

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP-3788-2021 (O&M)

Mangal
... Petitioner

VS.

Food Corporation of India & Ors.
... Respondents

CWP-8853-2021 (O&M)

Uday
... Petitioner

VS.

Food Corporation of India & Ors.
... Respondents

1.	Judgment reserved on	23.03.2026
2.	Judgment pronounced on	20.05.2026
3.	Judgment uploaded on	22.05.2026
4.	Whether operative or full judgment	Full
5.	Delay in pronouncement of full judgment and reasons, if any	NA

CORAM: HON’BLE MR.JUSTICE SANDEEP MOUDGIL

Present: Mr. Hitesh Malik, Advocate for the petitioner(s)

Mr. Rahul Dev Singh, Addl. AG Haryana

Sandeep Moudgil, J.

This order shall dispose of the above-cited two writ petitions i.e. CWP-3788-2021 & CWP-8853-2021 as issues are inter-related. For the sake of order, CWP-3788-2021 is treated as the lead case.

Prayer

(1). The jurisdiction of this Court has been invoked under Article 226 of the Constitution of India, inter alia, for issuing a writ of mandamus directing the respondents to consider and allow his claim for appointment on compassionate grounds on the post held by his father late Sh. Jagan Ram, or any other equivalent posts in terms of the policy (Annexure P11) or any other extant policy etc.

(2). The admitted facts emerging from the pleadings are that the petitioner's father Late Sh. Jagan Ram was working as Handling Labour/Loader with the Food Corporation of India at Sonepat Depot since 01.01.1991 and continued in service till his death on 08.09.2017. It is also not in dispute that he died while on duty and that the petitioner, being his elder son, applied for compassionate appointment on 29.09.2017 along with all requisite documents. The recommendation made by the Manager (Labour) vide letter dated 28.10.2017 and subsequent communications exchanged between the Regional Office and the Zonal Office are also admitted by the respondents.

(3). Learned counsel for the petitioner submits that after the death of his father, the family comprising the widow, two sons and three daughters was left without any source of income and the petitioner, being graduate and otherwise eligible, immediately submitted an application seeking compassionate appointment under the prevailing policy. The petitioner further relies upon letters dated 28.10.2017, 04.12.2017, 12.11.2018 and various communications issued by the authorities themselves recommending that cases of dependents of workers dying on spot while on duty be considered on priority and, if necessary, by adjustment against vacancies available at zonal level. It is the grievance of the petitioner that despite repeated recommendations and despite completion of all formalities, the respondents failed to take a final decision and kept the matter pending without justification.

(4). On the basis of the averments made in the written statement, learned counsel for the respondents, while not disputing the petitioner's eligibility at the relevant time, have opposed the claim primarily on the ground that compassionate appointment could be granted only subject to availability of

vacancy within the 5% ceiling prescribed under Circular dated 04.03.2003. It has been further pleaded that the petitioner's name was duly entered in the roster register as an “on the spot death case” and his case was to be considered subject to vacancy. The respondents have also relied upon subsequent developments, namely declaration of Departmental Labour System (DLS) as a “dying cadre” vide Circular No.01/2020 dated 08.01.2020 pursuant to approval granted by the Government of India and the decision taken by the Board of Directors of FCI.

(5). It is further contended that once DLS was declared a dying cadre and further induction was prohibited, no appointment could thereafter be granted in the said cadre. Reliance has been placed upon the judgment of the Supreme Court in **Union of India and others v. Amrita Sinha, Civil Appeal Nos.7640-7641 of 2021** to contend that compassionate appointment cannot be claimed as a vested right and has to be governed by the policy prevailing at the time of consideration.

(6). Heard learned counsel for the parties and the judgment was kept reserved on 25.03.2026.

