



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

224(5 cases)

Date of decision:03.12.2025

(1) CWP-6281-2022

Pinki Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

(2) CWP-6457-2022

Kiran Devi

...Petitioner

Versus

State of Haryana and others

... Respondents

(3) CWP-5255-2024

Kavita and others

... Petitioners

Versus

State of Haryana and others

... Respondents

(4) CWP-6581-2022

Sarveshwari Devi

... Petitioner

Versus

State of Haryana and others

... Respondents

AND

(5) CWP-5979-2024

Sarveshwari Devi

... Petitioner

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Manjit Singh Gahlawat, Advocate for
Mr. P. C. Yadav, Advocate
for the petitioner(s) in all cases.

Mr. Piyush Khanna, Additional A. G., Haryana.

Mr. K. K. Gupta, Advocate
for respondents no.4 and 5 in all cases.



HARPREET SINGH BRAR, J. (Oral)

1. This common order shall dispose of all the abovementioned writ petitions as they arise from a similar factual matrix. However, for the sake of brevity, the facts are taken from **CWP-6281-2022**.

2. The present petition has been preferred under Articles 226 of the Constitution of India seeking quashing of letter dated 06.11.2009 (Annexure P-6) addressed to Deputy Commissioner-cum-President, District Red Cross Society, Ambala whereby the post of Chair Caner for blind persons was amalgamated with Master Trainer, which was further made a diminishing cadre to which no future appointments will be made. A further prayer is made to consider the son or daughter of the petitioner for compassionate appointment as her now deceased husband-Parshu Ram Pandey and also to release his retiral benefits including gratuity and leave encashment, to the petitioner.

3. Learned counsel for the petitioner contends that the husband of the petitioner worked as a Master Trainer in the office of District Red Cross Society, Ambala. Unfortunately, he passed away on 19.08.2016. The deceased was blind, as discernible from his disability certificate available at Annexure P-2, and was appointed to the post of Canner on retainership basis vide letter dated 05.12.1994 (Annexure P-3). Vide letter dated 01.12.2009(Annexure P-4), the Government of Haryana decided to adjust Chair Caners to the post of Master Trainer. However, the petitioner has not been granted financial or ex-gratia benefits in spite of the Service Rules. Further, the action of the respondent to abolish the post of Master Trainer post the resignation or death of current employees is discriminatory and violative of Articles 14, 16, 21, 300, 300A of the Constitution of India as a distinction is being created between disabled and able-bodied persons. Lastly, as per the policy dated 02.08.2019, the daughter of the petitioner is also entitled for



compassionate appointment to service in either the Government of Haryana or the Indian Red Cross Society.

4. *Per contra*, learned counsel for respondents No.4 and 5 submits that the petitioner has no locus to challenge the policy by which the deceased was adjusted in the District Red Corss Society on 100% grant-in-aid provided by respondent No.3-the Department of Social Justice and Empowerment, Haryana under the Rehabilitation Scheme of the government. The deceased willingly accepted the service conditions at the time of his adjustment and thus, as settled, the State government neither has to pay any retiral benefits or grant compassionate appointment/ ex-gratia payment qua such employees. Moreover, the adjustment is not against any regular post and in fact, was only made till such employees retired, died or resigned. Even in the Service Rules of the Indian Red Cross Society, the mode of appointment of Blind Master Trainers is by transfer from Government of Haryana, on diminishing cadre. Further in the meeting of the Indian Red Cross society on 30.06.2020, it was decided that all project employees are to be paid within the scope of the grant-in-aid and no extra payment ought to be made; rather, any excess payment was made subject to recovery. The Service Rules are not applicable *in toto* to such Master Trainers as a policy decision has been taken by the Government that no payment ought to be made to them except salary and CPF benefit.

5. Learned State counsel informs the Court that leave encashment and gratuity has already been paid to the petitioners in CWP-6281-2022, CWP-6457-2022, CWP-6581-2022 while the same will be paid to the petitioners in CWP-5255-2024 and CWP-5979-2024 within 03 months.

6. Having heard learned counsel for the parties and after perusing the record of the case, it transpires that the deceased and other similarly situated employees were neither daily wagers, nor were they appointed on work-charged



or adhoc basis. The notification dated 31.08.2009 (Annexure R-1) issued by the Social Justice and Empowerment Department, Haryana clearly stipulates that blind Master Trainers will be kept in diminishing cadre in the future and thus, no appointment can be made against these posts in the future. The relevant part of the said notification is reproduced below:

“1. No.1469-SW(1)- Blind Caners were appointed by the Social Justice and Empowerment Department, Haryana, time to time for canning of chairs of Government offices. These Caners were appointed neither on the basis of daily wager nor on ad-hoc nor on work charged basis but appointed on the basis of retainership allowance, for welfare of blinds. Their appointments were made as per the policy adopted by the department for canning of chairs of Government offices by Caners. At present, use of caning chairs has been reduced greatly in Government offices. Thus, with an objective of rehabilitating these Caners, it has now been decided by the Government that all these 128 Caners will be adjusted in the Indian Red Cross Society in the office of Haryana State Branch on the post of Master Trainer with wages equivalent to the 4th Class employees in the pay band of Rs.44000-7400 +1300 G.P. in the basic salary of Rs. 6050 per month and other benefits that are approved from time to time by the Indian Red Cross Society, Haryana Branch.

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5. Determination of CPF and other dedications, etc. of such appointed employees will be decided by the Indian Red Cross Society, Haryana State Branch and the service rules of the Indian Red Cross Society, Haryana State Branch will be applicable to these employees.”

