

Before Justice Sanjay Kumar J.

AMIT GARG—Petitioner

versus

STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 15868 of 2017

November 1, 2019

Constitution of India, 1950— Art. 226 & 227—Policy of 2002 as amended in 2008- State of Punjab- Compassionate Appointment- Held-Such appointments do not constitute a mode of recruitment, but only an enabling provision- A dependent child can apply for such appointment within one year from the date of attaining age of majority or securing educational qualification for group ‘C’ or group ‘D’ post in government service. Such qualification is associated with the age (of 18-21 years) by which one would ordinarily secure a graduate degree- One cannot claim appointment at a ripe age of 30 years- Petition dismissed.

Held that it is well settled that compassionate appointments do not constitute a mode of recruitment. Such appointment is provided as a welfare measure to help the family of the deceased employee tide over the financial crisis caused due to the sudden loss of the breadwinner..... Further, the proviso does not visit any mandate upon the authorities concerned and is only an enabling provision, whereby a dependent child is allowed to apply for compassionate appointment within one year from the date of attaining the age of majority or securing the educational qualification for a Group 'C' or Group 'D' post in Government service.

(Para 9)

Further held that The extension of the period for making an application by a minor child of a deceased employee, up to one year from the date of his attaining the age of majority and securing educational qualifications, would normally be associated with the age bracket of 18 to 21-18 being the age of majority and 21 being the age by which one would ordinarily secure a graduate degree. By no stretch of imagination can the afore stated phrase be interpreted to bring within its fold the case of the petitioner, who now seeks compassionate appointment at the ripe age of 31 years after securing an educational

qualification at the age of 30 years, long after the death of the employee.

(Para 10)

Mohit Garg, Advocate
for the *petitioner*.

Ayush Sarna, AAG, Punjab.

SANJAY KUMAR, J. (oral)

(1) The prayer of the petitioner in this case is to provide him compassionate appointment on the ground that he is fully covered by the Policy of 2002 of the State of Punjab, as amended in the year 2008.

(2) The admitted facts are that the father of the petitioner died in harness as a Medical Officer in Sunam, District Sangrur, State of Punjab, on 17.12.1994. However, the petitioner was a minor on that date, being around 13 years of age, and his mother did not choose to secure any compassionate appointment for herself. The record however reflects that basing upon her request, the Civil Surgeon, Sangrur, addressed letter dated 22.05.1999 to the Director, Health and Family Welfare, Chandigarh, informing him that the widow had sought reservation of one post for compassionate appointment of the petitioner. Thereafter, the petitioner's mother submitted application dated 30.08.2012 seeking appointment of the petitioner as a Kanungo in the Revenue Department or as a Computer Teacher in the Education Department on compassionate grounds. The authorities seem to have forwarded this application to the offices concerned but found that neither the post of Kanungo nor the post of Computer Teacher were available. The petitioner then submitted application dated 05.07.2013 seeking to withdraw the earlier application dated 30.08.2012 and requesting that his case be considered for appointment to any post in the Punjab Civil Secretariat, as per his qualification. This request of the petitioner was forwarded to the Personnel Department of the State of Punjab. While the same was under consideration, the petitioner again submitted representations dated 4.10.2013 and 10.10.2013, seeking consideration of his case for appointment to the post of Clerk. At this stage, the authorities applied their mind and came to the conclusion that the case of the petitioner would not be covered by the Policy dated 21.11.2002.

(3) Be it noted that the present writ petition was filed on 22.05.2017 whereas the authorities rejected the petitioner's claim for

compassionate appointment, vide Memo dated 02.02.2018, and the same was communicated to the petitioner's mother, vide Office Letter dated 02.05.2018. Significantly, the petitioner did not choose to amend the writ petition and lay a challenge to the aforestated communications relating to the rejection of his claim.

(4) Shri Mohit Garg, learned counsel for the petitioner, would submit that the delay, if any, on the part of the petitioner in seeking compassionate appointment was due to factors totally beyond his control and that the amended policy of the State would come to his rescue. He would submit that the petitioner, who was born on 25.05.1981, completed his 10+2 in the year 2000. He then secured admission in the first year of B.D.S. course on 10.11.2003. He however had to drop out of the said course due to familial and financial constraints. He then secured admission in B.A. Course and upon completing the same in the year 2006, he secured a Masters Degree in Information and Technology in the year 2009. However, it then came to light that the graduation certificate of the petitioner was not valid. The Masters Degree secured by him on the strength thereof also stood nullified. He then did a graduate course afresh and secured a degree in Business Administration from Delhi University in the year 2011. It was only after this development that the mother of the petitioner again approached the authorities for securing his compassionate appointment.

