

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(207)

CWP No. 1989 of 2016
Date of Decision : 15.01.2024

Om Kumari and another

...Petitioners

Versus

State of Haryana and others

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Abhimanyu Singh, Advocate for the petitioners and
Ms. Suman Saharan, Advocate for
Mr. Sandeep Goyat, Advocate for the petitioners.

Mr. Saurabh Mohunta, Deputy Advocate General, Haryana.

Harsimran Singh Sethi J. (Oral)

1. In the present petition, the grievance of petitioners is that petitioner No. 2 i.e. son of the deceased employee, namely Jaibir Singh should have been granted the benefit of compassionate appointment on a suitable post keeping in view the educational qualification of petitioner No. 2.
2. Certain facts needs to be mentioned herein for correct appreciation of the issue in hand.
3. The father of petitioner No. 2, namely, Jaibir Singh, who was working as a Constable, unfortunately died on 09.03.1993. The petitioner No. 2 being the elder son, was minor at the time when the employee Jaibir Singh died. After the death, the petitioner No. 1 i.e.

widow of the deceased was offered compassionate appointment, which she refused with the condition that as and when her elder son i.e. petitioner No. 2 will gain majority in age, he be considered for the said compassionate appointment. As the said benefit of compassionate appointment has not been granted to petitioner No. 2, the present petition has been filed.

4. Learned State counsel submits that the compassionate appointment is not a source of appointment but only an exception created to mitigate the financial hardship of the family of the deceased employee and in the present case, once the appointment was offered to petitioner No. 1, which she refused, there is no reason that the said appointment can be given to the petitioner No. 2 after 30 years of the death of the employee. Learned counsel for the respondents further submits that the claim of the petitioners is squarely covered against the petitioners keeping in view the judgment of the Division Bench of this Court in LPA No. 160 of 2021 titled as *Tinku Vs. State of Haryana and others*, decided on 22.03.2022.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. It is the conceded fact that after the death of the employee, petitioner No. 1 was offered compassionate appointment, which she refused even though, while refusing, the petitioner No. 1 had requested that as and when petitioner No. 2 will gain the age of majority, he be considered for compassionate appointment. Question of law arise that

whether the said consideration can be given at this belated stage, when 30 years have passed since the death of the employee concerned. As per the settled principle of law settled by the Division Bench of this Court in ***Tinku's case (supra)***, no old cases can be opened for the grant of compassionate appointment. In ***Tinku's case (supra)***, the Division Bench has held that keeping in view the Government Instructions dated 22.03.1999, the claim for the grant of compassionate appointment can only be raised within a period of three years of the death of the employee and in case, no such claim is raised, no benefit of compassionate appointment can be given.

7. In the present case, the Jaibir Singh employee died in the year 1993 and it is a conceded fact that the claim qua the appointment of the son was never raised within a period of three years of the death of the employee. The relevant paragraphs 9 and 10 of the judgment in ***Tinku's case (supra)*** is as under :-

“9. Keeping in view the settled principle that the compassionate appointment cannot be used as a source of appointment and it is only an exception, this Court is of the considered opinion that the claim for appointment at that belated stage was not justified. The Apex Court in 'Shreejith L. Vs. Deputy Director (Education) Kerala & others', (2012) 7 SCC 248, and in Sima Banerjee (supra) has held that compassionate appointment is not to be granted at a belated stage and is only an exception to the general source of recruitment. It is to be noticed that the Three Judges Bench in N.C. Santhosh (supra) had also held similarly and gone to the extent that even the consideration in accordance

with the norms as applicable on the day of death of the Government employee cannot be asked for as a vested right.

Relevant portion of the said judgment read as under:-

“19. Applying the law governing compassionate appointment culled out from the above cited judgments, our opinion on the point at issue is that the norms, prevailing on the date of consideration of the application, should be the basis for consideration of claim for compassionate appointment. A dependent of a government employee, in the absence of any vested right accruing on the death of the government employee, can only demand consideration of his/her application. He is however disentitled to seek consideration in accordance with the norms as applicable, on the day of death of the government employee.

20. In view of the foregoing opinion, we endorse the Tribunal’s view as affirmed by the High Court of Karnataka to the effect that the appellants were ineligible for compassionate appointment when their applications were considered and the unamended provisions of Rule 5 of the Rules will not apply to them. Since no infirmity is found in the impugned judgments, the appeals are found devoid of merit and the same are dismissed.

*10. The Apex Court took the said view even while noting that the matter had been referred for consideration to a Larger Bench in **Sheo Shankar Tewari (supra)** and thus the said judgment as such is binding upon this Court.”*

8. Learned counsel for the petitioners has not been able to rebut the question of law settled by the Division Bench of this Court covering his case against him.

9. Keeping in view the above, no ground is made out for the grant of prayer as raised in the present petition qua the compassionate appointment of petitioner No. 2, at this stage.

10. Dismissed.

January 15th, 2024
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No