

(2013) 02 P&H CK 0049
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 2327 of 1997

Inder Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 15-02-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 227
Penal Code, 1860 (IPC) — Section 120B, 420, 467, 468, 471

Citation : (2013) 170 PLR 185 : (2013) 2 SCT 762

Hon'ble Judges : G.S. Sandhawalia, J

Bench : Single Bench

Advocate : C.M. Chopra, for the Appellant; Deepak Jindal, D.A.G., Haryana, for the Respondent

Judgement

G.S. Sandhawalia, J.—The present petition has been filed under Articles 226/ 227 of the Constitution of India for issuance of writ in the nature of Mandamus directing the respondents to consider the case of the petitioner for compassionate appointment to a class III post i.e. for the post of Inspector, Food and Supplies in view of the policy dated 13.7.1971 (Annexure P-1) and 3.11.1988 (Annexure P-2) and after ignoring the instructions dated 8.5.1995 (Annexure P-9). The pleaded case of the petitioner is that his father was working as chowkidar in the Food and Supplies Department, Haryana, and died while in service on 12.3.1995. In view of instructions dated 13.7.1971 (Annexure P-1) and 3.11.1988 (Annexure P-2), the petitioner, who was dependent of the deceased employee was entitled for compassionate appointment as Inspector in the Food and Supplies Department, Haryana being graduate. The said qualification was as per the Haryana Food and Supplies Department Sub Offices (Group C) Service Rules, 1982. The petitioner accordingly applied for compassionate appointment to the post of Inspector after the death of his father. The department decided to appoint the petitioner as chowkidar and accordingly issued appointment letter dated 24.6.1995 (Annexure P-7) and turned down the request of the petitioner for the appointment as Inspector. While the case of the

petitioner was under consideration for compassionate appointment, the Government of Haryana had issued instructions on 8.5.1995 whereby compassionate appointment could only be given one step lower than the post held by the deceased employee. Since the father of the petitioner was working as class IV employee being chowkidar, the case of the petitioner could not be considered for any other post. Accordingly, the writ petition was filed on the ground that petitioner had a right to be considered for compassionate appointment on the basis of instructions which were in force at the time of the death of the father of the petitioner. The instructions dated 8.5.1995 (Annexure P-9) providing for appointment at one step lower than the post held by the deceased employee could not have any retrospective effect and could not be applied in the case of the petitioner. Accordingly, rejection of the case of the petitioner while offering him the appointment as Chowkidar and denying the appointment against the post of Inspector vide letter dated 31.7.1995 (Annexure P-8) was challenged. Reference was made to Civil Writ Petition no. 17633 of 1995-Surinder Singh v. State of Haryana and others decided on 20.12.1996 (Annexure P-10).

2. Short reply by way of affidavit has been filed on behalf of respondents No. 1 to 3 wherein it was pleaded that case of the petitioner for appointment on compassionate ground was considered and it was noticed that educational qualification pertaining to B.A. issued by the "Magadh University, Bodhgaya" was a provisional certificate and the qualification of the petitioner was treated as matriculate and as per the existing policy for appointment on compassionate ground, the appointment was to be offered at one step lower than that of the post held by the deceased employee except in cases where the deceased employee was working at the lowest level in the Government. Since the father of the petitioner was working as PR Chowkidar, lowest level of the Government, therefore, the petitioner was offered appointment on the same post. The appointment was not accepted by the petitioner stating that his qualification was B.A. and as such he was entitled to the appointment on class III posts i.e. Inspector, however, the same was rejected.

3. That since there were two mark sheets of B.A. qualification of the petitioner which carried different Roll numbers/registration number/dates but the name of certificates holder were the same, there was a doubt whether certificates were genuine, accordingly, a Division Bench of this Court had passed the following order on 2.5.1997:-

Heard the learned counsel for the parties. The writ petition is admitted.