(7). It is not in dispute that on the date of death of the petitioner's father i.e. 08.09.2017, the policy permitting compassionate appointment to dependents of deceased DLS workers was in force. It is further not disputed that the petitioner applied promptly on 29.09.2017 and that the authorities themselves processed and recommended his case. The communication dated 28.10.2017 issued by the Manager (Labour) specifically recommended urgent consideration of the petitioner's case. Thereafter, the Assistant General Manager (IR-L), vide communication dated 04.12.2017, further recommended

that cases of dependents of workers dying on spot while at work be considered on priority and even requested consideration at zonal level in case vacancy was unavailable in Haryana Region. Various subsequent communications dated 12.11.2018 and emails exchanged thereafter further reveal that the petitioner's claim remained under active consideration.

(8). The respondents have sought to justify denial of appointment by relying upon Circular No.01/2020 dated 08.01.2020 declaring DLS as a dying cadre. However, the said contention cannot be accepted in the peculiar facts of the present case.

(9). In **Canara Bank v. M. Mahesh Kumar, (2015) 7 SCC 412**, the Supreme Court considered a similar situation where the claim for compassionate appointment arose under an existing scheme but during pendency thereof the scheme was altered. The Supreme Court held that the claim has to be considered under the scheme prevailing on the date of death of the employee inasmuch as the rights and obligations crystallize on the date of death and subsequent withdrawal/modification of the scheme cannot retrospectively deprive the dependent of consideration under the earlier scheme.

(10). A similar controversy came to be considered by the Allahabad High Court in **Anjesh v. Food Corporation of India, 2024 (3) ADJ 430** wherein the Court dealt with the effect of declaration of DLS as a "dying cadre" upon pending claims for compassionate appointment. The Allahabad High Court considered the objection raised by FCI regarding non-availability of vacancies and the subsequent declaration of DLS as a dying cadre, and held that such subsequent developments could not be employed to defeat a claim

that had arisen earlier and remained pending consideration. The Court further noticed that the claimant therein had made timely and continuous efforts for compassionate appointment and that the authorities themselves had processed his claim. Rejecting the stand of the respondents, the Court observed that the issue regarding a “dying cadre” was not relevant to deny compassionate appointment where the claim had arisen under the existing scheme and had remained pending without a final decision. The relevant extract of the said judgment read as under:-

“24. A perusal of the writ petition shows that the petitioner had made very early and consistent efforts to seek appointment and his case was found fit for appointment by the Compassionate Appointment Committee on 13.01.2010. In the counter affidavit filed on behalf of the Corporation, the contents of Paragraph No.13 of the writ petition have not at all been denied. In Paragraph No.18, all that is said is that these are matter of record. In Paragraph No.13 of the writ petition, it is asserted that the economic condition and source of income of the deceased's family and the petitioner are such that they live in hardship, making compassionate appointment for them a necessity. This fact has been endorsed, according to the petitioner, by the report submitted by the Compassionate Appointment Committee. These facts are not in dispute. The respondents say that the petitioner was placed in a roster for compassionate appointment for the Allahabad Depot and placed at Roster Sr. No.14. It is also the respondents' case that the petitioner could be considered for compassionate appointment subject to availability of posts under the 5% vacancies for direct recruitment and set apart for compassionate appointment. This percentage of vacancy is, according to Paragraph No.7(b) of the Scheme, introduced by the

Government of India vide Office Memorandum dated 16th January, 2013.

25. To the understanding of this Court, this restriction of 5% out of the vacancies is meant for Group-C posts under the Scheme of 2013, and, in any case, that is not the scheme that would govern consideration of the petitioner's case. His case has to be considered according to the Scheme that was in force when his father died on 21.01.2009. No later scheme would govern consideration of the petitioner's case. On merits, the petitioner's case has already been recommended and found fit for consideration by the Compassionate Appointment Committee, a position admitted to the respondents.

26. At the same time, it is true and that is verily the law that the right to compassionate appointment is not a right strico sensu. An employer can consider many factors before deciding to grant compassionate appointment. The most predominant of these is the economic crisis that the death of the breadwinner has brought on the bereaved family. Here, however, the petitioner's case has been found fit by the designated Committee for consideration, but the petitioner has not been offered an appointment on the pretext: firstly, that there was no vacancy available, and, later on, on ground that now the Departmental Labour System, to which the petitioner's deceased father belonged, has been declared a dying cadre. These considerations we have already dealt with and do not find them to be relevant, particularly, the one about the 'dying cadre'. The question of availability of vacancy would be a matter that would depend on the scheme, as already said, in force in the respondents' establishment on the date of the petitioner's father's death.

