
(1997) 10 P&H CK 0003
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 3248 of 1997

Karnail Singh

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 07-10-1997

Acts Referred:

Citation : (1998) 1 ILR (P&H) 402

Hon'ble Judges : M.L. Singhal, J;G.S. Singhvi, J

Bench : Division Bench

Advocate : Daya Chaudhary, for the Appellant; Ritu Bahri, AAG, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Singhal, J.—This is a civil writ petition filed by Karnail Singh whereby he has desired the quashing of order Annexure P5 declining his application for giving him compassionate appointment in place of his father Dalip Singh who was JBT teacher posted in Government Primary School, Dhundsa and died in harness on 16th November, 1976. It is averred that his father died leaving behind him, his mother and brother. On 16th November, 1976, he (Petitioner) was 2 years old. Family of the deceased did not have any source of income wherewith to maintain then. Salary of the deceased was the only source of their survival. Petitioner's mother made an application on 8th February, 1978 to the Respondents saying that she herself was unable to do the job and that her both sons were minor and as such one post be kept for her son, namely, the Petitioner for being offered to him after he attains majority and achieves qualifications essential for that job. His mother was not in a position to do the job as there was none else to look after the family and also he was to bring up her two minor children and that was the reason why she made an application to Respondent No. 4 for giving appointment to her son on his attaining majority. Government of Haryana introduced a policy for giving compassionate appointment to one member of the family of the deceased who died while "in; service leaving the family in penury

and destitution so as to relieve the family of penury and destitution and to enable them to keep the ball of life rolling. Annexure P-1 is the policy introduced in December 1970 of allowing appropriate ex-gratia grants and other facilities to the families of the Government employees who died while in service. Petitioner was born on 15th November, 1974. When the Petitioner became major, his mother submitted another application to Respondent No. 4 stating that he had become major and had passed matriculation examination and as such was entitled to appointment to the post of Clerk. Respondent Department asked his mother for completing certain formalities. Those formalities were completed by her. Petitioner's case for appointment to the post of Clerk was sent to the Chief Secretary. Respondent No. 2 wrote to Respondent No. 1 that there was no post of Clerk in the Department of Education and as such the Petitioner may be appointed in some other Department. Annexure P-2 is letter dated 28th April, 1993 addressed by Respondent No. 2 to Respondent No. 1. Petitioner became major in the year 1992. He was not given appointment to the post of Clerk as per policy of the State Government although period of about 4 years has expired. His mother and brother also gave in writing that they had no objection to the appointment of the Petitioner to the post of Clerk. His elder brother is residing separately while he is residing with his mother. He and his mother do not have any source of livelihood and they are living in penury and destitution. Family owns 8 acres of agricultural land. It is a waste land having no source of irrigation yielding no crop and generating no income. Eventually when he failed to secure appointment to the post of Clerk as per the policy of the "Government, he filed CWP No. 15791 of 1996 which was disposed of by a Division Bench of this Court on 8th October, 1996 with the direction to the Respondents to consider the request of the Petitioner in the light of the observations made by the Supreme Court keeping in view the facts set up by the Petitioner in the writ Petition. His request for compassionate appointment was rejected by the Respondents, vide order Annexure P-5 dated 8th January, 1997 saying that his prayer for compassionate appointment under ex-gratia scheme could not be entertained after a lapse of 16 years of the death of the deceased in view of the observations made by the Supreme Court in *Umesh Kumar Nagpal v. State of Haryana* JT 1994 (3) SC 525. He had previously received a letter dated 30th July, 1996 that his claim for compassionate appointment had been rejected because he was not eligible for appointment as he had not applied within 3 years of the death of his father which fact was factually not correct. His mother had applied for compassionate appointment to him on 8th February, 1978 through application sent to the Sub Divisional Education Officer, Faridabad. Even otherwise such an application, if it had been made, would have carried no meaning as no action could be taken on it before his attaining majority and the qualifications essential for manning the job. It is averred that this action of the Respondents that his application was not entertainable for compassionate appointment having been made beyond 3 years of the death of his father is illegal as he could apply for compassionate appointment only after attaining majority and achieving the qualifications essential for the post of Clerk. Three years limitation should have

been taken after he had attained majority and not when his father died when he was minor aged 2 years only. Action of the Respondents is highly undemocratic and against the object underlying, the policy of compassionate appointments.

2. Respondents contested the writ petition urging that as per the policy enshrined in letters dated 8th May, 1995 and 31st August, 1995, no compassionate appointment could be granted after such a long lapse of time. Compassionate appointment is an exception to the general rule that appointment to public service shall be through open competition among all eligible people. Compassionate appointment is intended to relieve the family of immediate hardship. If the family has been able to survive for 20 years, there is no point in offering compassionate appointment to the Petitioner as the compassionate appointment is intended to work as immediate succour to the family in distress if given within a reasonable period of the death of the Government employee, vide-circular letter No. 16/14/97-5GS 11 dated 4th July, 1997, Annexure R-I the Government has dropped the ex-gratia scheme because it had become practically impossible to meet the requirements of this scheme resulting in arrears for want of vacancies.

3. We have heard the learned Counsel for the Petitioner and learned Assistant Advocate General for the State of Haryana-Respondents and have gone through the record.

4. Petitioner's father died on 16th November, 1976. Petitioner was born on 15th November, 1974. He became eligible for the job of a Clerk on 15th November, 1992. Prior to 15th November, 1992, he was not eligible for the job of Clerk. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, the Hon'ble Supreme Court observed that "in all claims for appointments on compassionate grounds, there should not be any delay in appointment as the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread winner in the family and such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such cases, pending for years and if there is no suitable post for appointment, supernumerary post should be created to accommodate the Petitioner. These observations were reiterated in Smt. Phoolwati v. Union of India AIR 1991 SC 459. In Umesh Kumar Nagpal v. State of Haryana and Ors. JT 1994 (3) SC 525, Hon'ble Supreme Court death with the concept of compassionate appointment in public service and observed that the whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis and the object is not to give a member of such family a post much less a post held by the deceased. It was observed that mere death of an employee in harness does not entitle his family to such source of livelihood. Job is to be offered to the eligible member of the family and that too if the Government or the public authority concerned concludes on examining the financial conditions of the family of the deceased that without the compassionate appointment, the family will not be able to meet the crisis. It was observed that

compassionate appointment 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 tide" over the financial crisis which is faced at the time of the death of the sole bread winner. The Compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. In Jagdish Prasad Vs. State of Bihar and Another, the Hon"ble Supreme Court observed that "The very object of appointment of a dependent of the deceased employee who died in harness is to relieve unexpected immediate hardship and distress caused to the "family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the Appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is. accepted, it amounts to another mode of recruitment to the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules." It is thus cellar that compassionate appointment is offered to one member of the family of the deceased within a reasonable period of the death of the deceased so as to relieve" the family of the financial hardship and destitution. It has been subject to because of the untimely death of the deceased.

Claim for compassionate appointment cannot be kept alive for any length of time as there can be no reservation in favour of the member of the family of such a deceased employee to be reaped whatever be the lapse of time.

5. For the reasons given above, we are of the opinion that. the claim of the Petitioner for compassionate appointment could not be kept alive for 15-20 years when its object was to provide immediate succour to the family on when Dalip Singh died i.e. 15th November, 1974. Providing compassionate appointment to the Petitioner after a lapse of 15-20 years is to negate the concepts compassionate appointment evolved by the Government for ameliorating the lot of its employees who die in harness leaving no source of income to the family to live on. So, this writ petition fails and is dismissed.