



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

LPA No. 812 of 2020 (O&M)

Date of Decision:17.02.2025

State of Punjab and others

.....Appellants

Versus

Kulwinder Singh

..... Respondent

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MR. JUSTICE DEEPINDER SINGH NALWA**

**Present: Mr. R.S.Pandher, Sr. DAG., Punjab
for applicant-appellants.**

**Mr. Mohit Garg, Advocate
for non-applicant-respondent.**

LISA GILL, J.

CM-2260-LPA of 2020.

Heard.

For the reasons mentioned in the application as well as arguments addressed, delay of 144 days in filing the appeal is condoned subject to just exceptions.

Application is accordingly disposed of.

LPA No. 812 of 2020 (O&M)

1. Prayer in this appeal is for setting aside order dated 06.09.2019, passed by learned Single Bench, whereby impugned orders dated 04.08.2015 and 24.04.2017 rejecting the claim of respondent/writ-petitioner for appointment on compassionate basis have been set aside

and writ petition disposed of with a direction to the department to pass fresh appropriate order by affording benefit of Policy/Instructions dated 27.12.2016 to writ-petitioner in accordance with law.

2. Brief facts necessary for adjudication of the matter are that appellant/writ petitioner filed CWP No. 24699 of 2019 for setting aside orders dated 04.08.2015 and 24.04.2017, whereby his claim for appointment on compassionate basis had been rejected. Writ petitioner claimed that his father was serving as Sr. Assistant, T. B. Sanatorium, Amritsar. His date of superannuation on attaining the age of 58 years was 31.10.2013. In terms of Instructions dated 30.10.2015, service of writ-petitioner's father was extended, firstly for one year from 31.10.2013 to 31.10.2014 and thereafter for another year from 01.11.2014 to 31.10.2015. Unfortunately, his father passed away on 19.01.2015 during the currency of second extension in service, afforded to him.

3. Application dated 21.07.2015 submitted by writ-petitioner seeking appointment on compassionate basis was rejected vide communication dated 04.08.2015, wherein it is stated that as per Instructions dated 21.10.2014, dependents of employees who have expired during extension in service cannot be considered for grant of compassionate appointment. His subsequent request/application dated 19.01.2017 was also rejected on 24.04.2017. It is stated therein that though provision had been made for granting compassionate appointment to dependents/ wards of employees, who had died during the period of extension in service granted to them but implementation of this Instruction (dated 27.12.2016) has been stopped and it was decided that no such appointment shall be available.

4. Aggrieved therefrom, CWP No. 24699 of 2019 was filed by writ-petitioner claiming that Instructions dated 27.12.2016 whereby it was decided to afford appointment on compassionate basis to wards/dependents of employees who died during the period of extension in service was made effective retrospectively w.e.f., 08.10.2012. Therefore, for all intents and purposes writ petitioner was entitled for appointment on compassionate basis. Subsequent withdrawal of these instructions would have no impact on the rights of the writ-petitioner, which had already accrued in view of Instructions dated 27.12.2016. It was further claimed that extension in service implies that employee is still in service of the government because it is the date of superannuation which had been extended.

5. Learned Single Bench on considering documents on record, facts and circumstances concluded that instructions dated 27.12.2016 stipulated that the same would be effective from 08.10.2012. Therefore, the right for consideration to appointment on compassionate basis did accrue to writ-petitioner. Impugned orders were thus set-aside and writ petition disposed of with a direction to pass fresh appropriate orders while according benefit of instructions dated 27.12.2016 in accordance with law.

