

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.11533 of 2013

Date of decision: 11.5.2016

Veena Kumari

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr. K.S.Dadwal, Advocate for the petitioner.

Mr. L.S.Virk, Addl. Advocate General, Punjab
for the respondents.

G.S.SANDHAWALIA, J. (Oral)

The petitioner challenges the order dated 10.4.2013/2.5.2013 (Annexure P/9) whereby her request for compassionate appointment has been rejected by respondent no.2 on the ground that her husband was only an Education Service Provider on contract basis and therefore he not being a regular employee was not liable to be considered for the benefit of compassionate appointment. The petitioner also prays for grant of family pension in accordance with the Rules.

Counsel for the petitioner at the out set submits that he does not wish to press his case for family pension.

The issue thus only arises whether the petitioner is entitled for the benefit of appointment on compassionate ground.

As per appointment letter dated 27.9.2008 (Annexure P/8), the husband of the petitioner was appointed as Education Service Provider against the vacant post of Punjabi Master on consolidated salary of ₹ 5400/- for a period of one year. As per Clause 1 of the terms and conditions, after completion of contract period of 1-1/2 year on the basis of good work and conduct, the contract was to be extended which was not to

be exceeded more than three years and six months. Clause 1 of the terms and conditions reads as under:-

“1. This offer is totally temporary of your being appointment as Education Service Provider on a consolidated salary of Rs.5400/- PM. Firstly a contract of one year is to be made with your goodself and the same be kept for next year keeping in view your work and conduct. After completion of contract period of 1-1/2 year, on the basis of your good work and conduct, your consolidated salary of Rs.5400/- shall be increased. So, the said offer appointment on contract basis shall not exceed more than three years and six months. Every time the extension of period shall not be made keeping in view the annual results or keeping in view the annual confidential reports but the same be increased after being found the work and conduct to be satisfactory.”

It is not disputed that the petitioner's husband expired during the extended period of contract on 18.2.2010. As per Clause 21 of the terms and conditions of the appointment letter, services of the husband of the petitioner were to be considered for regularization in the pay scale of ₹ 5480-160-5800-200-7000-220-8100-275-8925 in the cadre of Master/Mistress provided that he had worked minimum two years in rural/border/Bet or area of Mand out of 3-1/2 years. Clause 21 of the terms and conditions reads as under:-

“21. If your work and conduct of the three and half year of your contractual appointment in which you have worked minimum two years in rural/border/Bet or area of Mand is found satisfactory, then you shall be considered in the cadre of Master/Mistress in the pay scale of ₹ 5480-160-5800-200-7000-220-8100-275-8925 (amendment shall be applicable from time to time) and your regular appointment shall be considered from the initial stage and in no circumstances, no benefit of contractual appointment period being Education Service Provider will be given to you.”

Counsel for the petitioner has relied upon the judgement of this Court passed in **Civil Writ Petition No.23291 of 2012-Paramjit Kaur Vs. State of Punjab and others** decided on 11.1.2016. In the said case also, similar issue had arisen where the employee had died two days prior to the policy decision of the Government dated 20.10.2010 whereby it had been decided to regularise all teachers appointed on contract basis as per the advertisements issued between 5.9.2007 and 29.8.2007. In the said case the petitioner had been appointed against the vacant post of JBT/ETT teacher on contract basis and expired on 18.10.2010.

As noticed above, in the present case the petitioner's husband has also been appointed on the same date and thus was also covered by the same policy decision of the Government and he would have been entitled for regularization but unfortunately he expired on 18.2.2010 prior to the decision of the Government dated 20.10.2010.

Counsel for the petitioner has pointed out that the petitioner was around 35 years when her case had been forwarded and having two minor sons to support is in dire need of a job on compassionate basis and needed immediate succor.

In Paramjit Kaur's case (Supra), reliance had been placed upon the judgment of the Division Bench in **Beant Kaur vs. State of Punjab**, 2001 (3) SCT 321 and **CWP No. 1731 of 2011-Dalbir Kaur vs. State of Punjab and others**, decided on 10.01.2012 wherein a direction was issued to consider the application of the petitioner. Relevant portion of the said judgment reads as under:-

“In such circumstances, this Court cannot lose sight of the fact that the benefit of the instructions is being denied only on account of the technicality of the cut off period and the husband having been granted the extension in service was obviously liable to be considered for regularization on

the strength of the instructions dated 20.10.2010. Thus, keeping in view the principle which is laid down by the Division Bench, as noticed above, the order dated 12.08.2011 is liable to be quashed and the writ petition is allowed accordingly. The prayer for mandamus directing respondent no. 1 to consider the case of the petitioner unfettered by the fact that the husband was a regular employee or not, is allowed.

