

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

LPA NO. 1084 OF 2023 (O&M)

DATE OF DECISION : FEBRUARY 27, 2024

Jagvir Singh @ Gursewak Singh

...Appellant

Versus

State of Punjab and others

...Respondents

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

HON'BLE MS. JUSTICE LAPITA BANERJI

Present : Mr. Ranjeet K. Jaswal, Advocate,
For the appellant.

Mr. Salil Sabhlok, Senior DAG, Punjab.

LAPITA BANERJI, J.

Under consideration in the present appeal is a judgment and order dated May 08, 2023 passed by the Hon'ble Single Judge in CWP No.4821 of 2020 '*Jagvir Singh @ Gursewak Singh V. State of Punjab and others*'. The Hon'ble Single Judge dismissed the writ petition by refusing to exercise his discretion to issue a writ of certiorari, setting aside the impugned letter dated October 11, 2019, (Annexure P-4) rejecting the petitioner's claim for compassionate appointment and for further prayer for relief of mandamus to consider the case of the petitioner.

2. The facts of the case in brief are narrated hereafter :-

i) The petitioner's father, one Mahal Singh (MS) was a Patwari who died in harness on January 22, 2006. During his life time, he solemnized two marriages and both the widows, one Beant Kaur (BK) and

one Charanjit Kaur (CK), filed civil suits for claiming the service benefits of the deceased employee MS. BK, mother of writ petitioner Jagvir Singh @ Gursewak Singh along with the writ petitioner filed the first suit being No.94-T of March 24, 2006 for release of service benefits of MS in their favour and permanent injunction against the State of Punjab in granting the same to the second wife CK and her son Simarpreet Singh (SS) who were impleaded as defendants No.5 and 6 in that suit. The petitioner being a minor at that time filed the suit through his mother.

ii) In the second suit (bearing No.443-T dated April 07, 2006/08) filed by CK and her minor son SS against the State of Punjab, reliefs of declaration and permanent injunction were claimed restraining the State from granting the service benefits to BK and writ petitioner Jagvir Singh.

iii) Learned Civil Judge (Junior Division), Patiala, by judgment and decree dated December 19, 2013 came to the finding that the second wife-CK could not establish that the marriage between first wife-BK and MS had been dissolved. Just because BK was living separately did not indicate that the marriage had dissolved between her and MS. Therefore, he held that the plaintiffs in the first suit being BK and the petitioner were to be considered Class-I heirs, along with Amar Kaur (AK), the mother of the deceased and the plaintiffs were entitled to receive the service benefits. Consequently, defendants No.1 to 3 (State) were restrained from releasing any benefits in favour of CK and SS. In the event defendant No.4-mother raised any claim towards the service benefits of her son then her claim was directed to be decided as per Rules. The claim of the plaintiffs for grant of compassionate appointment was directed to be considered by the State-respondents, as per Rules within a period of two months from the date of decree. The second suit filed by CK was dismissed with costs.

iv) Being aggrieved and dissatisfied with the said decree, CK and SS (minor, through his mother) filed two appeals before the learned Additional District Judge, Patiala. Both the appeals being CA-87 of February 07, 2014 and CA-745 of February 07, 2014, were disposed of by a common judgment and order dated September 26, 2014.

v) The learned Additional District Judge, Patiala came to the finding that it was apparent from the evidence on record that deceased-MS contracted a second marriage with CK during subsistence of his first marriage. Simarpreet Singh (SS), being born from the second marriage was also entitled to service benefits of deceased MS, being a Class-I heir. The appellate Court held that SS was also entitled to pensionary benefits and other death benefits along with the wife BK, son-writ petitioner and the mother-AK, in equal shares. Thus, the appeals were allowed in part. However, the appellate Court did not interfere with the finding in respect of compassionate appointment. The State authorities complied with the appellate Court's judgment with regard to service benefits which stemmed from the death of the employee and the family pension payable to the heirs of the deceased as per Rules.

