

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.

2024-PHHC-161705-DB



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LPA-199-2018 (O&M)

Date of Decision: 04.12.2024.

Ashish Chopra

...Appellant.

Versus

State of Punjab and others

....Respondents.

CORAM: HON'BLE MRS. JUSTICE LISA GILL
HON'BLE MRS. JUSTICE SUKHVINDER KAUR

Present: Mr. Gaurav Sharma, Advocate for the appellant.

Mr. Rohit Ahuja, DAG, Punjab.

LISA GILL, J. (Oral)

1. Prayer in this appeal is for setting aside order dated 07.11.2017 passed by learned Single Bench whereby CWP-25363-2017 filed by appellant/ writ petitioner was dismissed.

2. Appellant/ writ petitioner filed CWP-25363-2017 seeking setting aside of order dated 08.09.2017 passed by Director Education Department (S.E.) Punjab, whereby petitioner was dismissed from service while concluding that appointment to the post of Vocational Teacher had been obtained by appellant on compassionate basis, *de hors* the provisions of law and in a fraudulent manner. Writ petitioner pleaded that his mother was serving as Math Mistress in Government Senior Secondary School, Valur, District Ferozepur. She died in harness on 12.09.2003. Appellant, being elder son, sought appointment on compassionate basis, vide application dated 18.10.2003. Subsequent applications were also submitted while attaching relevant certificates as well as an affidavit of his father. Appellant, in the meanwhile

acquired higher qualification of Bachelor in Engineering (Electrical) and had again represented before the department and submitted a fresh application on 02.01.2008 for appointment. Appointment was ultimately afforded to appellant in the year 2012 after five years. His application was not considered earlier. An anomaly in the pay grade of appellant arose and came to the knowledge of the District Education Officer (SE), Ferozepur City and during said proceeding, it emerged that appointment of appellant to the post of vocational teacher was not in accordance with Rules dated 08.07.1995. Charge-sheet dated 17.03.2016 was issued to appellant with allegations that he had secured the job on compassionate ground by tendering false affidavit and that his qualifications were not according the Rules of 1995. Further allegation was that appellant had tendered a false affidavit to the effect that he was dependant upon his mother Smt. Seeta Budhwar and that his father also tendered an incorrect affidavit dated 30.07.2004 to the effect that only source of income for making both ends meet, was the family pension, whereas appellant's father was a serving government servant and had retired on 29.02.2011. Appellant having the qualification of B.Tech (Electrical Engineering) in the month of May, 2007, was statedly not eligible for the post of vocational teacher in terms of the Rules of 1995. Reply was submitted by the appellant.

3. Detailed inquiry was conducted at the level of Tehsildar and District Education Officer, Ferozepur, wherein it was found that appellant's father was very much in service at the time of death of appellant's mother and at the time of appointment also, he was receiving a pension of Rs.23,037/- per month. As per instructions dated 21.11.2002, when both parents are in government job, in the event of death of one, job can be provided to any of the dependants keeping in view the circumstances, after approval of the

government. Disciplinary Authority vide order dated 08.09.2017 terminated services of appellant finding the allegations raised against him to be correct.

4. Aggrieved therefrom, CWP-25363-2017 was filed by the appellant which was dismissed by learned Single Bench finding no merit in the arguments raised on his behalf. After taking note of the various affidavits filed by appellant and his father and considering the facts and circumstances of the case, it was concluded that appointment of appellant was indeed *de hors* the provisions of law. Affidavits of appellant and his father, it was found had been cleverly worded and undertaking furnished in such a manner that factum of appellant's father being a government servant as such did not emerge. Aggrieved of order dated 07.11.2017, present appeal has been filed.

5. Learned counsel for appellant argues that impugned decision dated 08.09.2017 is liable to be set aside as the controversy has not been considered in correct perspective. Copy of enquiry report was never supplied to appellant. Appointment in question was not afforded to appellant on the basis of his earlier applications, which had been submitted in the year 2003-04, therefore any affidavit submitted at that time cannot be taken into account and has been wrongly considered by learned writ Court. Appointment was given on the basis of affidavits and applications filed in 2011, which are correct. Moreover, Appointing Authority is the DEO while order of dismissal was passed by Director Education Department (S.E.) Punjab. Remedy of appeal has thus been denied to appellant. It is wrongly observed in the impugned order of dismissal that appellant did not fulfil the eligibility criteria. Reliance in this regard has been placed upon judgment of Hon'ble the Supreme Court in **R.K. Vashisht Vs. Union of India and others, 1993 SCC (L&S) 153.** Learned counsel reiterates that entire proceedings should be set aside on the ground that

enquiry report has not been supplied. It is thus prayed that this appeal be allowed, impugned order dated 07.11.2017 passed by learned Single Bench be set aside and writ petition is allowed as prayed for.

6. Learned counsel for State refutes the said arguments while submitting that appellant is guilty of concealment. His father who was serving Treasury Office at the time of death of appellant's mother, submitted an incorrect affidavit. He retired in the year 2011. Application was deliberately kept pending for all these years in order to avoid the condition of obtaining approval of government which was required in terms of 2002 Policy. Conduct of appellant was clearly fraudulent. Reply to charge sheet had been sought and was duly submitted by appellant, who had also been called for personal hearing but he chose to remain absent and moreover he did not even fulfil the requisite qualification. Learned counsel for State relies upon the judgment of Hon'ble the Supreme Court in **Union of India and others Vs. Prohlad Guha and others, 2024 AIR (SC) 3588** and **State of Haryana and another Vs. Ankur Gupta, 2003(7) SCC 704**. Dismissal of appeal is prayed for.

