratory Assistant*' and sought for permission for

appointment of the appellant from respondent No.2-Director of Higher Education, Panchkula in the pay scale of Rs.3050-4350. The said permission was sought for by the governing body vide letter dated August 18, 2000.

ii) The appellant, however was appointed as a '*Laboratory Attendant*' in the Chemistry Department vide letter dated September 17, 2001 by the respondent No. 3-College. The appellant was appointed on temporary basis in the pay scale of Rs.3050-4350 plus usual allowances sanctioned by the Government of Haryana from time to time.

3. Learned counsel appearing on behalf of the appellant has strenuously argued that appellant was entitled to compassionate appointment as per the rules/regulations on a post lower than that of his father, who at that time was working on the post of 'Lecturer Assistant'. Therefore, the appellant was entitled to be appointed as '*Laboratory Assistant*'. Furthermore, at the time of appointment in 2001, since there was no difference in the scale of pay between a '*Laboratory Attendant*' and a '*Laboratory Assistant*', the appellant did not raise any objection to such appointment.

4. It was only after the passing of the judgment dated 20.11.2013 in CWP-5492 of 1997, '*Gurcharan Singh and others Vs. State of Haryana and others*' whereby the '*Laboratory Assistants*' were placed at a higher scale of pay that the appellant's grievance had germinated and the appellant claimed that he should have been considered for appointment to the post of '*Laboratory Assistant*' as was originally recommended by the governing body.

5. In the opinion of Hon'ble Single Judge, the appellant willingly accepted the offer of appointment as a '*Laboratory Attendant*' instead of

‘*Laboratory Assistant*’ and continued to discharge his services without raising a claim to the latter post. This Court in ***Gurcharan Singh*** (*supra*) had held that the ‘*Laboratory Assistants*’ were entitled to higher pay scale and the ‘*Laboratory Attendant*’ was a feeder cadre, but the same would not give any right to the appellant to seek appointment on the said post that was never offered to him. Therefore, he held the ratio of ***Gurcharan Singh*** (*supra*) had nothing to do with the appellant’s entitlement to the post of ‘*Laboratory Assistant*’. Resultantly, the writ petition was dismissed.

6. This Court has heard the arguments of the parties and materials placed on record. It is a well settled principle of law that compassionate appointment is as an exception to the general rule, the object of which is to enable the family members to tide over the financial crisis which they face due to the sudden demise of the sole earning member of the family. In the matters of compassionate appointment, the candidate has no choice as to the post in which he is offered appointment. It is only in order to save the family from destitution/penury, that an exception has been carved out to the regular process of selection and a dependent family member is offered appointment to a public post. Furthermore, compassionate appointment cannot be claimed and/or offered after a considerable lapse of time and after the crisis is over. A beneficial reference be made to the Apex Court’s decision in ‘***Umesh Kumar Nagpal Vs. State of Haryana***’, (1194) SCC (4) 138. Relevant extract is reproduced herein below:-

“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 dependant 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.*

3. *Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.*

XXX

XXX

7. In above decision, it has also been held that compassionate appointment as a matter of source of employment is only *qua* posts for classes III and IV and compassionate employment cannot be a source of employment in posts above Class III and Class IV. Relevant extract is reproduced herein below:-

4. *It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India [(1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant."*

8. It is also well settled proposition of law that the person praying for compassionate appointment has to approach the authorities immediately and without any undue delay. In similar circumstances, in LPA No.1595-2023, '**Gagandeep Singh Vs. State of Punjab and others**' this Court has held that once an appointment has been accepted by a candidate on compassionate grounds he could not seek employment on a higher post by moving an application after 10 years of appointment.

9. Even the Apex Court in **State of Rajasthan v. Umrao Singh**, (1994) 6 SCC 560 has held that once a beneficiary accepts an appointment

on compassionate basis his right stands extinguished and no further consideration on compassionate ground could ever arise. Otherwise, it would be a case of “*endless compassion*”. Relevant extract is reproduced herein below:-

“8. Admittedly the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of “endless compassion”. Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.”

10. Similarly on the facts and circumstances of the present case, this Court holds that after accepting appointment on dated September 17, 2001 without any demur or protest, the appellant could not later turn round and pray for appointment to the higher post of ‘*Laboratory Assistant*’. It has also been noticed by this Court that after more than 2 years of the decision in **Gurcharan Singh** (*supra*) dated November 20, 2013, the appellant sought to move a writ petition being CWP No.5366 of 2016 for deciding his representation.

11. The speaking order rejecting the claim of the appellant (Annexure P-7) notes that on scrutiny of personal file of the writ petitioner/appellant, it transpired that there was no representation from him that was found on record, on which the authorities could have complied with the order dated February 5, 2016 passed in CWP-5366-2016.

Therefore, the authorities on dated September 8, 2016 wrote to the writ

petitioner for submission of representation which he duly did on September 16, 2016. Thereafter, the respondents considered the said representation dated September 16, 2016, in accordance with law.

12. Before parting with the discussion, this Court refers to the decision in **Gurcharan Singh** (*supra*) to come to the conclusion that in the said case the petitioners who were working as ‘*Laboratory Assistant*’ had been held to be entitled to pay parity as admissible to their counter-parts i.e. ‘Junior Lecturer Assistants’ in government colleges relying upon the decision of the coordinate Bench in ‘*Braham Singh and others Vs. State of Haryana and others*’, 2008 (3) SCT 555.

13. The issue in the said case was whether the ‘*Laboratory Assistants*’ working in private affiliated colleges would be entitled to get the same pay scale as the Junior Lecturer Assistants working in Government Colleges and whether both the said posts could be equated.

14. Therefore, the issue raised in **Gurcharan Singh** (*supra*) was not with regard to pay parity between the ‘*Laboratory Attendants*’ and ‘*Laboratory Assistants*’ of the private affiliated colleges as it was an admitted position that ‘*Laboratory Assistants*’ were promoted from the post of ‘*Laboratory Attendants*’. Therefore, the appellant’s reliance on the said case to get pay parity is wholly misplaced.

15. Accordingly, the present letters patent appeal is dismissed and the connected applications, if any, are hereby disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

April 08, 2024

vandana

Whether speaking/reasoned :

Yes

Whether reportable :

No