

CWP-17052 of 2020

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

CWP-17052 of 2020

Reserved on: 09.01.2024

Pronounced on: 29.01.2024

Nitin Negi

.....Petitioner

Versus

State Consumer Disputes Redressal Commission, Punjab and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE NAMIT KUMAR

Argued by: Mr. Madhav Pokhrel, Advocate,
for the petitioner.

Mr. T.P.S. Walia, AAG, Punjab.

NAMIT KUMAR, J.

1. Petitioner has approached this Court by way of filing the present writ petition under Article 226 of the Constitution of India seeking a writ of *certiorari* for setting aside the order dated 15.07.2020 (Annexure P-7) issued by respondent No.2 vide which the claim of the petitioner for appointment on compassionate basis has been rejected on the ground that he has not passed the Punjabi language examination upto 5th standard, which is required for appointment as peon and secondly that as per guidelines, an application for compassionate appointment beyond five years cannot be entertained as father of the petitioner died on 31.12.2001.

2. The brief facts leading to the filing of the present petition are that father of the petitioner Sh. Jagdish Singh Negi son of Sh. Gian Singh Negi was working as Class-IV employee (Peon) with respondent No.2 i.e. District Consumer Disputes Redressal Forum, Shaheed

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Bhagat Singh Nagar, Punjab, and while in service he died on 31.12.2001 leaving behind the following family members: -

Sr. No.	Name of the member	Age as on 31.12.2001	Relation with the deceased (Jagdish Singh Negi)
1.	Parmila	23 years	Wife
2.	Nitin Negi (petitioner)	8 months	Son
3.	Sarveshari	18 years	Sister
4.	Trilochani Devi	57 years	mother

3. Mother of the petitioner (wife of the deceased) moved first application for compassionate appointment on 18.01.2002 and the second application on 19.04.2002 to respondent No.2. In the second application dated 19.04.2002 it was submitted by her that she has not done any studies in Punjabi subject till date but she will pass 5th standard examination very soon. However, vide letter dated 15.07.2002, it was conveyed to the mother of the petitioner that she was not eligible for appointment to Class-IV post on compassionate ground as she had not studied/passed Punjabi upto 5th standard, which is minimum requisite qualification. Thereafter on 28.05.2003, she submitted her 5th class certificate along with her application, which was filed by stating that no Class-IV vacancy is available in the office and the request will be considered as and when Class-IV vacancy occurs in the office.

4. It is the case of the petitioner that his date of birth is 25.04.2001 and he was of the age of eight months when his father died on 31.12.2001. He, on attaining the age of 18 years, attained majority on 25.04.2019 and by that time had also passed matriculation examination also. After a period of one year and fifteen days after

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attaining the age of majority, petitioner applied for appointment on compassionate basis vide application dated 10.05.2020 (Annexure P-3). Thereafter, vide letter dated 24.06.2020, respondent No.2 asked the petitioner to submit the certificate showing that the petitioner has passed the Punjabi language examination upto 5th standard. However, petitioner submitted representation dated 10.07.2020, stating therein that he has passed the matriculation (10th) examination from Punjab School Education Board, but since he has not studied the Punjabi subject as such, he requested that if he is given appointment, he will appear in Punjabi language examination of 5th standard and will submit the certificate by passing Punjabi language upto 5th standard within a period of one year from the date of appointment. However, respondent No.2 vide order dated 15.07.2020 rejected the claim of the petitioner for appointment on compassionate basis on the grounds that he has not passed the Punjabi language examination upto 5th standard, which is required for appointment as peon and secondly that as per guidelines an application for compassionate appointment beyond five years cannot be entertained as father of the petitioner died on 31.12.2001.

5. Learned counsel for the petitioner has argued that claim of the petitioner for appointment on compassionate grounds has wrongly been rejected by respondent No.2 and the said action is totally illegal and arbitrary. He submitted that the petitioner has attained the age of majority on 25.04.2019 and also passed his matriculation examination by that time and he submitted the application for appointment on compassionate grounds on 10.05.2020, which has wrongly been

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rejected by respondent No.2 vide impugned order dated 15.07.2020 (Annexure P-7). He further submitted that although the petitioner has not passed the Punjabi language examination of 5th standard, and if he is given appointment, he shall pass the Punjabi language upto 5th standard within a period of one year from the date of appointment. He has further placed reliance upon Policy dated 21.11.2002 for compassionate appointment issued by the Government of Punjab, Department of Personnel. The relevant portion from the said policy is as under: -

“No.11 10598/art 14420

*GOVERNMENT OF PUNJAB
DEPARTMENT OF PERSONNEL
(Personnel Policies II, Branch)*

Dated 21.11.2002 (Chandigarh)

To

*All Heads of Departments.
Registrar, Punjab & Haryana High Court.
All Commissioners of Divisions
All Sub-Divisional Officers (Civil)
In the state of Punjab.*

Subject:- Scheme for compassionate appointment-2000-Grant of employment in the State Services on compassionate grounds policy regarding.

