

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

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CWP-24512-2017

Date of decision: 16.04.2024

NEERAJ KUMAR

...PETITIONER

Vs.

THE FOOD CORPORATION OF INDIA AND OTHERS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr. T.P.S. Makkar, Advocate
for the petitioner.

Mr. Anurag Jain, Advocate,
Mr. Ajay Kamboj, Advocate and
Mr. Kuljeet Singh, Advocate
for the respondents.

JAGMOHAN BANSAL, J (ORAL)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking setting aside of order dated October' 2011 (Annexure P-2) whereby claim of the petitioner for compassionate appointment has been rejected.
2. The father of petitioner was working with respondent-FCI as 'Dustin Operator' who on 12.06.2001 passed away in harness.
3. The petitioner applied for compassionate appointment on 19.12.2001. The respondent placed his name in the waiting list. The respondent has kept 5% seats of direct recruitment for compassionate appointment. The name of the petitioner figured at Serial No. 827 in the list of candidates under category-IV. His name came to be considered in 2011, however, on account of non- availability of vacancies and huge number of applicants, his application came to be rejected by impugned order dated October' 2011 (Annexure P-2).

4. Mr. T.P.S. Makkar, Advocate submits that respondent has wrongly rejected petitioner's claim. His father had died in harness, thus, respondent was duty bound to consider him for a post in Category-IV.

5. Per contra, Mr. Anurag Jain, Advocate submits that impugned order was passed in 2011 whereas writ petition was filed in 2017, thus, it is liable to be rejected on the doctrine of delay and latches.

6. I have heard the arguments of learned counsel for the parties and perused the record.

7. The respondent follows compassionate policy framed by Central Government. 5% posts of direct recruitment are meant for compassionate appointment. On account of non-availability of vacancy, the petitioner could not be appointed.

8. The object of compassionate appointment or ex-gratia payment is to protect family of the deceased employee from destitution, penury and starvation. In the object clause of the policy framed by the respondent, it has been specifically noticed that object of the appointment on compassionate ground is not to give a member of the deceased employee's family a post, much less a post for a post held by the deceased but to provide relief to the family of a deceased employee to tide over the sudden crisis brought about by his/her premature death. The relief envisaged would provide the distressed family immediate succor and financial assistance to recover from the unexpected deprivation of the income of the sole bread-winner of the family.

9. The Apex Court in **Umesh Kumar Nagpal Versus State of Haryana; (1994) 4 SCC 138**, has held that appointment on compassionate ground is a concession and cannot be claimed as a matter of right especially after passage of substantial time. The relevant extracts of the said judgment read

as:-

“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.”

10. From the perusal of above-cited judgment and policy of the respondent-FCI, it is evident that object of the scheme is to protect family of the deceased from being driven to destitution and penury. Petitioner’s father passed away more than 23 years back. The respondent could not appoint him on account of non-availability of vacancy. The petitioner’s claim was rejected in 2011 and he approached this Court in 2017. It seems that he wants to make hay at this belated stage which is impermissible in equity as well as in law.

11. In the wake of above-referred judgment and considering inordinate delay on the part of petitioner, this Court does not find it appropriate to invoke

its extra-ordinary writ jurisdiction. The present petition deserves to be dismissed and accordingly dismissed.

16.04.2024
manoj

[JAGMOHAN BANSAL]
JUDGE

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