The respondents shall be free to make enquiry regarding the genuineness of the marks sheets and other documents produced by the petitioner. If it is found that the documents produced by the petitioner were not genuine, then the respondents shall file an FIR with the police and take appropriate action for cancellation of the offer of appointment already given to the petitioner against a class-IV post. The respondents shall also make an application before the Court to

bring to its notice the result of the enquiry/investigation made into the genuineness of the documents produced by the petitioner.

4. The matter was investigated by the State Vigilance Bureau, Haryana and the petitioner was interrogated and he submitted that both the said certificates were in order but since the Enquiry Officer had held that the certificates were fictitious, it was a clear cut case of cheating and FIR No. 22 dated 24.11.1997 under Sections 420/ 467/ 468/ 471 and 120-B IPC had been lodged at Police Station, Rohtak against the petitioner.

5. In the additional affidavit filed by the petitioner, it was pleaded that the Haryana State Vigilance Bureau without properly verifying the facts from Magadh University Bodhgaya lodged the aforesaid FIR and on re-verification, the Controller Examination, Magadh University Bodhgaya had informed the Superintendent of Police, State Vigilance Bureau, Rohtak that the registration No. 57570/87 had been allotted in the name of two students, namely, Manish Kumar son of Murli Dhar and Inder Singh son of Karam Singh. Accordingly, the petitioner had been acquitted of the charges by the Judicial Magistrate 1st Class, Karnal on 28.9.2010. He had made a request to the department on 9.11.2010 for issuance of appointment as per Government policy and submitted another request on 17.2.2011. The department had informed him vide memo dated 28.1.2011 (Annexure P-16) that his case will be decided after the decision of the present petition which stood admitted. Thereafter, vide another affidavit documents Annexures P-17 to P-20 were also placed on record. Letter dated 21.3.1997 (Annexure P-17) which was issued to the petitioner asking the petitioner to submit his testimonial for reconsideration of his case by the Director, Food and Supplies and judgment in Civil Writ Petition No. 8933 of 1993 *Rajiv Kumar Sharma v. The State of Haryana* and another decided on 28.2.1995 (Annexure P-19) were placed on record wherein the said Rajiv Kumar Sharma was directed to be given appointment as Inspector, Food and Supplies.

6. Counsel for the petitioner has accordingly submitted that since father of the petitioner died on 12.3.1995 while working as Chowkidar and at that point of time policy dated 13.7.1971 (Annexure P-1) and 3.11.1988 (Annexure P-2) were in force, therefore, his case should have been considered on the basis of his qualification, keeping in mind the said policies. Reference was made to the Full Bench judgment of this Court in *Krishna Kumari Vs. State of Haryana and Others*, to contend that the policy applicable on the date of death of the employee would apply and not one applicable on the date of consideration. Reference was also made to a Division Bench judgment of this Court in *Nirmala Devi v. State Electricity Board and others* 2004 (1) SCT 614 to contend that mere pendency of the writ petition could not deny the relief to the petitioner since he had immediately approached this court on 18.2.1997.

7. The State on the other hand pressed into service a Division Bench judgment of this Court in *Bijender Singh v. State of Haryana & another* 1997 (3) RSJ 669 to contend that the policy of the compassionate appointment did not give a right to

a member of the family to claim the post held by the deceased and the observations of a Single Bench of this court in Civil Writ Petition No. 17663 of 1995 Surinder Singh (supra) holding that the policy dated 8.5.1995 prescribing appointment at one step lower was bad was not approved of.

8. In view of the above pleadings and submissions made before this Court, the question that arises is that whether the petitioner is entitled for compassionate appointment to a class III post in view of the policy dated 3.11.1988 which was in vogue at the time his case was being considered and subsequent policy dated 8.5.1995 would not come in his way. The second issue which also arises is that since it is an appointment on compassionate basis whether the petitioner is entitled for the same in view of the fact that almost a period of 18 years have expired since the date of death of his father i.e. 12.3.1995. Another factor which is to be kept into consideration is that the petitioner in view of the order passed by this Court on 2.5.1997 was prosecuted in FIR No. 22 dated 24.11.1991 under Sections 420/ 467/ 468/ 471 read with Section 120-B IPC which was lodged at Police Station, Rohtak and eventually earned acquittal at the hands of the Judicial Magistrate 1st Class, Karnal on 28.9.2010.