Counsel for the petitioner fairly submits that the petitioner is willing to be appointed on any post on account of the financial exigencies the family is facing, which, further goes on to show that the case is one which requires a sympathetic approach.

Accordingly, respondent no. 1 shall consider the said application, as directed above, within a period of 3 months from the period of certified copy of the order.”

Similarly, in **Asha Rani vs. State of Punjab and others, 2015**

(4) SCT 250 it was held that it sometimes becomes necessary and expedient in extra ordinary situations and for extra ordinary measures to fall back on the principle of compassionate appointment in the interest of justice. In the said case, the petitioner had applied for a job for her son on compassionate grounds under the ex gratia scheme in place of her late husband and her son was accordingly appointed as a sweeper. Unfortunately, the son also died and, therefore, she claimed the appointment on the same basis and her case was rejected on the ground that the mother was not included as a dependent family member and there could not be two appointments on compassionate grounds and the benefit of compassionate appointment, which would have normally flown to her on account of death of her husband, could not be given. It was held that liberal interpretation is to be given to such policies to do real justice and the decisions sometimes may not be in perfect harmony with the instructions or the rules but as long it is based on fair and just application, there would be

no loss to the State. The relevant observations read as under:-

“8. This Court finds that the present is not a case of transfer of an appointment and the reasoning adopted by the administrative authority is rather wide off the mark in its humanistic approach and is not acceptable as an ouster clause of rights arising from the death of Sham Lal are not accounted for in the impugned view. It is well to remember once again that extraordinary situations require extraordinary measures and broadly speaking executive instructions under Article 162 of the Constitution are themselves the prescription and the medicine for curing human problems and leave enough elbow room to the administrator social justice where rule or previous instructions may not necessarily be the controlling, limiting or the determining factor in the matter of grant of relief when justice demands. To speak teleologically, Parliament and State Assemblies made the law tailored to suit and to govern lives of citizens while the administrator has set about to fill the gaps in the law by framing rules and instructions but neither of them made the working life to run like machines without a heart. These do not nor should overly obsess us while dealing with out of the way cases which demand social justice by using so to speak- forks to lift food for our survival or to put it better; to apply the head of a pragmatic man and the hands of a liberal person acting within the sympathy that judicially manageable standards can afford. The rules and regulations on the statute and rule book or instructions in manuals are not just a makeup kit with just as many things put into into the basket. There is more to life than what meets the eye in legal documents and papers and that extra component lies is equity. To best understand the significance of the teleological explanation of why forks have prongs is that this design helps humans eat certain foods; stabbing food to help humans eat is what forks are for.

Mercifully, forks are not found in rules or instructions of government otherwise even this principle may not work to tide over an encountered human issue because of the wide variety of forks in the cutlery shop which make choices even more difficult. This is what is meant by a teleological explanation. This is how I think power of issuing executive instructions should be exercised and permitted by the court of law to be applied while judicially reviewing work of administrators who should never be afraid or shy in creating a new precedent or a fresh instruction when the call of social justice demands or a situation creates which can recur in other people's lives. There are many bad precedents anyway scattered on the path, both administrative and judicial for anyone to worry.

9. On the other hand, the purpose and object of Article 162 of the Constitution is also to give to a class of persons not only the minimal but at the same time the much needed freedom to the Government to act or respond to newly emerging situations as never before witnessed in government files or addressed and to respond to them in a fair and just manner. To do real justice, rules and instructions are not enough to be obsessed with and the ex aequo et bono principle may deservedly apply to the case in hand to make the decision ameliorative in nature and pulsating with life which decision may sometimes not necessarily be in perfect harmony or in sync with the instructions/rules, but a decision based really on what appears to be fair and just, just as one might view the case of the widow in this case. If she is appointed by compassion heavens won't fall nor would all hell break loose."

Keeping in view the above, this Court is of the opinion that the present case is squarely covered by Paramjit Kaur's case (Supra).

Resultantly, the present petition is allowed in the same terms.

Accordingly, respondent no. 1 is directed to consider the case of the petitioner for compassionate appointment within a period of three months from the date of receipt of certified copy of this order.

May 11, 2016
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(G.S.SANDHAWALIA)
Judge