Sir/Madam,

I am directed to address you on the subject noted above and to say that at present, the policy regarding grant of employment in the State Services Class-III and IV on compassionate grounds is mainly contained in circular letter No.11/27/94-2PPI/2364, dated 05.02.1996. This policy was framed on the basis of the judgment of the Hon'ble Supreme Court of India delivered in the case of "Umesh Kumar Nagpal Versus State of Haryana and

others (1994) 4 S.C. Cases (138)". The Apex Court held that the object of compassionate appointment is to enable the penurious family of the deceased employee to ride over the sudden financial crisis and not to provide employment. It was further held that mere death of an employee does not entitle his family to compassionate appointment, The authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death. The offering compassionate appointments as a matter of course irrespective of the financial condition of the family of the deceased and making compassionate appointment in posts above Class-III and IV, is legally impermissible. The compassionate appointments cannot be granted after a lapse of reasonable period, which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in further. The object being to enable the family to get over the financial crisis which is faces at the time of death of the sole bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

It has been considered appropriate that there is need to review the whole policy on compassionate appointments by taking a clue from the policy of Government of India and to impose strict conditions so that compassionate appointment are available only to very deserving cases. Most of the vacancies that are available or accrue in direct quota posts in various departments are consumed by these compassionate appointments considerably reducing vacancies for carrying out recruitments from the open market. This has a direct reflection on the efficiency and working of the departments as is restricts the Government for making selections from a wider choice of

I henceforth, the objective of the Scheme is limited to grant of appointment on compassionate grounds to persons who fall in the categories mentioned below:

(2) A dependent member of the family of the deceased Government employee, who dies in harness

6. ELIGIBILITY

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respect under the provision of the relevant Recruitment Rules.

8. RELAXATIONS

(a) Upper age limit could be relaxed wherever found to be necessary. In case of reserved categories of SC/BC,

widows the age relaxation may be allowed as per policy instructions issued from time to time. The lower age limit should, however, in no case be relaxed below 18 years of age in case of Group "C" and below 16 years in case of Group "D". However, the Administrative Department may relax upper age limit by 5 years in deserving cases.

NOTE Age eligibility shall be determined with reference to the date of application and not the date of appointment.;

(b) No relaxation in educational qualification is permissible. However, for Group "D" minimum 5th standard is necessary. For Group "C" the appointing authority may temporarily relax the conditions for the passing of Punjabi Language for a period of six months. The persons so appointed shall have to pass an examination of Punjabi Language equivalent to Matriculation standard of he/she has to qualify a test concerned by the Language Wing of the Department of Education, Punjabi within prescribed period, If he she fails to qualify the test, he/she may be dealt with like other employee as per rules.

x x x x

13. PROCEDURE

(a) The proforma as in Annexure-1 may be used by Department offices for ascertaining along with the document as given in Annexure-II, and submitted to the Appointing Authority within a period of 6 months from the date of death or disability of a person/employee as the case may be. Appointment must be made within a period of one year within the Department and 2 years in other departments through Re-deployment Cell. Genuine belated requests with cogent reason for compassionate appointment can be entertained only within a period of 5 years from the date of death or disability of the employee

person with the special approval of the Personnel Department and Finance Department.”

6. Learned counsel for the petitioner further submitted that proviso to para 13(a) of the abovesaid policy has been added by the State of Punjab vide letter dated 03.07.2008, which reads as under: -

“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 of majority and educational qualification for a Group-"C" or "D" appointment in Government.

2. On humanitarian considerations, it has also been decided as a special one time measure to extend this benefits to all old deserving cases. In such cases, an application for employment may be made within six months from the date of issue of these instructions. If not already made. The Administrative Department should complete the process of giving employment with a period of nine months from the date of issuance of these instructions. No further relaxation shall be allowed under any circumstances.”

