

**HIGH COURT OF PUNJAB AND HARYANA
BENCH : HON'BLE MR. JUSTICE JAGMOHAN BANSAL
Date of Decision: 1st May 2024**

CWP-8222-2017

RANI DEVI ...Petitioner

VERSUS

FOOD CORPORATION OF INDIA and others ...Respondents

Legislation:

Articles 226/227 of the Constitution of India

Subject: Petition for a compassionate appointment following the petitioner's husband's death in service.

Headnotes:

Compassionate Appointment – Rejection of Application – Petitioner's husband died in 2008 while employed with Food Corporation of India – Petitioner applied for a compassionate appointment soon after but faced rejection and subsequent delays in processing her applications – High Court held that compassionate appointment is not a matter of right but a concession meant to prevent destitution – Given the substantial time elapsed and no exceptional destitution shown, petitioner's claim held unsustainable – Relevant policy (2013) not retrospective to cover 2008 – Petition dismissed. [Paras 1-8]

Referred Cases:

- Umesh Kumar Nagpal v. State of Haryana; (1994) 4 SCC 138 [Para 6]

Representing Advocates:

Ms. Alisha Soni for the petitioner

Mr. Abhishek Arora for Mr. Sumit Jain, Advocate for the respondents

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to appoint her on compassionate ground on account of death of her husband.

2. The husband (Jitender Singh) of the petitioner was working as labourer with respondent-Food Corporation of India. He died in harness on

17.07.2008. As per the petitioner, she applied for compassionate appointment vide application dated 03.09.2008 (Annexure P-2). The respondent corporation is denying receipt of said application whereas communication dated 28.02.2012 (Annexure P-3) and 09.02.2012 (Annexure R-1) confirm that respondent has rejected her application. She filed fresh application on 24.05.2012 which was rejected on 02.06.2012 (Annexure R-3) on the ground of delay.

3. Ms. Alisha Soni, Advocate submits that petitioner applied for compassionate appointment well within time, thus, respondent was bound to extend her benefit of compassionate appointment. She concedes that her claim is based upon policy dated 16.01.2013 (Annexure P-4) issued by Ministry of Personnel, Public Grievances and Pensions (Department of Personnel & Training).

4. *Per contra*, learned counsel for the respondents submits that husband of the petitioner passed away in 2008. Her application was rejected in 2012 and she did not challenge the said rejection order within reasonable time. The claim of the petitioner is neither maintainable in law nor in equity.

5. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

6. Hon'ble Apex Court in ***Umesh Kumar Nagpal Versus State of Haryana; (1994) 4 SCC 138***, has held that appointment on compassionate ground is a concession and cannot be claimed as a matter of right especially after passage of substantial time. The relevant extracts of the said judgment read as:-

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of

open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

From the perusal of above-cited judgment, it is evident that object of the scheme is to protect family of the deceased from being driven to destitution and penury.

7. In the case in hand, the husband of the petitioner died in the year 2008. The intent and purport of compassionate scheme is to prevent the family of the employee from being driven to destitution and penury and not to give employment. As substantial period has passed away from the date of death of the employee and there is no plausible explanation for the delay in approaching this Court, the claim of the petitioner for compassionate appointment cannot be countenanced. Any order of this Court for appointment would be contrary to the Scheme as well as settled legal position. Further, claim of the petitioner is based upon Policy of 2013 whereas her husband passed away in 2008. The policy is not retrospective.

8. In the wake of above discussion and findings, this Court is of the considered opinion that present petition sans merit and deserves to be dismissed. Accordingly, dismissed.

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