

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA
CWPOA No. 4593 of 2020
Judgment Reserved on 11th Aug., 2023
Decided on: 31st August, 2023

Vijay Kumar

...Petitioner

Versus

State of H.P. & others

...Respondents

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting?

For the Petitioner : Mr. Rakesh Chauhan, Advocate.

For the Respondent : Mr. Anup Rattan, Advocate General
with Mr. Ramakant Sharma and
Mr. Baldev Negi, Additional Advocate
General.

Vivek Singh Thakur, Judge.

Petitioner herein has approached the Court against the order dated 12th September, 2017 whereby case of petitioner for compassionate appointment has been rejected on the ground that case has been submitted after a period of three years from the date of death of deceased/Government employee (father of petitioner).

2 Rejection of case of petitioner is based upon Office Memorandum dated 24.2.2016 issued by the Finance Department of the Government of H.P.

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3 Admitted facts in present case are that Om Parkash, father of petitioner, serving as Head Constable in Police Department expired on 8.6.2013, whereafter his wife, mother of petitioner, on 8.1.2014, submitted an application to the Superintendent of Police Annexure A-1 (colly) requesting therein that after death of her husband, she was not in a position to join the services on compassionate grounds to serve as an employee in place of her husband and therefore, employment on compassionate ground be given to her younger son Vijay Kumar studying in 10+2 with further request that the employment be reserved for her said younger son.

4 The application was received by the Superintendent of Police Chamba on 8.1.2014 and marked to CRC Branch for necessary action on the very same day. Petitioner Vijay Kumar was of 18 years on 1.3.2012 and he passed his Senior Secondary 10+2 examination in March, 2016. Certificate in this regard was issued on 29.4.2016.

5 Thereafter, in November/December 2016 petitioner submitted his application for compassionate appointment on the Performa regarding employment of dependence of employees dying within service/retired on valid pension.

6 After verification of documents and the case, the Superintendent of Police had forwarded the case of petitioner for compassionate appointment which was sent to the Director

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General of Police through Inspector General of Police, Northern Range, Dharamshala.

7 Case of the petitioner was considered, but rejected on the sole ground that an application for compassionate appointment was submitted after completion of three years from the date of death of deceased employee and thus, as notified by Finance Department vide memo dated 23.2.2016, in terms of decision dated 6.10.2015 of the High Court in CWP No. 9094 of 2013 titled as Surinder Kumar vs. State of H.P.

8 Rejection of case of petitioner was communicated by the Office of Director General of Police to Inspector General of Police Northern Range, Dharamshala who transmitted the said rejection to Superintendent of Police, District Chamba who, in turn, informed it to petitioner in October, 2017.

9 Present petition was preferred on 17.05.2018.

10 Aforesaid admitted factual matrix clearly depicts that wife of deceased employees had approached the Department within seven months after the death of her husband requesting to consider her younger son Vijay Kumar for appointing him on compassionate grounds. Thereafter, necessary Performa/application for compassionate appointment was filled on 9.12.2016 after passing of 10+2 examination by petitioner and thereafter the same was transmitted to concerned authority by Superintendent of Police.

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11 At the time of death of employee or on submission of application by his wife on 8.1.2014, there were no instructions or decision providing three years limitation for applying the compassionate appointment and the said condition was notified vide memo dated 24.2.2016 but petitioner or his family was never informed about this condition. Otherwise also, family of deceased employee, through his wife, had approached the Department for compassionate employment after seven months of death of deceased employee and her request was acceded by Department to consider her younger son i.e. petitioner Vijay Kumar for compassionate appointment after passing 10+2 examination by him and in continuation thereof, case for compassionate employment was forwarded by Superintendent of Police to concerned authority.

12 It is not a case of respondents that wife of deceased employee or other family members including the petitioner, after receiving the request of wife of deceased on 8.1.2014, were ever asked to fill-up the Performa immediately so as to blame the petitioner or his family for not filing the necessary particulars on relevant Performa for compassionate employment within time. Family of deceased employee acting with due diligence had approached the Department through Superintendent of Police in January 2014 with request, referred supra. Their request was never turned down rather it appears to have been accepted, for

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act of respondent Department submitting the case of petitioner for compassionate employment on required Performa along with documents complete in all respects with positive recommendation in favour of petitioner. Therefore, concerned authority has committed an error by concluding that application for compassionate appointment was filed by dependent of deceased employee after expiry of three years. Thus, rejection of claim of petitioner, for compassionate employment, is not sustainable and accordingly, the same is quashed and set aside.

13 Case of petitioner has been rejected on sole ground that it was submitted after three years of death of deceased employee and the said ground has been found erroneous and misconceived as the petitioner through his mother had approached the Department after seven months of death of deceased employee. No other reason has been found and assigned by concerned authority for rejecting the claim of petitioner for compassionate employment.

14 The Supreme Court in ***Mohinder Singh Gill and another vs. The Chief Election Commissioner, New Delhi and others*** reported in **(1978) 1 SCC 405(AIR 1978 SC 851)** has held as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the

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reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time, it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commr. of Police, Bombay vs. Gordhandas Bhanji*:

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actions and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older.”

15 Any claim submitted for consideration of any authority has to be verified, considered and decided by the said authority by taking into consideration all objections if any, at one go. Objections cannot be raised in a piecemeal manner.

16 In present case, rejection is on sole ground of delay in filing the application, which stands quashed and set aside for the reasons assigned supra. As no other objection has ever been raised by concerned authority for rejecting the claim of

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petitioner or to defend the rejection during adjudication of present petitioner, therefore, we feel that in present case, it would be appropriate to issue direction to respondents to offer appointment to petitioner on compassionate ground as expeditiously as possible latest by **31st October, 2023**.

Petition is allowed and disposed of in aforesaid terms including all pending miscellaneous application(s).

**(Vivek Singh Thakur)
Judge.**

August 31, 2023(ms)

**(Bipin Chander Negi)
Judge.**