

(2012) 04 P&H CK 0178

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 4303 of 2009

Krishna Kumari

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: April 20, 2012

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 309

Citation: (2012) 134 FLR 1014

Hon'ble Judges: Rajiv Narain Raina, J; Rajan Gupta, J; M.M. Kumar, J

Bench: Full Bench

Advocate: Mahavir Singh Sandhu, in CWP Nos. 7276, 11330 of 2008 and 18600 of 2009, Dilbagh Singh, in CWP No. 4303 of 2009, Anand Bhardwaj, in CWP No. 14689 of 2008, T.C. Dhanwal, in CWP No. 1570 of 2007, Rakesh Nagpal, in CWP No. 5335 of 2009, Surinder Mohan Sharma, in CWP No. 14875 and 14894 of 2009, S.K. Monga, in CWP No. 20536 of 2009, Ashish Aggarwal with Kartik Gupta and Inder Pal Goyat, Rajesh Sheoran, in CWP No. 6247 of 2009, Ritam Aggarwal, in CWP No. 8113 of 2011, Jitendra Nara, in CWP No. 8070 of 2011, J.P. Sharma, in CWP No. 16193 of 2011 and CWP No. 11521 of 2010, Bhoop Singh, in CWP No. 12717 of 2009 and Yashwinder Paul Singh, in CWP No. 930 of 2011, for the Appellant; Hawa Singh Hooda, Advocate General Haryana with Kamal Sehgal, Addl. A.G. Haryana., for the Respondent

Final Decision: Allowed

Judgement

Rajan Gupta, J.

This order shall dispose of a bunch of writ petitions SC have been preferred by various petitioners. However, the facts have been referred from CWP No. 4303 of 2009.

The question of law, which has been referred to this Full Bench for decision is as regards the rules which would be applicable to Government employees who seek compassionate appointment whether it would be the rules in operation at the time of death of the employee or the rules applicable on the date when case is

considered by the appropriate authority. In view of conflicting views by various Division Benches, the case has been referred to the Full Bench.

Some facts necessary for decision of the case are being noticed here: Petitioner's husband, who had been working as Junior Engineer in Haryana Irrigation Department, expired on 23rd February, 1995. On 5th May, 1995, she moved an application to respondent department for providing employment on compassionate grounds to her only son namely, Manoj Kumar, who at that time was seven years old. A letter was thereafter addressed from the Superintending Engineer, Narnaul requesting that a post be kept reserved for the minor child of the widow in order to consider his case on attaining majority. In the year 2005, petitioner moved an application that her son be considered for appointment on compassionate ground as he had attained age of 17 years and was going to appear in B.A. final year examination. She relied upon letter, Annexure P-2 and instructions issued by Government dated 27th March, 1991. However, application was rejected by the respondents vide their letter dated 18th August, 2006. The petitioner protested and sent representations. However, stand of respondents remained the same. They communicated to the petitioner that there was no provision for employment under new policy dated 3rd August, 2006, thus petitioner was at liberty to opt for financial assistance under the new scheme which would be considered by the department. Aggrieved, petitioner preferred the instant petition before this Court.

2. In view of number of cases in which similar question arose and there being conflicting views of various Division Benches, matter was referred to Full Bench by the Single Judge. Needless to observe that facts of each case vary. We have noticed facts from one case, as referred to above.

3. Learned Counsel representing the petitioners, referred to the view taken by this Court in two Division Benches in case titled as Lalit Sharma v. State of Haryana, in CWP No. 6890 of 2007 decided on 11.7.2008 and Sheela Devi v. State of Haryana and another in CWP No. 8844 of 2007 decided on 22.8.2008, and contended that judgments delivered therein contained the correct view. Policy of compassionate appointment being in the nature of a social welfare measure needed liberal interpretation. Thus, the scheme/policy applicable on date of death of the employee should be the relevant for consideration of case of his dependant for appointment on compassionate basis. According to them, the Apex Court in its recent judgment reported as [Bhawani Prasad Sonkar Vs. Union of India \(UOI\) and Others](#), has taken the same view.