9. The issue of which policy is to be made applicable has been considered by this Court and there were several contradictory judgments which led to matter being referred to the Full Bench of this Court in Krishna Kumari's case (supra). The Full Bench after considering the various judgments on the issue formulated the question as to which of the rules would be applicable, whether the one prevalent at the time of death of the employee or on the date of consideration. Accordingly, it came to the conclusion that the death of the employee was a factor to be taken into consideration as the scheme floated with a view to ameliorate the financial crisis which the family was facing at that point of time was relevant. It was further held that the such application should be moved promptly and if it, was considered after lapse of time, the object of the scheme was defeated. The observations made by the Apex Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, were taken into consideration. The relevant portion of the judgment reads as under:-

2. 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.

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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 be falls 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.

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.

10. Thus, from the reading of the question of law framed and the conclusion reached, it would be apparent that date of death is the relevant date which is to be taken into consideration and at that time as per policy dated 3.11.1988, the qualification possessed by the applicant at the time of consideration for appointment had to be taken into consideration. The relevant portion of the said policy reads as under:-

Besides it, it has also been decided that in future, the cases of family members of the deceased employees for appointment to class II posts should only be considered where the person concerned is in possession of technical qualifications such as MBBS, B.E., B. Tech., B.V. Sc. etc. and he can be appointed only against class II or higher post. The remaining cases should not be considered for appointment to the gazetted posts and the proposal be sent to the Government for appointment against class III and IV posts only, keeping in view

the qualifications possessed by the applicant.

11. The subsequent policy dated 8.5.1995 thereafter departed from the earlier policy dated 3.11.1988 and keeping in view the judgment of the Apex Court in Umesh Kumar Nagpal's case (supra) provided that compassionate appointment was to be afforded at one step lower. Keeping in view the said stipulation, the petitioner was, thus, offered the post of Chowkidar and declined the post of the Inspector for which he had staked claim on the basis of his educational qualifications. Thus, the petitioner's case for consideration under the policy which was in force at the time of death of his father was departed from. Now in view of the binding proposition laid down by the Full Bench in Krishna Kumari's case (supra), it is apparent that the petitioner has a right to be considered against the policy dated 3.11.1988 on the basis of his educational qualifications.

12. Another ground that weighs in favour of the petitioner is that he has referred to the judgment of this Court in Rajiv Kumar Sharma's case (supra) wherein the deceased employee was working as Assistant in the same department i.e. Food and Supplies Department and died while in service and the petitioner in the said application submitted an application for appointment on compassionate ground to the post of Assistant Food and Supplies Officer and was offered appointment as Clerk. Thereafter, he claimed appointment as Inspector which was declined. This Court allowed the writ petition on the ground that once similarly situated persons had also been appointed as Inspector, the petitioner therein could not be denied the same benefit. Accordingly, respondents were directed to examine the case of the petitioner therein for appointment as Inspector, Food and Supplies and the respondents issued the appointment order. The appointment order dated 28.10.1995 (Annexure P-20) issued to Rajiv Kumar Sharma has also been placed on record in compliance of the direction issued by this Court in Rajiv Kumar Sharma's case (supra). This Court is also aware of the fact that the direction being issued to the State to consider the case of the petitioner after a long period has to be taken into consideration keeping in view the observations of the Apex Court in Umesh Kumar Nagpal's case (supra). However, in the facts and circumstances of the present case, the petitioner had approached this Court way back in the year 1997 when the order dated 2.5.1997 was passed. Mere pendency of the writ petition could not prejudice the case of the petitioner and the observations of the Division Bench in Nirmala Devi's case (supra) would come to the help of the petitioner wherein it has been held that the rights of the parties have to be adjudicated upon when proceedings for redressal were initiated. The said case also pertained to a compassionate appointment and while allowing the Letters Patent Appeal, this Court noticed that the husband had died in the year 1990 and direction was being issued in the year 2003 only because the matter had remained pending before this Court. The relevant observations reads as under:-