27. In conclusion, it is the respondents, who have to consider the petitioner's case for compassionate appointment, but they have to do so on a correct understanding of his rights in this regard and what the law is, that would govern their decision. This Court has

clarified the principles by which the petitioner's case for compassionate appointment has to be considered by the respondents. Since the respondents, till date, have not taken a decision about the petitioner's claim for compassionate appointment, they ought to do that now; and do that strictly according to law and the guidance in this judgment."

(11). The principles flowing from the aforesaid judgment squarely apply to the facts of the present case. Here also, the petitioner applied immediately after the death of his father on 08.09.2017 and his claim was repeatedly processed and recommended by the departmental authorities themselves. The petitioner's name was entered in the roster register as an "on the spot death case" and even consideration against zonal vacancies was contemplated. Despite this, no final decision was taken for years together. Having themselves kept the petitioner's claim alive and pending since 2017, the respondents cannot now defeat the same by relying upon Circular No.01/2020 dated 08.01.2020 declaring DLS as a dying cadre. Such action, in the considered opinion of this Court, would amount to permitting the respondents to take advantage of their own administrative inaction, which cannot be countenanced in law.

(12). The ratio of the aforesaid judgments squarely applies to the facts of the present case inasmuch as the petitioner had applied for compassionate appointment immediately after the death of his father and his claim was duly processed and recommended by the departmental authorities from time to time. The respondents themselves acknowledged the petitioner's entitlement for consideration by entering his name in the roster register as an "on the spot death case". The record further reveals that the matter remained under active

consideration and continued to linger for years on account of administrative processes and inaction attributable entirely to the respondents. Having kept the petitioner's claim pending since 2017, the respondents now seek to defeat the same by relying upon the subsequent Circular dated 08.01.2020 declaring DLS as a dying cadre. Such a course of action cannot be sustained in law, particularly when the petitioner's claim had arisen and was being processed under the policy prevailing prior to the issuance of the said circular.

(13). The respondents cannot be permitted to take advantage of their own delay. Had the respondents taken a timely decision in accordance with the policy prevailing in 2017, the petitioner's claim would have been considered long before issuance of Circular No.01/2020.

(14). The plea regarding non-availability of vacancy is also unsupported by any concrete material. Except making a bald assertion regarding the 5% ceiling, the respondents have not produced any material demonstrating the actual vacancy position, the roster position, or the exercise undertaken for considering adjustment at zonal level despite specific recommendations to that effect. On the contrary, the contemporaneous correspondence relied upon by the petitioner itself shows that consideration at zonal level was contemplated under the existing instructions.

(15). Moreover, the principle that compassionate appointment is not a matter of vested right cannot possibly be ostracized, however, that does not authorize the authorities to indefinitely keep an eligible claim pending and thereafter defeat it by applying a subsequent policy change. The very object of compassionate appointment is to provide immediate financial relief to the family of a deceased employee dying in harness. The prolonged pendency of

the petitioner's claim since 2017 and the attempt to deny consideration on the basis of a later policy completely frustrate the object underlying the scheme.

(16). Accordingly, the respondents are directed to consider the petitioner's claim for compassionate appointment strictly in accordance with the policy/instructions prevailing on the date of death of Late Sh. Jagan Ram i.e. 08.09.2017, without being influenced by Circular No.01/2020 dated 08.01.2020 declaring DLS as a dying cadre. While doing so, the respondents shall also consider adjustment against available vacancies at zonal level in terms of the extant instructions and recommendations already existing on record.

(17). Let the needful be done within a period of one month from the date of receipt of certified copy of this order.

(18). The present petition is allowed in the aforesaid terms.

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

20.05.2026

V.Vishal

(Sandeep Moudgil)
Judge

1. *Whether speaking/reasoned?* :
2. *Whether reportable?* :

Yes/No
Yes/No