4. Learned Advocate General Haryana representing the respondents, however, referred to decisions of this Court in cases reported as Kuldip Kumar v. Uttar Haryana Bijli Vitran Nigam and another 2008 (2) SCT 254 and Sudha Rani v. State of Haryana and others 2008 (2) SCT 547 According to him, policy applicable on the date application comes up for consideration is required to be followed. He emphasized that the view taken in these judgments was in right perspective as compassionate

appointment is only a concession and not a vested right. Thus, policy in force on date of consideration of the case is applicable. According to him, issue has been finally decided by the Apex Court in judgment reported as *State Bank of India and another v. Raj Kumar*. 2010 (125) FLR 572 (SC)

5. Learned Counsel for the parties have been heard at length and careful thought has been given to the submissions made by them.

6. A brief reference to the different views taken by this Court is necessary before we proceed, beside the question of law under reference. In *Lalit Sharma's* case (supra), a Division Bench of this Court held that dependents of Government employees would be entitled to compassionate appointment in terms of the policy applicable at the time of death. In said case, Government had floated a scheme for financial assistance for dependents in lieu of compassionate appointment. The Bench came to the conclusion that dependents of Government employees who had died prior to issuance of policy dated 4.3.2003 containing provision of financial assistance were entitled to appointment on compassionate ground. However, others would be entitled to financial assistance in terms of schemes promulgated in 2003, 2005 and 2006. The judgment delivered in *Sheela Devi's* case (supra) is, however, more categorical. It was clearly held that policy in force at the time of death of the deceased employee would be applicable for deciding case of dependents for appointment on compassionate basis. The Bench was of the view that such policies are in the nature of social welfare measure and are to be considered liberally in order to ameliorate the immediate crisis which befalls the family on death of sole bread winner. In another case reported as *Rambati v. State of Haryana and others*, 2008 (4) P.L.R. 120 this Court while quashing the order rejecting the claim for compassionate appointment, held as follows :

15. The Division Bench of this Court has also recorded a very categorical finding in the cases of the nature under adjudication and recorded specific finding that the policy in operation at the time of death of the deceased would be applicable in deciding the cases for compassionate appointment. The policy of compassionate appointment is a welfare measure of the State and a very liberal interpretation is required to implement these welfare policies. The State should make a very serious endeavour to ameliorate the sufferings of the family which lost its sole bread earner while serving the State, In some of the cases, we have noticed, as it is in the present case as well as that the dependents do not own any assets and are invariably drawn from the poorest strata of the Society and such class of people who come from the lower income segment of the society deserve to be given much better treatment instead of harassing them by raising technical pleas and by citing the niceties of rules which are contradictory to law laid down by Hon'ble the Supreme Court without feeling the pain of the bereaved families. In that context, we are inclined to make a reference of decision in the case of *Secy., H.S.E.B. v. Suresh*, 1993(3) S.C.C. 601 their Lordships held that the Court must decide in the interest of public inspired

by principles of justice equity and good conscience. Similarly in the case of [Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.](#), guides us in the context of the interpretation of the statutes that how social welfare legislation should be interpreted. In that contest their Lordships have observed that provisions of such a social legislation providing for economic empowerment to workers and poor classes should be considered in the light of public law principles not of private or common laws. So far as the philosophy behind construing a social legislation is concerned, there are no two opinions, social legislation are primarily meant for welfare of a particular section of the society and should be construed liberally so as to advance the cause of the public at large.

