

C.W.P No. 19891 of 2010

(1)

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

C.W.P No. 19891 of 2010

DATE OF DECISION: 23.12.2016

Swarna Rani Megh

.....Petitioner

Versus

State of Punjab and others

.....Respondents

**BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY**

Present:- Mr. Pritam Saini, Advocate  
for the petitioner.

Mr. L.S. Virk, Addl. A.G., Punjab.

Mr. Kanwaljit Singh, Senior Advocate with  
Mr. Parunjeet Singh, Advocate  
for respondent No.5.

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**DAYA CHAUDHARY, J.**

The prayer in the present petition is for quashing of impugned order/memo dated 10.9.2010 (Annexure P-10) as well as order dated 2.10.2010 (Annexure P-11). A further prayer has also been made for issuance of directions to the respondents to consider the case of the petitioner for compassionate appointment on account of death of her husband while in service.

Briefly, the facts of the case as made out in the present petition are that earlier the husband of the petitioner, namely, Sh. Hans Raj Megh was married to one Kamlesh Kumari and out of the said wedlock, three sons including respondent No.5 (the younger son) were born. The petitioner got

married to Sh. Hans Raj Megh on 25.6.2002 and out of the said wedlock one daughter and one son was born on 11.4.2003 and 2.8.2004, respectively. The husband of the petitioner expired while in service on 3.2.2008. Respondent No.5 alongwith his brothers from the earlier wife were having a Will allegedly executed by husband of the petitioner, by which, all the properties including immovable and moveable like fixed deposits, saving fund accounts and other bank accounts, lockers, life insurance policies, household goods, jewellery and other retiral benefits were to be inherited by him and his brothers and only an amount of ₹ 2 lacs each out of the retiral benefits were to be kept for minor children of the petitioner, which were to be given to them after attaining majority. The petitioner is aggrieved as no provision for her maintenance was made. On 20.5.2010, respondent No.5 and his brothers filed a petition for grant of succession certificate before the Court. Thereafter, the petitioner also filed a petition for grant of succession certificate and both the cases are still pending. The petitioner filed C.W.P. No. 18150 of 2008 before this Court for grant of family pension and compassionate appointment, which was disposed of by issuing a direction to pay the family pension to the petitioner, her two minor children and respondent No.5 till they attain the age of 25 in equal shares. As far as grant of compassionate appointment is concerned, the competent authority was directed to hold a fact finding inquiry to ascertain the claim for appointment between the petitioner and respondent No.5. In terms of order passed by this Court, the petitioner made representation for grant of compassionate appointment on 30.7.2010 and thereafter another application was moved with certain other documents on 2.8.2010. The claim of the petitioner was rejected on the ground that respondent No.5 has a preferential right for grant

of compassionate appointment vide memo dated 10.9.2010 as well as order dated 2.10.2010, which are subject matter of challenge in the present petition.

Learned counsel for the petitioner contends that respondent No.5 and his brothers have forged and fabricated Will dated 26.6.2006, which has been challenged and the case is pending. The petitioner is only getting the family pension and she is not having any other source of income. Learned counsel further contends that the petitioner is a widow lady and expenses are being incurred by her for study of the children and the amount of pension is insufficient, whereas, her claim has wrongly been rejected only on the ground that respondent No.5 has preferential right for compassionate appointment viz-a-viz the petitioner.

Learned counsel for the respondent-State has opposed the submissions made by learned counsel for the petitioner and submits that civil litigation is pending between the petitioner and respondent No.5 in the Civil Courts and during the pendency of civil litigation, this petition is not maintainable. Learned counsel submits that in compliance of directions issued by this Court in C.W.P. No. 18150 of 2008, sufficient opportunities were given to the petitioner as well as to respondent No.5 and a well reasoned and speaking order was passed while rejecting the claim of the petitioner for compassionate appointment. Learned State counsel further submits that the petitioner and her children have been ordered to be paid ₹ 40,000/- (approximately) per month we.f. 4.2.2008 and it has wrongly been mentioned that the petitioner has no source of income.