vi) As far as the issue of compassionate appointment was concerned, the authorities rejected the claim of the petitioner vide impugned letter dated October 11, 2019. It was noted that even though the petitioner was a minor at the time of the death of the employee, it was the responsibility of the mother/guardian to submit an application for compassionate appointment within six months of the employee dying in harness, as per the instructions dated November, 21, 2002 of Personnel Department, Government of Punjab. In the present case, both the petitioner

and his step brother SS submitted applications for compassionate appointment in 2014, which was 08 years after the death of the employee.

vii) Furthermore, it was stated in the impugned letter that the learned Additional District Judge, vide order dated September 26, 2014 had only directed the pensionary benefits and other death benefits to be granted to the heirs and nothing further was directed to be done by him. As per Clause 14 of 2002 Instructions of the Personnel Department, any member of the family who was given appointment on compassionate grounds, had to take care of the remaining dependants of the deceased and consent was necessary for that purpose from the other family members but neither did they give the consent in favour of the petitioner nor SS for grant of the same. From the aforesaid fact it was deduced by the Deputy Commissioner, Patiala that both the families of the deceased employee were capable of earning their livelihood for the last 13 years so neither the petitioner nor SS was eligible for appointment on compassionate grounds. Since the other heirs did not give any consent in favour of either one of the male children, the financial destitution of the families was not proved. Being aggrieved by the said rejection, the petitioner filed the present writ petition which was dismissed by the Hon'ble Single Judge on the ground that more than 17 years had lapsed since the death of father of the petitioner and no financial hardship existed as on date.

3. After hearing the parties and the materials placed on record, this Court finds that immediately upon the death of petitioner's father, an application dated January 29, 2006 was made within a few days of the death by his mother for herself and on his behalf (as the petitioner was only 12 years of age at the time of death of his father) for release of pensionary benefits, death benefits and compassionate appointment. In response, vide

an order dated February 22, 2006, the Tehsildar-respondent No.3 directed the petitioner's mother to produce the "legal heirs' certificate". Since there was a matrimonial dispute between the petitioner's parents, a suit for decree of divorce was filed by the petitioner's father under Section 13 of the Hindu Marriage Act, 1955 which got dismissed on September 07, 1999. The appeal filed by his father was also dismissed vide judgment dated April 15, 2009. Despite the same, his father solemnized second marriage with CK during the subsistence of his first marriage.

4. From the perusal of the written statement, it appears that the reasons for refusal to grant of compassionate appointment were office instructions dated November 21, 2002. Plea that compassionate appointment is not a right but an exception to the Rule is put forth. For processing the prayer for compassionate appointment, a 'No Objection Certificate' had to be issued by the other heirs which the petitioner was unable to provide. In the event compassionate appointment was granted to a person, he would be legally obliged to maintain the other heirs. The stand of the respondents is that the order dated October 11, 2019 deciding the representation of the petitioner dated January 14, 2014 was a speaking order whereby the petitioner's claim was rightly rejected.

5. This Court notices that the learned Deputy Commissioner without challenging the decree passed by learned Civil Judge (Junior Division), Patiala dated December 19, 2013, (whereby the petitioner's prayer for grant of compassionate appointment was required to be considered as per Rules), decided to reject the same. The Appellate Court also vide an order dated September 26, 2014 did not interfere with the findings made by learned Civil Judge (Junior Division), Patiala on that

issue. The issue thus became final between the parties and the Deputy Commissioner could not have taken a contrary view to the same.

6. In the written statement filed by defendants No.1 to 3 (State) before the learned Civil Judge (Junior Division), Patiala, no defence was taken with regard to late filing of the application for compassionate appointment. Neither was any plea taken with regard to other heirs not consenting to the appointment in favour of the writ petitioner. In paragraph 6 of the plaint filed by BK and the petitioner, they categorically claimed their rights over the moveable and immovable property of the deceased MS and also made a claim for appointment on compassionate ground. The State-respondents only made a bald denial in the written statement. Furthermore, in paragraph 9 of the plaint, the plaintiffs averred that the cause of action in the suit arose on January 22, 2006 when the petitioner's father died in harness, on January 29, 2006 when the representation was made and also on February 22, 2006 when the letter from defendant No.3 was received for furnishing "legal heirs' certificate". The said paragraph was denied in the written statement by way of a mere denial, without any factual or legal reasoning.

