

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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CWP-13979-2020

Date of decision: 20.02.2024

Paras

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present: Mr. Dheeraj Mahajan, Advocate for the petitioner.

Mr. Swapan Shorey, DAG, Punjab.

AMAN CHAUDHARY J.

1. The prayer in the present petition is for the issuance of a writ in the nature of certiorari/mandamus for quashing the order dated 18.05.2020 passed by Commissioner of Excise and Taxation, Patiala and directing the respondents to consider the case of the petitioner for compassionate appointment.

2. Learned counsel would submit that the father of the petitioner was working as a Peon in the Department of Excise and Taxation since 20.08.2001. He got divorced from his wife and thereafter adopted the petitioner, being his nephew, through a registered deed of adoption dated 07.04.2005. He, however, passed away on 20.03.2006 and at that time, the petitioner was approximately 8 years old, his date of birth being 11.07.1997. As per the Instructions dated 21.11.2002, Annexure P-7, in which clause 14(b) says that the Department has to depute any senior official to meet the family members of the deceased employee, advice and assist them for getting appointments on compassionate grounds, but the same was not done. These were reiterated by the instructions dated 27.04.2017, Annexure P-9.

He completed his graduation in May of 2018 and on 01.10.2018, Annexure

P-5, submitted an application for appointment on compassionate basis against Group-C post for which, the minimum qualification required was graduation and he, at that time, was 21 years old. He did this in accordance with the instructions dated 03.07.2008, Annexure P-8, which provides that a dependent child can apply for compassionate appointment within a period of one year from the date of attaining the age and education qualifications for Group-C and Group-D appointment in Government service. The same having not been considered, he submitted a representation dated 05.03.2020, Annexure P-6. However, his case was rejected on 18.05.2020, Annexure P-1, on the ground that the petitioner had submitted his representation more than 12 years after the death of his father, without taking into account the aforesaid Instructions dated 03.07.2008. The family pension and other retiral dues have been duly released to him. Reliance is placed on the judgment of Hon'ble the Supreme Court in **Ganesh Shankar Shukla vs. State of U.P. and another**, 2023 (176) FLR 936.

3. Learned State counsel, on the other hand, unable to controvert as regards the Instructions dated 03.07.2008, Annexure P-8 is concerned, however submits that the application being belatedly filed was thus, rightly rejected.

4. Heard learned counsel on either side.

5. Before proceeding further, it would be apposite to refer to Instructions dated 03.07.2008, wherein proviso below para 13 (a) was added, which reads thus:

“ Provided that in the case where the deceased Government employee leaves behind his/her minor children, who are studying at the time of death of the employee and are not qualified for an employment in the Government and the spouse is not in a position to join the Government job, a dependent child may be allowed to apply for compassionate appointment by the Competent

Authority, within a period of one year from the date of attaining the age and educational qualifications for a Group 'C' or 'D' appointment in Government."

6. The petitioner could have applied for appointment on a compassionate basis after attaining the age and acquiring the educational qualifications, which he did. The rejection of his claim ignoring the aforesaid Instructions and on the ground of the application being filed belatedly, smacks of non-application of mind by the authorities.

7. It is evincible that the petitioner could not have submitted his application any time before he actually did, so as to claim the right of consideration for appointment on compassionate basis in terms of the policy of the State Government. Hon'ble the Supreme Court in **Ganesh Shankar Shukla** (supra), wherein, as per Rule 5 of U.P. Recruitment of Dependents of Govt. Servants Dying in Harness Rules, 1974. a period of five years had been prescribed for filing the application seeking compassionate appointment, however since at the time of the death mother of the appellant, he and his sister were minor, it was held that the rigours of the above Rule would not be attracted. The operative portion of the judgment reads thus:

"9. Consequently, the present appeal is allowed in view of the peculiar hard facts of the case. The appellant to apply for compassionate appointment to the State, giving his educational qualifications within one week. Considering the said application, the respondent-State will make appointment within next two months."

8. In **Canara Bank vs. M. Mahesh Kumar** 2015 (7) SCC 412, as well, it was observed that if the dependent of the deceased employee was a minor at the time of death, the offer of appointment on compassionate basis should be kept open for consideration till the minor attains the age of majority and becomes eligible for the same and should not have been rejected solely on the ground of lapse of time or delay.

9. On a cumulative consideration of the peculiar facts and circumstances of the case, the ground of rejection of the claim of the petitioner is found to be untenable, thus, the impugned order is hereby set aside. As a corollary thereto, it would be just and appropriate to direct the respondents to consider the petitioner and if found eligible in terms of the policy, offer appointment to him, within a period of four weeks, from the date when a web-print of this judgement is received by the competent authority.

20.02.2024
Hemant

(AMAN CHAUDHARY)
JUDGE

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