7. Another school of thought which prevailed with Division Bench in Kuldeep Kumar's case (supra), dealing with similar question was that policy applicable on the date of consideration of the application would be relevant. In said case claim for compassionate appointment was rejected on the ground that on the date of consideration of application only provision available in the policy was for grant of financial assistance. This Court upheld the order passed by the authority and gave a direction to consider case of the petitioner for grant of ex gratia compensation. Same view was reiterated in judgment reported as Sudha Rani's case (supra). After considering the matter, the Division Bench held as under:

In view of the aforesaid principles, the facts of the present case need to be examined. Though the husband of the petitioner died on 31.5.2006, but the new Rules i.e., the 2006 Rules came into force w.e.f. 1.8.2006. Even if the copy of the said Rules has been received in the office of the Municipal Council after the issuance of letter of appointment to the petitioner, but the applicability of the Rules in respect of compassionate appointment is not depending upon the receipt of a copy of the Rules by a particular department. As per the statutory Rules framed under the proviso to Article 309 of the Constitution of India, the appointment on compassionate ground is not permissible. Only financial assistance, in terms of Rule 5 of the 2006 Rules, is admissible.

Therefore, we do not find any illegality or irregularity in the order, Annexure P-12, passed by the respondents terminating the services of the petitioner so as to grant her ex gratia financial assistance in terms of Rule 5 of the 2006 Rules.

8. It appears that question which has arisen before this Court came up before the Apex Court in Raj Kumar's case (supra). In the said case employee died in October, 2004. An application was moved by his wife in June, 2005 for consideration for appointment of her son on compassionate basis. Within two months of the application, new scheme came into force and old scheme was abolished. The new scheme provided that all pending applications would be considered under the new scheme. Apex Court came to the conclusion that old scheme was no longer applicable as same had been abolished. Appointment under the said scheme was no longer permissible. While relying upon judgment in [M.P. Housing Board and](#)

[Another Vs. Manoj Shrivastava](#), the Court held that while processing applications for grant of liquor vend licenses policy prevalent on the date of consideration would be applicable. By same analogy in case of compassionate appointment policy prevalent on the date of consideration of application would apply. Observations made by the Apex Court are as under :

8. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, upto the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

9. In a later judgment in Bhawani Prasad Sonkar's case (supra), similar question came up before the Apex Court. Matter pertained to compassionate appointment on the basis of various circulars issued by the Railway Board. In terms of circular dated 22nd September, 1995, wards of railway employees who were medically de-categorized, were entitled to consideration for appointment on compassionate basis. Father of appellant in said case was de-categorized vide order dated 30th August, 1999 and was retired with immediate effect. He moved an application on 1st September, 1999 requesting that his son be considered for compassionate appointment as Class-IV employee. No answer was received in response to said application. On 29th November, 2001, Railways issued a letter stating that in case of employees who had opted for voluntary retirement after 29th April, 1999, only cases of wards of totally incapacitated employees would be considered. A letter dated 15.2.2002 was sent to appellant rejecting the case of his son for appointment on compassionate ground as application was not found fit for consideration.

Aggrieved, the petitioner challenged the order before the Tribunal and the High Court but remained unsuccessful. His appeal came up before the Apex Court. While allowing the appeal, the Apex Court held as under:

21. Tested on the touchstone of these broad guidelines governing appointment on compassionate ground, we are of the opinion that the appellant has made out a case for such appointment. It is manifest that in terms of circular dated 29th November, 2001 only those employees, who have been totally incapacitated from performing any service after 29th April, 1999 were entitled to seek compassionate employment for their wards. In the instant case, appellant's father retired on 30th August, 1999 i.e. after 29th April, 1999, but was not offered alternative employment in terms of the Circular dated 29th April, 1999.

22. The circular/letter dated 29th November, 2001, on which reliance was placed while rejecting appellant's claim has to be understood in its correct perspective. Evidently, it seeks to limit the benefit of compassionate employment to only those incapacitated employees who had been retired after 29th April, 1999, as in case of employees who were found fit for performing services in a lower category, Circular dated 29th April, 1999 would be applicable, and the Railways was bound to offer alternative employment to such employees. It flows there from that after 29th April 1999, those employees who did not accept the alternative employment, and opted for voluntary retirement could not be given the benefit of compassionate employment for their wards.