7. A beneficial reference may be made to a recent decision of Supreme Court of India in Civil Appeal No.8935 of 2011 "*Thangam and another v. Navamani Ammal*" wherein it has been categorically held that a general or evasive denial cannot be treated as "*sufficient*". All the pleadings in the plaint have to be controverted in a para-wise and specific manner.

Relevant extract is reproduced herein below:

"xxx
15.1 Order VIII Rules 3 and 5 CPC clearly provides for specific admission and denial of the pleadings in the plaint. A general or evasive denial is not treated as sufficient. Proviso to Order VIII Rule 5 CPC provides that even the admitted facts

may not be treated to be admitted, still in its discretion the Court may require those facts to be proved. This is an exception to the general rule. General rule is that the facts admitted, are not required to be proved.

15.2 The requirement of Order VIII Rules 3 and 5 CPC are specific admission and denial of the pleadings in the plaint. The same would necessarily mean dealing with the allegations in the plaint para-wise. In the absence thereof, the respondent can always try to read one line from Page 13 of 16 one paragraph and another from different paragraph in the written statement to make out his case of denial of the allegations in the plaint resulting in utter confusion.

15.3 In case, the defendant/respondent wishes to take any preliminary objections, the same can be taken in a separate set of paragraphs specifically so as to enable the plaintiff/petitioner to respond to the same in the replication/rejoinder, if need be. The additional pleadings can also be raised in the written statement, if required. These facts specifically stated in a set of paragraphs will always give an opportunity to the plaintiff/petitioner to respond to the same. This in turn will enable the Court to properly comprehend the pleadings of the parties instead of digging the facts from the various paragraphs of the plaint and the written statement. Xxx”

8. Furthermore, due to inaction on the part of State-respondents, the petitioner was constrained to file an execution application being Execution case No.195 of 2015 which was disposed of by an order dated July 11, 2016 (Annexure P-3). The executing Court categorically directed the said respondents/judgment debtors to execute the order of granting appointment on compassionate grounds as per Rules by rejecting the objection of the State. The operative part of the order reads as under:-

“xxx

7. Keeping in view of the judgment and decree dated 19.12.2013 whereby the claim of the plaintiffs for the grant of appointment on compassionate grounds is to be considered by the defendants no.1 to 3 as per rules. Under these circumstances, the objectors/J.Ds no.1 to 3 are bound to execute the order of granting appointment on compassionate grounds as per rules.

In view of my findings given above, the objections in hand filed by the applicant/objector are hereby dismissed.”

It has also not been contended by the State-respondents that due to any injunction operating against them, the representations on behalf of the petitioner dated January 29, 2006 and January 14, 2014 were not considered by them during the pendency of appeal. Admittedly, no appeal was filed by the State-respondents challenging the order dated July 11, 2016 passed by the executing Court.

9. The State-respondents in reply filed to CWP-4821 of 2020 had strongly urged that the writ petition is hopelessly barred by the laws of limitation. However, there is no explanation at all as to why it took more than five and a half years for the Deputy Commissioner to decide the representation of the petitioners dated January 14, 2014. There is no explanation at all as to why no decision was taken within a reasonable period of time from the passing of the directions by the executing Court on July 11, 2016. Moreover, there is also no denial of the fact that pursuant to the prayer made by the petitioner through his mother, a “legal heir certificate” was called for by respondent No.3-Tehsildar on February 22, 2006.

10. Insofar as the argument of the respondent-State is concerned that the purpose of providing compassionate appointment is to mitigate the hardship faced by family of the deceased employee due to the sudden death of the breadwinner of the family. This principle cannot be said to operate when the application is taken up for consideration many years after the death of the deceased employee on account of *inter se* litigation between the heirs and this Court respectfully finds that the same cannot be an absolute bar. It is trite law that ordinarily while delay in itself is a sufficient bar to a claim for compassionate appointment, it is the facts of each case that are relevant.

