

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.18612 of 2012
Reserved on: 05.05.2016
Decided on : 18.05.2016

Satpal

... Petitioner

Versus

State of Punjab & others

... Respondents

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

Present : Mr.Kanwaljit Singh, Sr.Advocate
with Ms.Jaswinder Kaur, Advocate,
for the petitioner.

Mr.Avinit Avasthi, A.A.G., Punjab.

Mr.Dinesh Nagar, Advocate
for respondent No.4.

G.S. Sandhawalia, J.

Petitioner seeks quashing of the order dated 30.03.2012 (Annexure P7), whereby the appointment of Smt. Gurmit Kaur, respondent No.4, on compassionate grounds, has been approved, on account of the fact that she was a Government employee, nominated by the deceased in the service record. Therefore, holding her liable to be considered for compassionate appointment, after the death of the Government employee, as per instructions dated 19.09.2002 (Annexure P5) and thus, the petitioner's objection has been filed. Respondent No.4 is the second wife of the deceased employee, Darshan Singh, who was working in the office of respondent No.2, whereas the petitioner is the son from the first wife and therefore, the tussle for compassionate appointment *inter se* the family members.

From a perusal of the record, it would transpire that the deceased employee, Darshan Singh, who died on 03.07.2010 (Annexure P1), was married to one Surinder Kaur, mother of the petitioner on 14.12.1991 and the petitioner was born from the said wedlock on 09.12.1994. Due to the dispute *inter se* the couple, got divorced by mutual consent on 26.03.2002 (Annexure P2), on a payment of Rs.40,000/- as total maintenance to the wife. The petitioner, being the minor son, was to remain with Darshan Singh, the deceased employee, which would be clear from the statement given by Surinder Kaur, in the divorce proceedings, which has been noticed in the order, Annexure P2. Thereafter, Darshan Singh performed second marriage on 04.08.2002 and it is the case of respondent No.4 that Manpreet Kaur was born from the said wedlock. The deceased employee also nominated the said respondent as a member of his family, in which, even Manpreet Kaur's name figured as the daughter, vide nomination dated 05.11.2008. A perusal of the document (Annexure R4/6) would go on to show that the daughter was 6 years old, at that point of time. Similarly, the ration card dated 29.04.2009 shows that she was 5 years old on that date. Thereafter, on 03.07.2010, the employee, Darshan Singh expired, leading to the filing of the Civil Suit dated 23.11.2010, for the payment of his retiral dues, which was filed by the petitioner and his grandmother and respondent No.4 along with Manpreet Kaur were arrayed as defendants No.4 & 5.

A compromise was arrived at *inter se* the parties that half of the dues would be paid by the Department to the plaintiffs and half would be paid to Gurmeet Kaur and Manpreet Kaur. The family pension would be sanctioned as per rule, proportionately. Accordingly, the suit was disposed of on 13.01.2011 (Annexure R2), as per the compromise. Respondent No.4, in the meantime, had also applied for compassionate appointment and had also filed CWP-8946-2011, in which, she had also claimed the retiral dues. The petitioner, along with his grandmother, were arrayed as respondents No.4 & 5 in the said petition. However, in view of the compromise which was arrived at in the Civil Suit, the writ petition was dismissed as withdrawn by filing an application for withdrawal, by getting the case preponed by respondent No.4. The order dated 19.12.2011 (Annexure R5) reads as under:

“C.M. No. 16724 of 2011

In this application the applicant has prayed that he may be allowed to withdraw the main petition, which is pending for 12.01.2012. According to him, the petitioner has already been appointed as Group 'D' post on compassionate grounds.

The prayer for withdrawal is not opposed by the State counsel.

In view of above, the date of hearing of the petition is preponed for today.

CWP No.8946 of 2011

In view of above, this petition is dismissed as withdrawn.”

A perusal of the above would go on to show that in the

meantime, respondent No.4 had got the appointment order dated 22.09.2011 (Annexure R3) as a Peon in the Election Department with respondents No.2 & 3, on compassionate grounds and therefore, withdrew the writ petition. The petitioner, thereafter, approached this Court, through his grandmother, by filing CWP-895-2012, directing the respondents to terminate the services of respondent No.3 on the ground that she was not eligible for the job on the basis of compassionate ground and she had not got divorce from the previous husband etc.

Accordingly, it was noticed that the petitioner was a minor and claiming that a post could be kept vacant for his appointment, so that he could be given employment, as and when he would get major but respondent No.4 had been appointed. Whether more than one dependent could be given employment was to be decided by the authorities. The order dated 16.01.2012 (Annexure P6) reads as under:

“(1) The petitioner seeks a mandamus for his appointment on compassionate grounds under the ex gratia policy on the premise that at present he is minor and a suitable post may be kept vacant for his employment as and when he attains majority and/or the qualification that he may acquire.