23. In the instant case, the respondents have not placed any material on record to establish that the appellant's father was offered any alternative employment in terms of Circular dated 29th April, 1999. On the contrary, it appears that the Standing Committee recommended his retirement. Having denied appellant's father the benefit of Circular dated 29th April 1999, the respondents cannot claim that Circular dated 29th November, 2001 was applicable to appellant's father, disentitling him from seeking employment on compassionate ground for his son as he was not totally incapacitated and had sought voluntary retirement. It is clear from the retirement order dated 30th August, 1999 that the appellant's father was retired from service pursuant to the recommendation of the Standing Committee.

24. In light of the fact that Circular dated 29th November, 2001 was not applicable in the case of appellant's father, inasmuch as the benefit of the 29th April, 1999 Circular was not extended to him, and he was made to retire from service, we are of the opinion that the earlier circular dated 22nd September, 1995 is applicable in the instant case. Consequently, the appellant would be entitled to employment on compassionate ground as the said Circular contemplates compassionate employment for the wards of those employees who have been medically de-categorized, and have retired, without being offered an alternative suitable job. We are unable to accept the plea of the respondents that on being de-categorized, appellant's father had opted for voluntary retirement.

25. In light of the foregoing discussion, the appeal is allowed; the impugned judgment is set aside and it is directed that the appellant shall be granted employment on compassionate ground within three months of the receipt of copy of this judgment, subject to his complying with other eligibility conditions, as applicable on 1st September, 1999. However, for all intents and purposes, he shall be deemed to be in service from the date of actual joining.

26. In the facts and circumstances of the case, there shall be no order as to costs.

10. In aforesaid case, Apex Court also held that compassionate employment is given solely on humanitarian grounds with the objective of providing succor to employee's family to tide over sudden financial crisis. Ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit in consonance with Articles 14 and 16 of the Constitution of India as no other mode of appointment is permissible. The Court came to the conclusion that concept of compassionate appointment has been recognized as an exception to the general rule governing employment in public service, carved out in the interests of justice. The scheme/policy providing for such appointment would be binding on both employer and employee. Being an exception to general rule policy has to be strictly construed and confined to the purpose it seeks to achieve. It was held that while considering claim for compassionate appointment, certain factors are to be borne in mind as laid down in para 20 of the judgment (Bhawani Prasad Sonkar). Same are as under :

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

11. In view of above judgment of the Apex Court and principles laid down therein, it is clear that the employer is within its power to lay down a policy for compassionate employment. It has to strictly adhere to the such policy. Though compassionate employment is in an exception to the general rule, power of the Government or public authority to frame policy to offer compassionate employment has been accepted by the Courts in the interest of justice and to meet sudden crisis which befalls the family when an employee dies in harness or is incapacitated. The question whether the policy in operation at the time of death of the employee would be applicable or that at the time of consideration of application would operate, arises for consideration. In Raj Kumar's case (supra) decided by the Apex Court it was held that there being no vested right for compassionate employment scheme in force at the time application is actually considered would apply, not the scheme in force earlier to said date. Subsequent policy would impliedly abolish the earlier policy. In this case, scheme which was in operation at the time of consideration of the application specifically provided that all pending applications would be considered under the new scheme. In a later judgment in Bhawani Prasad Sonkar's case (supra) the Apex Court took the view that the scheme in operation at the time of incapacitation of the employee would be applicable and not the scheme framed subsequently. In our considered view date of death of an employee is an important factor to be taken into consideration as schemes for compassionate appointment are floated with a view to provide immediate relief to families of deceased employees to meet the financial crisis they face on death of sole bread winner. Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognized as an exception to the general rule for offering public employment would necessarily be applicable strictly in the parameters laid down therein and accepted by the Apex Court in its various decisions. Particular reference may be made here to [Umesh Kumar Nagpal Vs. State of Haryana and Others](#), wherein it was 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 rationale nexus to the object sought to be achieved viz. relief against destitution. The Supreme Court held :

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in

future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. 7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.

12. In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognized by the Apex Court in its recent judgment in Bhawani Prasad Sonkar's case. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the Apex Court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly. Before parting with the judgment, however, we may mention that in present bunch of petitions facts of each case vary. Since issue referred to this Bench has already been decided, individual cases be placed before learned Single Judge for decision in accordance with law and facts and circumstances of each case.