7. We have heard learned counsel for the parties and have perused the file with their able assistance.

8. Factum of death of appellant's mother on 12.09.2003 while in service, as math teacher in Government Senior Secondary School, District Ferozepur, is a matter of record. It is further admitted that at the time of her death, appellant's father was a serving government servant in the Treasury Office. Perusal of file reveals that initial applications submitted by the appellant seeking appointment on compassionate ground do not indicate that his father was a serving government servant at that time. Appellant stated that he is the eldest son in the family and seeks appointment on

compassionate basis being the actual legal heir of his mother. Affidavit dated 30.07.2004 submitted by appellant indicates that the property owned was one residential house and that source of livelihood was pension received. Dependants in Proforma B of the affidavit are detailed to be Gulshan Rai Chopra i.e. husband of the deceased, appellant-Ashish Chopra and Sumit Chopra as sons of deceased. In the affidavit dated 30.07.2004 submitted by appellant, there is no mention about the father being a government servant. Appellant declares that he is a dependant on his mother. Affidavit dated 30.07.2004 furnished by appellant's father too does not reveal any details about father's employment or his income. Evidently, the matter was kept in limbo till retirement of appellant's father when things were raked up again. Affidavits were again submitted by appellant and his father along with the undertakings. In these affidavits/ undertakings of 2011, appellant's father simply mentions that after his retirement, the amount as mentioned therein was received on account of DCRG and GP funds which had been spent by him on study of his children i.e. appellant who was stated to be pursuing his MBA and younger son who had been pursuing BDS, from the family pension of Rs.23,037/- received by him.

9. It is further a matter of record that on charge sheet being served upon the appellant, he had submitted his reply and reply being found unsatisfactory, Smt. Baljit Kaur, Divisional Education Officer, Faridkot and Shivpal, Deputy Divisional Education Officer, Faridkot were appointed as Enquiry Officers. After conducting enquiry, in respect to which learned counsel for appellant was unable to point out any discrepancy, enquiry report dated 18.05.2017 was submitted, wherein allegations against the

appellant were found to be proved. Personal hearing was afforded to appellant by Disciplinary Authority but he chose not to appear on the stipulated date(s) and neither did he send any information about his absence nor sought another date for personal hearing. Order of dismissal was accordingly passed by Director, Education Department on 08.09.2017.

10. We do not find any merit in the arguments raised by learned counsel for appellant that appointment was afforded on the basis of subsequent affidavits therefore any affidavit submitted in the year 2003-04 should be ignored. Applications submitted by appellant in the year 2011 reveal the same to be in continuation of his earlier applications. Learned counsel for appellant was unable to controvert that factum of his father's service with government was indeed not brought on record at the outset. There is also no merit in the argument that copy of enquiry report was not supplied to appellant. It is to be noted that there is no such pleading available in the writ petition. It is only averred that appellant was not afforded an opportunity of hearing which is clearly controverted by material on record. Plea of the appellant that respondents were very well aware of his father being in service and still having afforded the appointment, could not turn around to dismiss him from service, is a plea noticed only to be rejected. In case, an incorrect step has been taken by the authority, it is not to be perpetuated forever. Furthermore, it is pertinent to note that appointment on compassionate basis is not a vested right and neither is it an alternate mode of appointment. It is a settled position that appointment on compassionate basis is meant to help the family of an employee tide over a crisis, which may hit them on the death of employee while in service. The

purpose is to save the family from destitution and is definitely not an alternate mode of recruitment. Such appointment cannot be claimed or offered after considerable or significant lapse of time or after the crisis is over. Hon'ble the Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana and others, 1994(3) SCT 174** held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to dependent of the deceased employee was accepted as it bore a rational nexus to the object sought to be achieved viz. relief against destitution. It is, however, held that compassionate appointment can't be claimed when the crisis is over and neither can it be offered on an *ad hoc* basis.

11. Gainful reference in this respect can be made to judgment of Hon'ble the Supreme Court in **State of Jammu and Kashmir Vs. Sajid Ahmed Mir, AIR 2006 (SC) 2743**, wherein it was held that grant of appointment on compassionate basis after lapse of considerable period of time after the death of a Government employee, would not be in furtherance of the object of a scheme for compassionate appointment. This position was reiterated by Hon'ble the Supreme Court in **The State of West Bengal Vs. Debabrata Tiwari and others 2023 AIR (SC) 1467**.

12. Hon'ble the Supreme Court in **State of Madhya Pradesh and others Vs. Amit Sriwas, 2020 (10) SCC 496** held that there is no inherent right to appointment on compassionate basis. It is a right based on certain criteria and is to provide support to a needy family. There is indeed nothing on record to indicate that writ petitioner was in such state of penury at the

relevant time. It is a settled position that provision for appointment on compassionate basis is a clear departure from general provisions providing for appointment to a post. Such appointment is clearly not a source of recruitment. It is apparent that in the instant case, the appellant and his family members were quite comfortable and were not hit by any penurious conditions. Reference in this regard can be made to the judgment of Hon'ble Supreme Court in **Prohlad Guha's case (supra)**, wherein it has been held that compassionate appointment is granted to those persons whose family is left deeply troubled or destitute by primary breadwinner either having passed away or having been incapacitated. When persons seeking appointment on such ground attempt to falsely establish their eligibility, such positions cannot be allowed to be retained. In the given factual matrix impugned order dated 07.11.2017 has been correctly passed. Learned counsel for appellant in unable to point out any illegality, infirmity or irregularity in the impugned order dated 07.11.2017, passed by learned Single Judge.

13. No other argument has been addressed.

14. Keeping in view the facts and circumstances as above, this appeal is dismissed with no order as to cost.

15. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(SUKHVINDER KAUR)
JUDGE

04.12.2024.

<i>komal</i>	Whether speaking/ reasoned	:	Yes/ No
	Whether Reportable	:	Yes/ No