7. On the strength of above proviso, learned counsel submitted that the case of the petitioner has wrongly been rejected by respondent No.2.

8. On the other hand, learned State counsel has submitted that the petitioner has no absolute right for appointment on compassionate basis. His case has rightly been rejected by respondent

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No.2 as firstly his application cannot be entertained beyond the period of five years from the date of death of his father and secondly he had not passed the Punjabi language examination upto 5th standard. He further submitted that even the proviso added vide letter dated 03.07.2008 below para 13(a) does not advance the case of the petitioner. He, therefore, submitted that the impugned order is perfectly legal and valid and does not require any interference by this Court under Article 226 of the Constitution of India.

9. I have heard learned counsel for the parties and perused the record.

10. The facts are not in dispute that father of the petitioner died on 31.12.2001 while in service and the wife of the deceased employee (mother of the petitioner) moved first application for compassionate appointment on 18.01.2002, which was duly replied by respondent No.2 vide letter dated 16.04.2002.

11. Thereafter, on 19.04.2002 mother of the petitioner moved another application stating that she has not done any studies in Punjabi subject till date but she will pass 5th standard Punjabi examination very soon, which was duly replied by respondent No.2 vide letter dated 15.07.2002 as under: -

“Reference your request for appointment to Class-IV post in this Forum on compassionate ground consequent upon the death of your husband Sh. Jagdish Singh Negi, who was an employee of this Forum.

This is to inform you that as per qualifications laid down by the State Govt. A person having passed 5th standard (with Punjabi as subject) is alone entitled to appointment

to Class-IV post on compassionate ground. Though as per certificate submitted by you. You have passed 5th standard examination from the Primary School, Oring. You have not studied Punjabi upto 5th standard. Even in the writing submitted by you, it was mentioned that you have not passed any examination in Punjabi Language, You are than not eligible for appointment to Class-IV post in this Forum on compassionate ground, your request for appointment to Class IV post on compassionate ground would be considered as and when you submit necessary proof of having passed the 5th standard examination in Punjabi.

This is for your information please.

*Sd/- (In English)
President,
Distt. Consumer Disputes
Redressal Forum,
Nawanshahr”*

12. Thereafter, mother of the petitioner moved application dated 28.05.2003 and submitted that she has now passed 5th grade, including Punjabi subject, so her case for compassionate appointment may be considered, which was filed by respondent No.2 as there was no vacancy of Class-IV with respondent No.2 at that point of time.

13. It is the case of the petitioner that he attained the age of majority of 18 years on 25.04.2019 and on passing matriculation examination, he submitted application dated 10.05.2020 seeking appointment on compassionate basis which has been rejected by respondent No.2 vide order dated 15.07.2020 on the ground that he has not passed the Punjabi language examination upto 5th standard, which is required for appointment as peon and secondly that as per guidelines an

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application for compassionate appointment beyond five years cannot be entertained as father of the petitioner died on 31.12.2001.

14. From the perusal of the Policy reproduced above, it is clear that firstly relaxation in qualification is not permissible and, therefore, case of the petitioner has rightly been rejected by respondent No.2. Secondly, so far as proviso added below para 13(a) of the Policy is concerned, a bare perusal of the same would show that the object of adding the said proviso is that 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 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 of majority and educational qualification for Group 'C' and 'D' appointment. The said proviso would not be applicable in the present case as the petitioner was of the age of eight months only when his father died on 31.12.2001 and the said proviso is beneficial only to those minor children who were studying at the time of death of the employee.

15. The Hon'ble Supreme Court in ***The Chief Commissioner, Central Excise and Customs, Lucknow and others v. Prabhat Singh, 2013(2) S.C.T. 58*** while considering the similar issue has held as under: -

“13. Most importantly, the High Court did not take into consideration one of the most significant reasons depicted in the orders passed by the appellants (dated 5.1.2006 and

