

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

**CWP No.13865 of 2015
Date of decision: 02.09.2016**

Rajinder Kumar

..Petitioner

Versus

The State of Punjab and others

..Respondents

CORAM: HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present: Mr. T.P.S. Makkar, Advocate
for the petitioner.

Mr. Anshul Gupta, AAG, Punjab
for the respondents -State.

Daya Chaudhary, J.

The prayer in the present writ petition is for issuance of a writ in the nature of certiorari for quashing of impugned order dated 10.07.2014 (Annexure P-1) passed by respondent No.1, whereby, the claim of the petitioner for appointment to the post of Constable on compassionate grounds has been rejected. A further prayer has also been made for direction to the respondents to appoint the petitioner as Constable on compassionate grounds being dependent upon his deceased brother by giving relaxation in upper age limit on the basis of instructions dated 21.11.2002 issued by the Department of Personnel, Govt. of Punjab.

Briefly, the facts of the case as made out in the present writ petition are that the brother of the petitioner, namely, Dharminder, joined the Police Department as Constable and was posted at Police Lines, Ferozepur. He died due to cancer on 29.08.2012 while on duty. At the time of his death, he was undergoing training at PAP Jalandhar. After his death, the father of petitioner made an application to respondent-authorities to give

employment to the petitioner on compassionate grounds in place of his

deceased son as per policy framed by the State Government. All formalities were completed and even other legal heirs of the deceased submitted an affidavit stating therein that they have no objection in case, the job is given to the petitioner on compassionate grounds. The date of birth of the petitioner is 31.05.1985 and on the date of making the application i.e., 27.11.2012, the petitioner was 27 years 5 months and 26 days of age whereas the claim of the petitioner for employment as Constable on compassionate grounds was rejected on the ground that he was not fulfilling the condition of age for appointment to the post of Constable. Said order of rejection dated 10.07.2014 is subject matter of challenge in the present writ petition.

Learned counsel for the petitioner submits that admittedly, the date of birth of the petitioner is 31.05.1985 and on the date of submission of application i.e., 27.11.2012, he was 27 years 5 months and 26 days of age. The age prescribed for the post of Constable is 18-25 years. The claim of the petitioner was rejected on the ground that the petitioner was not within the age limit prescribed for the post of Constable. Learned counsel also submits that as per policy/instructions dated 21.11.2002, the age relaxation can be upto 5 years in deserving case of SC/BC/widows. In the present case, the petitioner belongs to SC category and his case has wrongly been rejected.

Learned State counsel opposes the submissions made by learned counsel for the petitioner and submits that the case of the petitioner was sent to State Government for grant of relaxation in age of 2 years 5 months and 26 days for his appointment as Constable under Priority List

Instructions but the same was rejected on 10.07.2014. Subsequently, his

case for relaxation in age was again rejected on 17.03.2015 and said order has not been challenged.

Heard arguments of learned counsel for the petitioner as well as learned State counsel and have also perused the impugned orders as well as other documents on the file.

The facts with regard to death of brother of the petitioner, submission of application and rejection of his claim are not disputed. The case of the petitioner has been rejected on the ground that the petitioner was over age as his age was 27 years 5 months and 26 days and he was not within the age limit required for the post of Constable i.e., 18-25 years. It is also not disputed that the petitioner belongs to SC category.

The relevant provisions of instructions dated 21.11.2002 applicable to the case of the petitioner with regard to age relaxation are reproduced as under: -

“(a) upper age limit could be relaxed wherever found to be necessary. In case of reserved categories of SC/BC, widows the age relaxation may be allowed as per policy instructions issued from time to time. The lower age limit should, however, in no case be relaxed below 18 years of age in case of Group 'C' and below 16 years in case of Group 'D'. However, the Administrative Department may relax upper age limit by 5 years in deserving cases.”

It is also admitted fact that the object of the compassionate

appointment is to enable the family of the deceased to get over the financial

crisis that had occurred at the time of death in case, the sole bread winner of the family died during service.

In the scheme of compassionate appointment, issued vide letter dated 21.11.2002, the clause of eligibility and relaxation have specifically been mentioned, which are as under: -

“6. Eligibility

(a) The family is indigent and deserves immediate assistance for relief from financial destitution. The authority concerned must consider as to whether the family of deceased employees is unable to meet the financial crisis resulting from employee's death.

(b) Applicant for compassionate appointment should be eligible and suitable for the post in all respects under the provisions of the relevant Recruitment Rules.