11. A beneficial reference may be made to the Apex Court's judgment reported in 2022 SCC Online 1908 "*Ganesh Shankar Shukla v. State of U.P and another.*" In that case the learned Single Judge had dismissed the appellant's prayer for compassionate appointment. The same was also dismissed by the Hon'ble Division Bench of the High Court. The appellant was a minor child when his mother died in harness on March 13, 2003. The father of the appellant predeceased his mother. At the time of mother's death, the appellant was five years old whereas his elder sister was eight years old. The minor children had to invoke the jurisdiction of State Public Service Tribunal for release of pensionary benefits on account of death of their mother. The Tribunal passed an order on March 31, 2016 but still the pensionary benefits were not released. The order was implemented only in 2018 after filing of contempt petition.

12. The appellant therein applied for compassionate appointment on February 17, 2020 but such prayer was declined on the ground that it was not a regular source of recruitment and was to be offered to meet the emergent financial distress suffered by the family. Since the appellant survived for 17 years after the death of his mother, therefore, he lost the right to claim compassionate appointment. The State relied on Rule 5 of the U.P Recruitment of Dependents of Government Servants Dying in harness Rule, 1974, which contemplated a period of five years for making an application to seek compassionate appointment, though there was a provision of relaxation of such time limit. Since both the children were minor even after passage of five years from the date of death of deceased employee, the Apex Court held that the rigor of Rule 5 could not be made applicable to the appellant. Furthermore, since the appellant had survived on account of financial support of maternal grandparents, the respondent-

State was held not to be justified in raising a technical plea of delay in seeking compassionate appointment. The Apex court went on to hold that on the facts of that case the State had shown total inhuman approach in dealing with two minor children of the deceased employee.

13. Similar is the present case where the appellant was undisputedly a minor at the time of his father's death and his mother has agitated for his rights since 2006 by not only filing representations but also by filing of civil suit. Both the appellant and his mother contested the appeals filed by CK and also filed an execution application. Upon the decree of learned Civil Judge (Junior Division) of 2013 being upheld before learned Additional District Judge in 2014 on the issue of compassionate appointment, again the prayer for appointment of the petitioner was made. After refusing to consider the appellant's prayer sympathetically by applying the relevant Rules in proper perspective, the State-respondents should not be allowed to defeat the prayer for compassionate appointment on the technical plea that there was a delay in approaching the respondent authorities. When the appellant through his mother has agitated for his rights from 2006 onwards before a competent court of law and the suit was decreed upon being contested, then how a plea of delay can be raised by the State-respondents to defeat the appellant's prayer is beyond comprehension of this Court. This Court has no hesitation to hold that the decision making process of the State respondents has been arbitrary and perverse.

14. It is the respondent authorities who have failed to consider the representation of the petitioner within a reasonable time and now seeking to defeat his claim by taking a stand that delay defeats the claim for compassionate appointment. The said stand taken by the respondent authorities is in the teeth of judgment and decree dated December 19, 2013

and order passed by the executing Court dated July 11, 2016. Without controverting the claim of petitioner in the aforesaid proceedings on the grounds that are now urged, the Deputy Commissioner has not only sought to frustrate the letter and spirit of the aforesaid orders but also sought to sit in appeal over the judgments and decree passed by a competent Court of law. Such an exercise of authority is completely without any jurisdiction and cannot be condoned. The same suffers from perversity and error of law on the face of the record.

15. Accordingly, the appeal is allowed and order of Hon'ble Single Judge dated May 08, 2023 is set-aside, with a direction to the State authorities to process the prayer for compassionate appointment of the petitioner as per the Rules, within a period of three months from the date of certified copy of the order. The impugned decision dated October 11, 2019 is also set-aside and quashed. Furthermore, the costs assessed at Rs.50,000/- for undue harassment shall also be paid to the appellant/petitioner within two months of date of this order.

21. All the connected applications, if any, are also disposed of.

(G. S. SANDHAWALIA)
ACTING CHIEF JUSTICE

(LAPITA BANERJI)
JUDGE

FEBRUARY 27, 2024
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Whether speaking/reasoned : Yes
Whether reportable : No