Learned senior counsel for respondent No.5 submits that the petitioner is getting ₹ 40,000/- per month as family pension and she is not

entitled for ex-gratia appointment. He further submits that respondent No.5 does not want to contest for compassionate appointment as he has been selected/appointed. Learned senior counsel has, however, relied upon the judgments of Hon'ble the Apex Court in **Union Bank of India and others Vs. M.T. Latheesh** 2006 (4) S.C.T. 90, **Punjab National Bank Vs. Ashwini Kumar Taneja** 2004 (7) SCC 265, of this Court in **Jaspal Kaur Vs. State of Punjab** 2001 (3) SCT 341, **Parveen Kumar Chopra Vs. Union of India through Secretary Ministry of Finance, New Delhi and others** 2009 (7) SLR 525, of Allahabad High Court in **Smt. Madhulika Pathak** 2011 (2) All. LJ 363 and of Jharkhand High Court in **Shailesh Kumar Vs. Union of India and others** 2008 (3) S.C.T. 568 to the effect that the petitioner is not entitled for compassionate appointment as she is getting handsome amount towards family pension.

Heard the arguments advanced by learned counsel for the parties and have also gone through the documents available on the file.

Admittedly, husband of the petitioner late Sh. Hans Raj Megh, IAS was earlier married to one Kamlesh Kumari and out of said wedlock three sons including respondent No.5 were born. Thereafter, the petitioner got married with Lt. Sh. Hans Raj Megh on 25.6.2002 and out of the said wedlock one daughter and one son were born. It is also not disputed that civil litigation is pending between the petitioner and respondent No.5 regarding the alleged Will executed by husband of the petitioner. It is also not disputed that the petitioner is getting family pension and after death benefits like amount deposited in bank by way of fix deposits, saving accounts etc., LIC, household goods, jewellery are subject matter of litigation. It is also not disputed that the petitioner earlier filed C.W.P. No.

18150 of 2008 before this Court for grant of family pension and compassionate appointment. The family pension was ordered to be granted to the petitioner, her two minor children and respondent No.5 in equal shares till they attain the age of majority. On moving of an application for compassionate appointment, the fact finding inquiry was conducted by the department relating to claim of the petitioner as well as respondent No.5, whereby, the claim of the petitioner was rejected by the respondent-Department on the ground that respondent No.5 has a preferential right of appointment on compassionate ground.

The claim has been put up by the petitioner on the ground that there is no other source of income except the family pension, whereas, her children are school going. Respondent No.5 has got some other job during pendency of this petition and has opted not to claim the appointment on compassionate ground. The claim of the petitioner has been opposed by learned counsel for respondent No.5 on the ground that sufficient amount is being paid in the form of family pension and the petitioner does not deserve compassionate appointment.

Now the issue for consideration before this Court is as to whether the petitioner is entitled for compassionate appointment when she is already getting sufficient amount towards family pension. Although after death benefits are not the sole criteria to judge as to whether employment is to be granted or not but the compassionate appointment cannot be claimed as a matter of right as it is an exception to the General Rule of appointment. The object of the scheme of granting compassionate appointment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post, which can be claimed as a matter of right.

The respondent-authority has to assess the financial condition of the family of the deceased and in case the family is in need of financial assistance to meet out the crisis then the job is to be offered to the eligible member of the family. No doubt the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointment on open invitation of applications. The intention is that in case the sole earning family member dies during service and the family members are deprived of the means of livelihood then object is to enable the family to get over sudden financial crisis. Hon'ble the Apex Court in the case of **The General Manager (D&P.B.) & Ors. Vs. Kunti Tiwary and another** (Civil appeal No. 126 of 2004 disposed of on 5.1.2004) has held that the amount of retiral benefits have to be taken into consideration. It was also held that the dependants of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the family pension, gratuity amount received, employee's/employer's contribution to PPF, any compensation being paid by the bank or its welfare fund, LIC policies and other investments made by the deceased employee, income of the family from other sources, employment of other family members, size of the family and liabilities if so.