(5) It is on the strength of the aforestated factual milieu that the petitioner now seeks the relief of compassionate appointment in the service of the State.

(6) Perusal of para 13 (a) of the Scheme for Compassionate Appointments-2002, notified by the Government of Punjab on 21.11.2002, reflects that processing of the cases of compassionate appointment should be undertaken upon applications made within a period of six months from the date of death or disability of the employee. Such appointments must ordinarily be made within one year or two years, as the case may be. However, the policy permits belated compassionate appointments up to 5 years from the date of death or disability in deserving cases, subject to cogent reasons being recorded therefor. Further, such belated appointments require the special approval of the Personnel Department and also the Finance Department. This policy was subjected to amendment in the year 2008 by the Government of Punjab, vide Notification dated 03.07.2008. Thereby, a proviso was added to para 13 (a) of the policy instructions. The proviso reads as under:-

“Provided that in the case where the deceased Government employee leaves behind his/her minor children, who are studying at the time of death of the employee and are not qualified for an employment in the Government and the spouse is not in a position to join the Government job, a dependent child may be allowed to apply for compassionate appointment by the Competent Authority, within a period of one year from the date of attaining the age and educational qualifications for a Group “C” or “D” appointment in Government.”

(7) On the strength of the aforesaid amendment, learned counsel for the petitioner would contend that as the petitioner attained the requisite educational qualification only in the year 2011, the submission of the compassionate appointment application by his mother in the year 2012 cannot be said to be beyond time.

(8) *Per contra*, Shri Ayush Sarna, learned AAG, Punjab, would point out that the Scheme for Compassionate Appointments-2002 dated 21.11.2002 begins with a reference to the judgment of the Supreme Court in ***Umesh Kumar Nagpal*** versus ***State of Haryana and others***¹, wherein it was held that the object of compassionate appointments is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment. He would further point out that the Supreme Court held that mere death of an employee does not entitle the family to seek compassionate appointment and the authority concerned must also consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from such death. He would therefore contend that the petitioner cannot seek appointment on compassionate grounds at this late stage, keeping in mind the fact that his father died as long back as in the year 1994.

(9) It is well settled that compassionate appointments do not constitute a mode of recruitment. Such appointment is provided as a welfare measure to help the family of the deceased employee tide over the financial crisis caused due to the sudden loss of the bread-winner. Ordinarily, such appointments would have to be sought and effected within a brief hiatus from the date of death of the employee. The Government of Punjab, in its wisdom, fixed an outer limit of 2 years in the normal course and in exceptional and deserving cases, the outer

¹ (1994) 4 SCC 138

limit stands extended to 5 years, subject to conditions. The amendment caused in the year 2008 does not have the effect of deviating from the above norm. The object of the amendment was only to see that additional protection is afforded to the family of the deceased employee to the extent of providing compassionate appointment to the minor child of such deceased employee upon his attaining the age of majority and securing the requisite educational qualification. It does not have the effect of extending the period for securing such appointment beyond reasonable limits. Further, the proviso does not visit any mandate upon the authorities concerned and is only an enabling provision, whereby a dependent child is allowed to apply for compassionate appointment within one year from the date of attaining the age of majority or securing the educational qualification for a Group 'C' or Group 'D' post in Government service. Even if the benefit of this proviso is extended to the petitioner, it would still be open to the authorities to consider as to whether his case is a deserving one on the strength of appurtenant factors, which would also include the long lapse of time and the financial condition of the family.

(10) It is not the case of the petitioner that there was any delay on the part of the authorities. He would only place reliance on his own unfortunate circumstances to explain the delay on his part in applying for compassionate appointment. Such circumstances, however mitigating they may be, do not have the effect of diluting the settled legal position that compassionate appointment cannot be treated as a mode of recruitment. The use of the words 'one year from the date of attaining the age of educational qualifications' must be understood in the right perspective and the phrase must be interpreted purposively. The extension of the period for making an application by a minor child of a deceased employee, up to one year from the date of his attaining the age of majority and securing educational qualifications, would normally be associated with the age bracket of 18 to 21-18 being the age of majority and 21 being the age by which one would ordinarily secure a graduate degree. By no stretch of imagination can the aforesaid phrase be interpreted to bring within its fold the case of the petitioner, who now seeks compassionate appointment at the ripe age of 31 years after securing an educational qualification at the age of 30 years, long after the death of the employee. Therefore, on grounds more than one, this Court finds no merit in the plea of the petitioner that he should be provided compassionate appointment in Government service at this late stage.

(11) The writ petition is devoid of merit and is accordingly dismissed.

(12) No order as to costs.

Payel Mehta