8. RELAXATIONS

(a) Upper age limit could be relaxed wherever found to be necessary; In case of reserved categories of SC/BC, Widows the age relaxation may be allowed as per policy instructions issued from time to time. The lower age limit should however, in no case be relaxed below 18 years of age in case of Group 'C' and below 16 years in case of Group 'D'. However, the Administrative Department may relax upper age limit by 5, years in deserving cases. NOTE Age eligibility shall be

determined with reference to the date of application and not the date of appointment;

(b) No relaxation in educational qualification is permissible. However, for Group 'D' minimum 5th standard is necessary. For Group 'C' the appointing authority may temporarily relax the conditions for the passing of Punjabi Language for a period of six months. The person so appointed shall have to pass an examination of Punjabi Language equivalent to Matriculation standard or he/she has to qualify a test conducted by Language Wing of the Department of Education, Punjab within prescribed period. If he/she fails to qualify the test, he/she may be dealt with like other employees as per rules.

NOTE In the case of an attached/subordinate office, the Secretary in the concerned Administrative Department shall be the competent authority for this purpose.

(c) Where a widow is appointed on compassionate Group 'D' post, she will be exempted from the requirement of possessing the educational qualifications prescribed in the relevant rules provided the duties of the post can be satisfactorily performed by her'without possessing such educational qualification."

the Apex Court in ***Umesh Kumar Nagpal vs. State of Haryana, 1994 (3)***

SCT 174, wherein it was observed as under: -

“As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post

much less a post for post held by the deceased.

What is further, mere death of an employee in harness does not entitle his family to such source of livelihood.”

The aforesaid judgment was also followed by Hon’ble the Apex Court in case ***State Bank of India and others vs. Jaspal Kaur, 2007 (2) SCT 226*** wherein the Court has considered the facts and circumstances of the case as the petitioner in that case applied for appointment on compassionate grounds on the basis of scheme circulated by the Oriental Bank of Commerce vide circular dated 16.09.1996. Said scheme was superseded by the scheme dated 05.05.2005. Under said scheme, there was no provision for providing employment on compassionate grounds. It was replaced by the scheme for payment of *ex gratia* amount. The petitioner would have been eligible to receive the *ex gratia* amount under clause 8. The claim of the petitioner was rejected on the ground that income of the family was more than 60% of the last pay drawn salary of the deceased employee. The bank issued a last pay drawn certificate of the deceased showing the monthly income of April 2005, which was ₹7706.78/-. The petitioner was in receipt of ₹3924.37/- as family pension. It was held that the claim of the petitioner for *ex gratia* payment has rightly been rejected under clause 8 of the *ex gratia* scheme. Hon’ble the Apex Court considered a similar scheme made by the State Bank of India. The family members of the deceased consisted of a widow, twin daughters and one son. A sum of ₹4,57,607/- was paid as terminal benefit and a sum of ₹2055/- per month was paid towards family pension and monthly income under Staff Mutual Welfare Scheme. The total monthly income of the family was ₹5855/-

including monthly pension. By considering the financial condition, the claim of the petitioner was rejected by the Bank. Thereafter, the civil writ petition was filed and the respondent-Department was directed to re-consider the claim of the petitioner. On reconsideration, the claim was again rejected. Thereafter, second petition was filed for quashing of order of rejection of claim. It was allowed by the Division Bench by observing that an amount of ₹4,57,607/- granted to the family of the deceased on account of terminal benefit could not be accepted to be sufficient as the amount was in the shape of security for the marriage of the daughters. It was also observed that the aforesaid income was not sufficient for the bare maintenance of the family. The bank filed appeal before Hon'ble the Apex Court against the judgment passed by the Division Bench and it was allowed with following observation: -

*“The law with regard to employment on compassionate grounds for dependents of a deceased employee was laid down by this Court in the case of **Umesh Kumar Nagpal v. State of Haryana and others** (supra), where this Court observed that, “Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependents of employees dying in harness and leaving their family in penury and without any means of livelihood.”*

It is also settled proposition of law that the appointment on

compassionate grounds is not to be claimed as a matter of right. It cannot be

granted to replace the deceased employee with one of the dependents. The aim and object of granting appointment on compassionate grounds is to help the family at the time of sudden demise of the sole bread winner of the family.

In the present case, the financial condition has not been discussed to show that there was sufficient income of the family. The claim of the petitioner has been rejected only on the ground that the petitioner was over age at the time of making application. There is a specific provision of relaxation of age upto the period of five years in case of SC/BC and Widow. The petitioner belongs to SC category and the clause of relaxation of age is applicable but the same has not been considered and the claim of the petitioner has been rejected on two occasions.

Accordingly, by considering the submissions made by learned counsel for the petitioner and the provisions of the policy, the present writ petition is allowed and impugned orders of rejection dated 10.07.2014 and 17.03.2015 are hereby quashed. The respondents are directed to re-consider the case of the petitioner afresh by taking into consideration the clause of relaxation of age as well as financial condition of the family. The necessary exercise be done within a period of two months from the date of receipt of certified copy of this order.

02.09.2016
neetu

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned

√
Yes/No

Whether Reportable

√
Yes/No