The petitioner is getting family pension and is having other moveable and immoveable properties left by deceased husband as well which are subject matter of litigation. Nothing has been shown by way of averments made in the petition as well as during arguments raised by learned counsel for the petitioner as to how the financial condition of the petitioner is not good. Moreover, the petitioner is meeting out her expenses

since 2008 and nothing has come on record as to whether any assistance has been taken from some other person/family. Simply saying that the petitioner has no other means to meet out the expenses for the education of the children is not sufficient. At this stage, there is no such financial crisis that the petitioner is not in a position to maintain herself and her children, who were dependent upon the income of the deceased husband. The petitioner filed CWP No. 18150 of 2008, which was disposed of with a direction to the respondents to release all service benefits of the deceased-husband and family pension to her and to her minor children born out of second wedlock. After notice of motion in C.W.P. No. 18150 of 2008, following interim order was passed on 5.2.2010:-

“It appears that the family pension has not been released to the legal heirs of the deceased (Mr. Hans Raj Megh) official on account of the dispute between the children of his two wives. Even according to the stand taken by the respondents, Varun Kumar (youngest son of the deceased from his first wife) as well as two children born out of the 2<sup>nd</sup> wedlock of the deceased with the petitioner, were/are admittedly minors and were entitled to family pension.

Post again on 22.3.2010.

Meanwhile, subject to final orders that may be passed in the writ petition, the official respondents are directed to release family pension proportionately amongst Varun Kumar (son); Radhika (daughter) and Arun Kumar (son) of the deceased in equal shares and submit a compliance report on the adjourned date.”

As per direction issued in the aforesaid writ petition, the official respondents were directed to release family pension proportionately to the dependents of the deceased in equal shares. While disposing of the petition, it was also directed to the competent authority to hold a fact finding inquiry to ascertain their source of livelihood and to determine as to who out of the two was better for preferential claim for employment. On the basis of said direction, the claim of the petitioner was considered and it was rejected on the basis of fact finding inquiry, which was conducted by Sub Divisional Magistrate, Jalandhar-I. The concluding part of the report is reproduced as under:-

“It is clear from above that Smt. Swarna Rani is to be receive sufficient fixed monthly pensionary amount (including the share of minors as natural guardians). Sh. Varun Kumar, who is residing along with his two brothers in house at Jalandhar that was in the name of his father has received his share out of the maturity amount of LIC policies of his late father. Smt. Swarna Rani has also put in her and her children claim in this house by filing a civil suit in a civil Court at Jalandhar. Sh. Varun Kumar does not appear to have received any other dues relating to his deceased father because of the pending litigation. It is not clear as to in which way the above said litigations are going to be decided. There is allegation and counter allegation regarding retention of jewellery and other valuable articles by both the parties. Thus, I am of the view that as per the principle of equity Sh. Varun Kumar being unemployed has a better claim to be considered for giving employemjnt on

compassionate ground.”

It is also not disputed that sufficient opportunities were granted to the petitioner as well as respondent No.5 and after conducting fact finding inquiry, speaking order was passed while rejecting the claim of the petitioner. In the reply filed by respondent No.5, it is mentioned that the petitioner turned out the deceased-husband from her residential house on 11.9.2004. Thereafter the petitioner filed petition under Section 125 Cr.P.C. for grant of maintenance. The petitioner not only filed a complaint against her husband before Punjab State Human Rights Commission but also filed criminal complaints and FIR No. 159 of 2005 dated 28.4.2005 was also got registered, in which, the husband was granted bail by the Court of Sessions Judge, Chandigarh. It is also mentioned in the reply that all household articles, valuables and jewellery weighing more than 35 tollas were retained by the petitioner. The petitioner was also getting maintenance at the rate of ₹ 5000/- per month from her husband for herself and her children.

Keeping in view the facts as mentioned above, there is no merit in the contentions raised by learned counsel for the petitioner and the petition being devoid of any merit is hereby dismissed.

23.12.2016  
pooja

**(DAYA CHAUDHARY)**  
**JUDGE**

Whether speaking/reasoned  
Whether reportable

Yes  
No