(2) It may be noticed here that the father of the petitioner late Darshan Singh was working as Peon in the office of Chief Election Officer, Election Department, Punjab when he died in harness on 03.07.2010. It further appears from the averments made in the writ petition that the father of the petitioner divorced the petitioner's mother and got re-

married with respondent No.3 who has since been given appointment on compassionate grounds.

(3) In the absence of any specific policy on record to the effect that more than one dependents of the deceased employee can be given employment under the ex gratia policy, it may not be expedient for this Court to form any final opinion, rather I deem it appropriate to dispose of this writ petition, at this stage, with a direction to respondents No.1 & 2 to consider the above-mentioned claim of the petitioner as contained in his legal notice dated 26.11.2011 (Annexure P4) and dispose of the same by passing a speaking order as early as possible but not later than four months from the date of receipt of a certified copy of this order.

(4) Ordered accordingly. Dasti.”

Resultantly, the impugned order has been passed on the ground that the nomination is in favour of respondent No.4, while cancelling the earlier nomination. A perusal of the policy dated 19.09.2002 (Annexure R4) provides that the person nominated should be considered for the compassionate appointment, as per Clause 1. However, Clause 3 also provides that where the claimants/dependents are more than one, the appointing authority must refer the matter to the District Magistrate for determining the real dependent eligible for the compassionate appointment. All the claimants, including the dependents, the widow, sons, daughters, are to be called by the District Magistrate for determining the real dependent and the statements also had to be recorded and consent had to be obtained. The eligibility and suitability of the candidates and the priority position were to be

seen which was also given. The dependent, who was to be given compassionate appointment, was to execute an undertaking as per Clause 4 that he/she would discharge the responsibilities as guardian of the other dependents of the deceased employee. The said exercise, however, in the present case, seems not to have been done. Relevant portion of the policy reads as under:

“1) If the Government employee had nominated any of the dependent in GPF statement or any other service record, such nominated dependent should be considered for compassionate appointment after the death of the Government employee.

2) In case such nominated person is not eligible for compassionate appointment as per policy instructions, all dependents of the deceased employee should unanimously, nominate one dependent candidate eligible for compassionate appointment.

3) In case of any doubt, or where the claimant dependents are more than one, the appointing authority must refer the matter to the District Magistrate for determining the real dependent for compassionate appointment. In all such cases the District Magistrate shall:-

(i) Call all the claimants in his Court including all dependents i.e. Widow/widower/sons, Daughters adopted sons; Adopted Daughters.

(ii) Record statement of each dependent and obtain their consent for compassionate appointment in favour of the candidate of their choice.

(iii) Consider the eligibility of each claimant/proposed candidate in the light of Government policy instructions on the compassionate appointment issued from time to time.

(iv) Adjudge eligibility and suitability of the candidates keeping in view the age for entry into Government services, qualifications, and priority position in the family.

Priority position would be in the following order:-

- a) Widow/Widower
- b) Unmarried Son;
- c) Unmarried Daughter;
- d) Married Son, if living in joint family and in living separately property and other interests are common.

(v) Strictly ensure and ascertain the financial position of the family before issuing the legal authority for the compassionate appointments as per the provisions of policy instructions issued by the State Government.

The legal authority issued by the District Magistrate after following the procedure laid down above, may be treated as suitability for compassionate appointment.

4. In all such cases, the dependent who is offered compassionate appointment must execute as undertaking that he or she shall discharge his/her responsibilities as guardian of other dependents of the deceased employee.”

The background has already been noticed that apart from respondent No.4, even the petitioner was staying with his father and was a minor, at that point of time. On account of the divorce and due to the death of his father, he was left with the grandmother. The dispute had arisen between the family members for retiral dues, family pension etc. but it is apparent that respondent No.4 got the compassionate appointment at the back of the petitioner on account of the fact that he was, apparently, not a major, at the time of appointment in the year 2011, he being born on 09.12.1994.

Thus, his right of appointment or consideration, was also not adjudicated upon by respondents No.2 & 3, in spite of the fact that there was a specific order dated 16.01.2012. The

reasoning that the instructions dated 19.09.2002, gave the right of appointment to the person nominated cannot be an exclusive right to the person nominated who could only have a preferential right and there are various considerations which have to weigh with the authorities. Clause 3, as noticed, gives other dependents also the right of consideration. As noticed above, even the priority list has been given and the matter was to be referred to the District Magistrate, for appropriate consideration, which has not been done.

Resultantly, this Court is of the opinion that the order dated 30.03.2012 (Annexure P7) is not sustainable and the same is quashed. However, it is made clear that by quashing of the said order, services of respondent No.4 shall not be terminated, on this account. Respondents No.2 & 3 are directed to re-decide the issue afresh, regarding the claim of the petitioner also, for compassionate appointment. It would always be open to the respondents also to provide employment to the petitioner, additionally, in case there is any such provision. The necessary exercise, as per the policy dated 19.09.2002, shall be conducted, within a period of 6 months, from the receipt of the certified copy of this order.

MAY 18th, 2016
sailesh

(G.S. SANDHAWALIA)
JUDGE