

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.W.P.No.7433-CAT of 2001

Date of Decision : 31.03.2008.

Jagmohan

.....Petitioner

versus

Union of India and others

.....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA
HON'BLE MR.JUSTICE MOHINDER PAL

Present: Shri Balbir Singh, Advocate for the applicant-petitioner.
Ms.Naveender P.K.Singh, Central Government Standing
Counsel for the respondents.

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1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

JUDGMENT

HEMANT GUPTA, J.

The challenge in the present writ petition is to the order dated 29.3.2001, Annexure P-4, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (hereinafter referred to as the 'Tribunal'), whereby an application filed by the petitioner under Section 19 of the Administrative Tribunals Act, 1985 seeking appointment on compassionate ground was dismissed.

Shri Gurdial Singh, father of the petitioner, while working as driver with the Central Ground Water Board (hereinafter referred to as the 'Board'), died on 13.5.1995. After the death of the father of the petitioner, the mother of the petitioner sought appointment of the petitioner, who was born on 30.5.1970, on compassionate ground in the year 1996. On

27.12.1998, the petitioner was informed that his case has been forwarded to the respondent No.3 for further action, but on 5.2.2000, the petitioner received a communication that his claim for appointment on compassionate ground has been considered by the Board in its meeting held on 9.9.1997 and since no vacancy was available at that relevant time, the name of the petitioner was circulated in various Ministries of the Government of India for offering him compassionate appointment. It is the case of the petitioner that such communication virtually declines the claim of the petitioner for appointment on compassionate ground.

In reply to the averments made in the application, the respondents have pointed out that the name of the petitioner was considered by the Screening Committee constituted by the Board, with other candidates for appointment on compassionate ground, in its meeting held on 9.9.1997. Since the number of vacancies within the prescribed quota of 5% were not available, the petitioner could not be appointed on compassionate ground. It is further pointed out that the appointment on compassionate ground is purely related to give immediate assistance to the family of the deceased and such request cannot be kept pending for indefinite period. Therefore, the committee has forwarded the name of the petitioner to the different Ministries to explore the possibility of appointment on compassionate ground against the vacancies falling vacant in their respective departments. It is pointed out that the name of the petitioner has been circulated vide office memorandum dated 11.10.1997. It is also pointed out that the request of Harish Kumar, respondent No.4 was considered by the Screening Committee in its meeting held on 16.3.1999 and in terms of the circular

issued, the case was considered by the Screening Committee and Harish Kumar, respondent No.4 was recommended for appointment on compassionate ground. It is also pleaded that the deceased left behind his widow and sons elder to the petitioner and all of them are able bodies person. The family received Gratuity, Group Insurance, Leave Encashment and GPF amounting to Rs.1,69,917/-. The family is in receipt of pension plus dearness allowance and does not fall within the category of family in financial distress.

The learned Tribunal has considered the fact of non availability of vacancy and consequent circular forwarding the name of the petitioner to other departments for compassionate appointment. It was also found that the appointment in public services as a rule is to be made strictly on the basis of open invitation to the eligible candidates. The only exception to this general rule is the policy of compassionate appointment which has been carved out on purely humanitarian considerations. The Government or the public authority 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 crises with job as to be offered to the eligible members of the family. It was found that grievance of the petitioner that respondent No.4 Harish Kumar was offered appointment in preference to the petitioner, is not tenable for the reason that it was by comparison that family of Harish Kumar, respondent No.4 required help from the government immediately as his father died subsequent to the death of the father of the petitioner and at that time, a vacancy was also available. In view of the said fact, the Original Application filed by the petitioner was

dismissed by the learned Tribunal.

On 18.12.2007, the learned counsel for the respondents has sought time to file an additional affidavit disclosing the number of vacancies filled up by way of compassionate appointment from the year 1995 to 2000 with particulars of the candidates appointed. An affidavit dated 4.3.2008 has been filed by the respondents pointing out that during the month of February and March, 2004, the office was shifted to a new building and in that process, the old record is not traceable so as to give the names of all the candidates who have applied for appointment, dates of their applications, date of death against which the appointment was sought and date of appointment etc. Further, it is pointed out that respondent No.4 Harish Kumar has been given appointment on 7.4.1999 as against the death of his father on 15.6.1998. It has been further pointed out that the applicants seeking appointment on compassionate ground always exceed the vacancies, but the compassionate appointments are given to the applicants within a year keeping in view their pecuniary/financial status. It is further pointed out that the list of the applicants is considered for a year and the applicants who could not be appointed due to non availability of vacancies in that particular year, are not carried forward to the next year.