14. The argument raised by Shri Khaira that the appellant cannot be granted relief at this stage as her husband died in the year 1990 and more than 13 years

have passed, is liable to be rejected outrightly. The appellant has not only made representations from time to time but also invoked the jurisdiction of this Court in November, 1993. Lis remained pending before this Court. The rights of the parties have to be adjudicated upon keeping in view the facts when the proceedings for redressal of grievances were initiated. Therefore, the argument raised by the learned counsel for the respondent need not detain us any longer.

15. Consequently, we allow the present Letters Patent Appeal. Order of the learned Single Judge is set aside and writ petition filed by the appellant is allowed with the direction to the respondents to consider her claim for compassionate appointment in accordance with the policy contained in Annexure P.7 and decide the same within three months from the date of presentation of the copy of this order by passing a speaking order.

13. It is also a matter of record that in the present case in view of the order dated 2.5.1997 due to the stand of the State, this Court had passed a direction to make an enquiry as to whether the mark sheet of the petitioner was genuine or not. Resultantly, an FIR was lodged against the petitioner and he was prosecuted unsuccessfully and criminal trial remained pending from 24.11.1997 till the acquittal of the petitioner i.e. 28.9.2010. The petitioner also suffered criminal prosecution and keeping in view the maxim "*actus curiae neminem gravabit*" which means that no act of Court shall prejudice a man, the issue has also to be examined from this angle. The State at that point of time had projected before this Court that documents produced by the petitioner were not genuine and this Court had given liberty to make an enquiry and lodge an FIR if the documents produced by the petitioner were found not genuine. The FIR was lodged on the basis of enquiry report but before the trial Court, the benefit was given to the petitioner in view of the letter dated 23.2.1998 addressed by the Controller of Examination, Magadh University to the Superintendent of Police that it had been verified that one registration number had been allotted to two students. The Apex Court in *South Eastern Coalfields Ltd. Vs. State of M.P. and Others*, observed that if there is any injury to any person, the same has to be undone. The relevant portion reads as under:-

That no one shall suffer by an act of the Court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the Court would not have so acted had it been correctly apprised of the facts and the law. The factor attracting applicability of restitution is not the act of the Court being wrongful or a mistake or error committed by the court; the test is whether on account of an act of the party persuading the Court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only

what the party excluded would have made but also what the party under obligation has or might reasonably have made. There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the Court not intervened by its interim order when at the end of the proceedings the Court pronounces its judicial verdict which does not match with and countenance its own interim verdict. Whenever called upon to adjudicate, the Court would act in conjunction with what is the real and substantial justice. The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous litigants may feel encouraged to approach the Courts, persuading the court to pass interlocutory orders favourable, to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the Court withholding the release of money had remained in operation.

14. The said view has been reiterated in *Margret Almeida and Others, Vs. Bombay Catholic Coop. Housing Society Limited and Others*, by the Apex Court.

15. Accordingly, keeping in view all the three factors in mind and the fact that the respondents have also been keeping the matter alive which would be clear from Annexures P-17 and P-18 and have been waiting the decision of this Court which is clear from the letter dated 28.1.2011 (Annexure P-11). This Court is of the opinion that the petitioner is entitled for issuance of a writ of Mandamus directing that his claim for appointment on compassionate ground should be considered by respondent no. 2 on the basis of his educational qualifications at the time of death of his father i.e. 12.3.1995 and in case the petitioner is held to be eligible, necessary orders should be passed for appointment within three months from the receipt of a certified copy of this order. The petitioner shall be deemed to have been appointed with effect from the date of his appointment since he opted not to join earlier on the lower post of Chowkidar which was offered to him on 24.6.1995. The writ petition is disposed of in the above said terms.