6. Aggrieved therefrom, present appeal has been filed by State.

7. Learned counsel for the appellant vehemently argues that learned Single Bench has erred on facts and in law in passing impugned order dated 06.09.2019. It is argued that direction has been issued to consider the case of writ-petitioner on the basis of instructions dated 27.12.2016, which admittedly stood withdrawn on 29.03.2017. Learned

Single Bench did not consider the fact that case for appointment on compassionate basis already stood rejected on 04.08.2015, even prior to issuance of instructions dated 27.12.2016. By virtue of the said instructions, a fresh lease of life could not have been infused in the claim of writ-petitioner. Moreover, once instructions dated 27.12.2016 were withdrawn, there was no question of considering the case of writ-petitioner under the said instructions. It is submitted that writ-petitioner deliberately did not furnish details of the application submitted by him earlier on 21.07.2015. Moreover, the object of affording appointment on compassionate basis is to help the dependents/ legal heirs of the employees tide over a crisis which may hit the family on untimely demise of such employee. Opportunity had not been afforded by learned Single Bench to even file a reply to writ-petition and the matter was decided on 06.09.2019. Furthermore, extension in service is not a matter of right of an employee. Therefore, the claim that there was an extension in the date of superannuation of the employee is clearly an ill-conceived plea. It is thus prayed that present appeal be allowed and writ petition filed by respondent-writ-petitioner be dismissed.

8. Learned counsel for respondent/writ-petitioner has refuted the arguments as raised on behalf of appellants and submitted that learned Single Bench has correctly passed impugned order dated 06.09.2019 which should be upheld. Learned counsel refers to orders of extension dated 17.07.2013 and 26.09.2014, Annexure P-2 collectively, to submit that it is specifically provided therein that it is extension of service which has been granted to the employee while also providing that in case any promotional post is available during extension in service, it

shall be afforded to the employee and his salary/pensionary benefits shall be granted accordingly. Therefore, even if no reliance is placed upon instructions dated 27.12.2016, case of writ-petitioner would be covered under policy dated 21.11.2002. Though, it is submitted that once instructions dated 27.12.2016 were issued w.e.f., 08.10.2012, it is this policy which would be holding the field at the time of death of writ-petitioner's father i.e., 19.01.2015. It is thus prayed that this appeal be allowed.

9. We have heard learned counsel for the parties and have perused the file carefully with their able assistance.

10. The factual matrix in respect to death of writ-petitioner's father on 19.01.2015 during the second year of extension in service, submission of first application on 21.07.2015 by writ-petitioner seeking appointment on compassionate basis, its rejection on 04.08.2015, submission of second application on 19.01.2017 and its rejection on 24.04.2017 is a matter of record. Admittedly, claim of writ-petitioner was rejected for the first time on 04.08.2015. He accepted the same and did not challenge it. Application dated 19.01.2017 was filed subsequently on issuance of policy dated 27.12.2016. Said policy was admittedly withdrawn on 29.03.2017.

11. Learned counsel for respondent-writ-petitioner has argued that instructions dated 27.12.2016 would hold the field as they were made applicable with retrospective effect. He has further argued that terms and conditions of extension provided to his father in-fact amounts to extension in the date of superannuation. However, we do not find any merit in the said argument and specifically keeping in view the

subsequent instructions leading to amendment in the applicable Punjab Civil Services Rules Volume-I Part-I in Rule 3.26, which specifically provided that extension in service after the age of superannuation would not entitle the employee to (i) promotion (ii) benefit of assured carrier progression (iii) annual increment or any revision of pay made by the State Government, though, protection was afforded in respect to the pay released to the employees till the issuance of notification.