Having heard learned counsel for the parties for some length, it is apparent that the father of the petitioner died on 13.5.1995. At that time, the petitioner was almost 25 years of age. The deceased left behind his widow and two other sons. The family has got the payment of Gratuity, Group Insurance, Leave Encashment etc. and is also getting pension alongwith dearness allowance. The case of the petitioner for appointment on

compassionate ground has been considered by the Screening Committee. His name was recommended, but he could not be given appointment due to lack of available vacancies against 5% quota meant for filling up the posts by direct recruitment out of the candidates seeking appointment on compassionate ground. The name of the petitioner was circulated to other departments, but still there was no vacancy available against which the petitioner could be appointed. After the case of the petitioner was considered in the year 1997, another policy has been circulated by the Government of India on 9.10.1998 in supersession of the other policies. By virtue of the subsequent circular dated 3.12.1999, the compassionate appointment was contemplated to be given within a year. The said circular reads as under:-

“The undersigned is directed to refer to the Department of Personnel and Training Office Memorandum No.14014/6/94-Estt.(D) dated October 9, 1998 on the above subject and to say that the question of prescribing a time-limit for making appointment on compassionate grounds has received due consideration taking into account the ceiling of 5% of vacancies falling under direct recruitment quota in any Group ‘C’ or ‘D’ post prescribed in this regard in paragraph 7(b) *ibid* and the ruling of the Supreme Court that appointment on compassionate grounds can be made only if vacancies are available for the purpose [mentioned in paragraph 17(d) *ibid*]. Accordingly, it has been decided that the Committee prescribed in paragraph 12 *ibid* for considering a request for appointment on compassionate grounds should take into account the position regarding availability of vacancy for such appointment and it should recommend appointment on compassionate

grounds only in a really deserving case and only if vacancy meant for appointment on compassionate grounds will be available within a year, that too within the ceiling of 5% mentioned above. This would ensure grant of compassionate appointment within a year. In respect of other really deserving cases the Committee should only recommend taking up the matter with other Ministries/Departments/ Offices of the Government of India to consider those cases for appointment there as provided in paragraph 7 (f) *ibid*.

2. The instructions contained in the Office Memorandum dated October 9, 1998 stand modified to the extent mentioned above.

3. The above decision may be brought to the notice of all concerned for information, guidance and necessary action.”

Though, vide circular dated 5.5.2003, the time under which the name could be considered for appointment, was extended to 3 years, but such extension was contemplated to be on year to year basis. Before the said circular dated 5.5.2003 was issued, the claim of the petitioner was again rejected in the year 2000. As per the instructions available on that date, the name of the eligible dependents of the deceased for appointment on compassionate ground could be kept under consideration for a year only. In the said period of one year, the vacancy for appointment by direct recruitment within the prescribed quota did not fell vacant. Therefore, the petitioner cannot be appointed only for the reason that at the subsequent stage against the vacancy then available, another candidate has been appointed. Since the vacancy was not available at the relevant time, it

cannot be said that the action of the respondents to appoint Harish Kumar, respondent No.4, is illegal or suffers from arbitrariness. The availability of vacancy in a particular year is a matter of chance, but since in the relevant year, the vacancy was not available, the petitioner cannot claim appointment on compassionate ground.

Though we are satisfied that the appointment of respondent No.4 is not against the Scheme and neither arbitrary nor unjustified, but even if it is so, still the petitioner cannot claim any benefit of such an “illegal” order. It is well settled law that Article 14 of the Constitution of India cannot be extended to legalise the illegal order, though others have wrongly got the benefit of that order on some stray incidents earlier. Reference is to a Supreme Court judgment reported as “*Union of India Versus M.T. Latheesh, (2006) 7 SCC 350*”.

In view of the above, we do not find any illegality or irregularity in the order Annexure P-4, passed by the learned Tribunal, which may warrant interference of this Court in exercise of writ jurisdiction.

The writ petition is dismissed with no order as to costs.

(HEMANT GUPTA)
JUDGE

31-03-2008
*mohinder

(MOHINDER PAL)
JUDGE