7. The Service Rules for District Red Cross Societies in Haryana were notified on 02.03.2017 (Annexure P-5) and they came into effect from 27.02.2017. The provision governing Ex-gratia concessions reads as follows:

“15.(v) Ex-gratia

In case of death during service of any employee, Ex-gratia rules of Haryana Government will be applicable.”

8. The written statement filed on behalf of respondents No.4 and 5 states that since the post of the deceased was given the nature of diminishing cadre, the petitioner would not be entitled to compassionate appointment.

However, it remains uncertain as to why the kin of the deceased cannot claim any



ex-gratia relief, especially since vide notification dated 31.08.2009 (Annexure R-1), the service rules of the Indian Red Cross Society, Haryana State Branch were made applicable to the diminishing cadre of Master Trainers. Further, a two-Judge bench of the Hon'ble Supreme Court in *Umesh Kumar Nagpal vs. State of Haryana, (1994) 4 SCC 138* has categorically held that making compassionate appointments to posts above Class III and IV is proscribed as the motive behind this concession is limited to avoiding immediate destitution for the family of the deceased employee. Speaking through Justice P.B. Sawant, the following was held:

*“4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in Sushma Gosain v. Union of India, JT 1989(3) SC 570 : 1989(4) SLR 327 has been misinterpreted to the point of distortion. **The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV.** In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. **Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant...**” (emphasis added)*

Thus, even though the post of the deceased employee no longer exists, no reason has been indicated as to why the kin of the deceased cannot be considered for appointment to any other post from Class III or IV if they are found eligible in terms of the applicable policy.

9. Be that as it may, as far as the petitioner in CWP-6281-2022 is concerned, benefit of policy dated 02.08.2019 is being claimed while the deceased employee passed away in the year 2016. Tritely, the case of the



claimants for compassionate appointment ought to be assessed in terms of the policy prevalent at the time of death of the employee, in view of the judgment of a Full Bench of this Court in ***Krishna Kumari vs. State of Haryana 2012 (2) SCT 736***. Therefore, in the absence of learned counsel for the petitioner highlighting how the policy dated 02.08.2019 would apply to the case of the petitioner, this relief cannot be provided to her.

10. However, the petitioner(s) deserve for their claims of compassionate appointment to be considered in terms of settled law and applicable policy. Considering the objective of ex-gratia policies, the petitioner(s) may be given an opportunity to make their case before the competent authority. However, since this concession essentially allows for a side-door entry into government service, its provisions must be interpreted strictly. At this juncture, it may be relevant to refer to the judgment rendered by a three-Judge bench of the Hon'ble Supreme Court in ***Tinku vs. State of Haryana 2024 SCC OnLine SC 3292***, wherein, speaking through Justice A.G. Masih, the following as held:

*“11. The very idea of equality enshrined in Article 14 is a concept clothed in positivity based on law. It can be invoked to enforce a claim having sanctity of law. No direction can, therefore, be issued mandating the State to perpetuate any illegality or irregularity committed in favour of a person, an individual, or even a group of individuals which is contrary to the policy or instructions applicable. Similarly, passing of an illegal order wrongfully conferring some right or claim on someone does not entitle a similar claim to be put forth before a court nor would court be bound to accept such plea. **The court will not compel the authority to repeat that illegality over again. If such claims are entertained and directions issued, that would not only be against the tenets of the justice but would negate its ethos resulting in the law being a causality culminating in anarchy and lawlessness. The Court cannot ignore the law, nor can it overlook the same to confer a right or a claim that does not have legal sanction.** Equity cannot be extended, and that too negative to confer a benefit or advantage without legal basis or justification.*

*12. As regards the compassionate appointment being sought to be claimed as a vested right for appointment, suffice it to say that **the said right is not a condition of service of an employee who dies in harness, which must be given to the dependent without any kind of scrutiny or undertaking a process of selection. It is an appointment which is given on proper and strict scrutiny of the various parameters as laid down with an intention to help a family out of a sudden pecuniary financial destitution to help it get out of the emerging urgent situation where the sole bread earner has***



expired, leaving them helpless and maybe penniless. *Compassionate appointment is, therefore, provided to bail out a family of the deceased employee facing extreme financial difficulty and but for the employment, the family will not be able to meet the crisis. This shall in any case be subject to the claimant fulfilling the requirements as laid down in the policy, instructions, or rules for such a compassionate appointment.*

*13. It must be clearly stated here that in a case **where there is no policy, instruction, or rule providing for an appointment on compassionate grounds, such an appointment cannot be granted.**” (emphasis added)*

11. Therefore, in view of the discussion above, the abovementioned petitions are disposed of in the following manner:

(i) Since leave encashment and gratuity has already been paid to the petitioners in **CWP-6281-2022, CWP-6457-2022, CWP-6581-2022** and learned State counsel has assured this Court that the same will be paid to the petitioners in **CWP-5255-2024** and **CWP-5979-2024** within 03 months, the concerned authority is directed to do the needful within 03 month of date of receipt of a certified copy of this order.

(ii) The competent authority is directed to consider the case of the petitioner(s) in light of Rule 15(v) of the Service Rules for District Red Cross Societies in Haryana. Needless to say, the policy in vogue, if any, at the time of death of the concerned employee shall be applicable during such consideration. The petitioner(s) are directed to submit their claims by means of a representation within a period of 01 month from the date of receipt of a certified copy of this order, before the competent authority. The competent authority shall pass a speaking order, after affording the petitioner(s) an opportunity to be heard, within a period of 03 months from the date of receiving a certified copy of this order. Further, the decision taken thereof shall be conveyed to the petitioner(s). If the petitioner(s) is found entitled to the relief sought, the same shall be granted forthwith by the respondents.



12. Pending miscellaneous application(s), if any, shall also stand disposed of.

03.12.2025
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(HARPREET SINGH BRAR)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No