22.5.2008), namely, that under the OM dated 5.5.2003 appointment on compassionate ground was permissible within a period of three years from the date of death of the concerned employee in harness. Vijay Bahadur Singh, the father of Prabhat Singh had died on 2.3.1996. The candidature of Prabhat Singh, for appointment on compassionate ground, under the OM dated 5.5.2003 could have been considered only till 1.3.1999. Thereafter, Prabhat Singh was rendered ineligible for appointment on compassionate ground. Pointedly, on aforesaid ground the Review Committee constituted by the appellants to consider the claims of dependents of employees who had died in harness, vide an order dated 21.9.2007, had excluded the names of persons including Prabhat Singh, from the list of pending cases for appointment on compassionate ground, because they could no longer be appointed on compassionate ground, since more than three years had expired after the death of the concerned bread winner in harness. Had the High Court or the Tribunals applied their mind to the aforesaid pre-condition for eligibility for appointment on compassionate ground, none of the directions issued by the High Court or the Tribunals would have been issued. Such directions could have been issued only when the party approaching the Tribunal or the High Court had established a prima facie case, by demonstrating fulfillment of the terms and conditions stipulated in rules/regulations/policy instructions/office memoranda, relevant for such consideration. Had the aforesaid simple exercise been carried out, it would not have been necessary to examine the matter again and again. In the instant case, on a simple issue of compassionate appointment, there have been repeated rounds of litigation, the first time before the CAT-Allahabad Bench, then before the CAT-Lucknow

Bench, and thereafter, before the High Court. From the High Court the matter has now been carried to this Court. If only the pre-requisite eligibility of Prabhat Singh for appointment on compassionate ground had been examined, it would not have been necessary to examine the matter again, and yet again. The instant observations have been recorded only to demonstrate how judicial time at different levels has been wasted by entertaining a frivolous litigation. Surely, because Prabhat Singh had approached a judicial forum nine years after the death of his father, whereas, appointment on compassionate ground is permissible only within three years of the death of the bread winner, the matter deserved to have been rejected at the stage of first entertainment.

14. We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed. Where claims for appointment on compassionate ground, exceed, the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process, necessarily has to be fair, and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed, so that, the exercise carried out in choosing one of the two candidates against a solitary available vacancy, can be shown to be based on reason, fair-play and non arbitrariness.

15. *The very object of making provision for appointment on compassionate ground, is to provide succor to a family dependent on a Government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT-Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment.*

16. *Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Claus's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court's intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy family requiring financial support, and thereby, push into penury a truly indigent, destitute and*

impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion.”

16. Further the Hon’ble Supreme Court in **Jagdish Prasad v. State of Bihar, 1996 (1) SCC 301** has held as under: -

".....The very object of appointment of a dependent of the deceased employees who died in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year, the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules."

17. A Division Bench of this Court **Bijender Singh v. State of Haryana, 1999(3) SCT 98** has held as under: -

"One of the principles which is clearly discernible from the various judicial precedents referred to above, is that the minor dependent of deceased employee cannot claim appointment as of right on his/her attaining majority unless the rules or the administrative instructions which regulate ex gratia employment/compassionate appointment provide for consideration of the claim of such dependent after he/she becomes major, the Court cannot issue a writ in the nature of mandamus directing the public employer to appoint such dependent after lapse of many years. It is also consistent view of the Courts that long time gap between the date of the death of the employee and the date of submission of application by an eligible dependent is sufficient to draw an inference that the family of the deceased was not in dire need of

assistance in the form of ex-gratia employment/compassionate appointment."

18. This Court in ***Tinku v. State of Haryana and others, 2021(6) SLR 811*** has held as under: -

*"8. It is well settled that appointment to public office is required to be made by strictly adhering to the mandatory requirement of the Constitution. Compassionate appointment is an exception to the general rule. Provision has been made in order to help the bereaving family immediately, who has lost its bread earner, to tide over the immediate crisis. Compassionate appointment is not a right but a concession. A government/public employment is not a hereditary office. Such provision has been made to provide immediate succor to the dependents of the deceased. Moreover, it is also well settled that the compassionate appointment cannot be claimed as a matter of right especially after a passage of time. Reference in this regard can be made to the judgment of the Supreme Court in **Umesh Kumar Nagpal v. State of Haryana (1994) 4 SCC 138.***

19. Keeping in view the aforesaid, the petitioner is not entitled for appointment on compassionate basis after about 22 years from the date of death of his father on 31.12.2001 when he was eight months old and is now over 22 years of age. The position of law is settled that appointment on compassionate basis is not an alternate source of recruitment. Nor does the consideration for such employment is a vested right, which can be exercised at any time in future.

20. No other point has been urged.

21. In the wake of the position, as narrated above, the impugned order is perfectly legal and valid and does not require any

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interference by this Court. Consequently, the present writ petition is dismissed with no order as to costs.

29.01.2024
R.S.

(NAMIT KUMAR)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No