12. It is pertinent to note at this juncture that Hon'ble the Supreme Court in the case of **Canara Bank Vs. Ajith Kumar G.K, Civil Appeal No. 255 of 2025 (Arising out of SLP (Civil) No. 30532 of 2019), decided on 11.02.2025**, has taken note of the grey area in respect to the issue about consideration of application on the basis of compassionate appointment with reference to the policy/instructions as available and applicable on the date of the death of the employee or the norms prevailing on the date of consideration of the application. Divergent views of Hon'ble the Supreme Court in the case of **Canara Bank Vs. M. Mahesh Kumar, 2015 (7) SCC 412** and the subsequent decisions in **State of Madhya Pradesh Vs. Amit Shrivastava, (2020) 10 SCC 496**, **Indian Bank Vs. Promila, (2020) 2 SCC 729**, **State of Madhya Pradesh Vs. Ashish Awasthi, (2022) 2 SCC 157** besides subsequent reference made in the case of **State Bank of India Vs. Sheo Shankar Tewari, (2019) 5 SCC 600**, which is pending adjudication before Larger Bench has been discussed. Hon'ble the Supreme Court observed that it is indeed debatable whether a policy for compassionate appointment which is in the nature of an executive order can have retrospective application. While noting the

position as above, the controversy at hand was decided keeping in view the nature of *lis*.

13. In the instant case, a crucial factor to be considered is that the purpose of appointment on compassionate basis is to avoid destitution of family of an employee on his sudden death. Employee in question admittedly passed away during the period of extension of service. He had already attained the age of superannuation, thus it can be reasonably presumed that he had made adequate arrangements for his family by this time. Appointment on compassionate basis cannot be claimed or offered after considerable or significant lapse of time or after the crisis is over. Hon'ble the Supreme Court in **Umesh Kumar Nagpal Vs. State of Haryana and others, 1994(3) SCT 174** 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 rational nexus to the object sought to be achieved viz. relief against destitution. It was, however, held that compassionate appointment can't be claimed when the crisis is over and neither can it be offered on an *ad hoc* basis.

14. Hon'ble the Supreme Court in **Bhawani Prasad Sonkar Vs. Union of India (2011) 4 SCC 209**, held that as appointment based solely on descent is inimical to our constitutional scheme, and being an exception, the scheme has to be construed strictly and confined solely to the purpose it seeks to achieve.

15. Hon'ble the Supreme Court in **Canara Bank Vs. Ajith Kumar G.K (supra)**, reiterated this position while referring to its earlier

judgments and held that whole object of granting compassionate employment is intended to enable family members of a deceased or incapacitated employee to tide over sudden financial crisis, it is a concession not a right, with none entitled to claim it by way of inheritance. It was held as under:-

“29. The second sub-issue pertains to the real objective sought to be achieved by offering compassionate appointment. We have noticed the objectives of the scheme of 1993 and construe such objectives as salutary for deciding any claim for compassionate appointment. The underlying idea behind compassionate appointment in death-in-harness cases appears to be that the premature and unexpected passing away of the employee, who was the only bread earner for the family, leaves the family members in such penurious condition that but for an appointment on compassionate ground, they may not survive. There cannot be a straitjacket formula applicable uniformly to all cases of employees dying-in-harness which would warrant appointment on compassionate grounds. Each case has its own peculiar features and is required to be dealt with bearing in mind the financial condition of the family. It is only in “hand-to-mouth” cases that a claim for compassionate appointment ought to be considered and granted, if at all other conditions are satisfied. Such “hand-to-mouth” cases would include cases where the family of the deceased is ‘below poverty line’ and struggling to pay basic expenses such as food, rent, utilities, etc., arising out of lack of any steady source of sustenance. This has to be distinguished from a mere fall in standard of life arising out of the death of the bread earner.

16. Learned counsel for the writ-petitioner on a pointed query informs that the writ-petitioner is married and has two children. The

retiral/*ex gratia* benefits due to the employee in question had admittedly been released at the relevant point of time.

17. Keeping in view the facts and circumstances as above, impugned order dated 06.09.2019 is unsustainable. Appeal is accordingly allowed and order dated 06.09.2019 passed by learned Single Bench, is set aside. Pending application(s), if any, stand(s) disposed of accordingly.

(LISA GILL)
JUDGE

(DEEPINDER SINGH NALWA)
JUDGE

February 17, 2025.

s.khan

Whether speaking/reasoned	:	Yes/No.
Whether reportable	:	Yes/No.