

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

CWP No. 23291 of 2012
Date of decision: 11.01.2016

Paramjit Kaur

....Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

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

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

Mr. Anshul Gupta, AAG, Punjab.

G.S.SANDHAWALIA, J. (Oral)

The petitioner seeks the quashing of the impugned letter dated 12.08.2011 (Annexure P-8), vide which, the case of the petitioner for compassionate appointment has been rejected on the ground of being covered in the light of the instructions issued by the Personnel Department.

In the written statement filed, the defence taken is that the petitioner's husband was not a regular government employee at that point of time and he had expired on 18.10.2010 and, therefore, in view of the instructions dated 21.11.2002 (Annexure R-1), the petitioner's case did not fall within the ambit of the instructions and accordingly her case had been rejected.

Counsel for the petitioner has submitted that the petitioner's husband was appointed on 27.09.2008 (Annexure P-1) as a teaching fellow on a fixed salary against vacant post of JBT/ETT teacher. The appointment was initially on a one year contract basis and was to continue for the second

year subject to the annual results in the confidential reports as per clause 1. It is submitted that the necessary extension was granted and as per clause 21, after 3-1/2 years, if the employee had completed 2 years in the rural area/border/bet or mand area, the case would be considered for regular appointment. The petitioner's husband unfortunately died on 18.10.2010 while in service and, two days later on 20.10.2010 (Annexure P-4), the government decided to regularize all teachers appointed on contract basis as per the advertisements issued between 05.09.2007 and 29.08.2007. As per the letter, the work and conduct was to be satisfactory and the regularization was to be w.e.f. 01.04.2011. On account of the death of Karnail Singh, the husband of the petitioner, the regularization orders could not be passed. The similarly situated teaching fellows were regularized w.e.f. 01.04.2011 and copy of instructions regarding regularization orders to be passed is appended as Annexure P-5. The petitioner applied on the death of the husband and advice was sought by respondent no. 2 that on account of the employee not being regular, whether the legal heirs were entitled for compassionate appointment. As noticed, the impugned order has thereafter been passed rejecting the case on 12.08.2011.

Counsel for the petitioner has placed reliance upon the Division Bench judgment of this Court 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 (Annexure P-13) to submit that once the husband was entitled for regularization, the case should be considered on merits and only because of unforeseen circumstances, the benefit of beneficial instructions could not be denied.

Counsel for the State, on the other hand, has submitted that the

instructions provide for the appointment to be on regular basis and, therefore, the order passed was justified.

After hearing counsel for the parties, this Court is of the opinion that the case is covered by the judgment of the Division Bench of this Court in *Beant Kaur's case (supra)* . In the said case, the relief of compassionate appointment was denied on the ground that the employee had not completed 10 years of service which would entitle the employee for the benefit of regularization and, therefore, the wife was not liable for consideration. The Division Bench, in the said case, had gone on to direct that the regularization be ordered on completion of 10 years and the consideration for appointment on compassionate grounds was also directed to be done thereafter. The relevant portion reads thus:-

“5. The case of the petitioner is that her husband is being deprived of the benefit of regularisation of his services on the basis of the policy dated 7th March, 1993 Annexure R-1 which lays down that before the services could be regularised it was obligatory on the part of the employee to complete 10 years of service on or before the 31st August, 1992. The stand of the respondent- authorities is that since the husband of the petitioner joined his service as fitter coolie on 4th November, 1986 and that he had not completed 10 years of service on 31st August, 1992, rather on 3rd November, 1996, therefore, he was not entitled to be regularised as per the policy dated 7th May, 1993. We are not in a position to accept this contention of the respondents because, in our opinion, the underlying object of the policy letter dated 7th May, 1993 was to regularise the services of those workers who had completed 10 years of service and in order to achieve

that object the administration desired that cut off date should be given which was 31st August, 1992. This policy was of one time policy. The State cannot deprive regularisation of s ervices of those temporary workers who had completed 10 years of service after 31st August, 1992. The husband of the petitioner admittedly completed 10 years of service on 3rd November, 1996 but as on that day, there was no other policy declared by the State Government, therefore, his services could not be regularised. This stand of the respondents, in our opinion, is untenable, as we have stated above that the object of the policy dated 7th May, 1993 was that a worker must have completed 10 years of service. Shri Pritam Singh had completed 10 years of service before his death. So much, so his case at one point of time was sent for regularisation which was not approved for the reason that in the year 1996 no other policy was declared after the policy decision of the year, 1993. Resultantly, we hold that the husband of the petitioner was entitled to be regularised on completion of 10 years service w.e.f. 3rd November, 1996 and we order accordingly.

6. The second point for determination in this writ petition is whether petitioner Smt. Beant Kaur deserves to be considered for appointment on compassionate ground or not. We dispose of this Writ petition by giving directions to the respondents to consider the case of the petitioner for appointment on compassionate ground subject to her eligibility and necessary order shall be passed by respondent No. 4 within two months from the date of receipt of a certified copy of this order. There will be no order as to costs.”

In similar circumstances also in *Dalbir Singh's case (supra)*,

the employee had served for 7 years in the Punjab Home Guards

Department and for 13 years as SPO but had not been absorbed as a regular member of the police force and this Court, while placing reliance upon the observations of the Division Bench, had directed that the claim be considered on a suitable post by ignoring the fact that the husband was not a regular constable. In the present case also, as noticed, similarly situated persons as the petitioner's husband already stand regularized in view of the orders dated 13.05.2011 (Annexure P-5) and only on account of the death of Karnail Singh two days before the policy was issued, his consideration for regularization was denied and has led to the denial of proper consideration to the petitioner for compassionate appointment. The purpose of compassionate appointment, as noticed, is to give immediate succor to the family of the deceased employee. A perusal of Annexure P-6 would go on to show that the petitioner is 35 years and is having a daughter of 8 years to support and Surjit Kaur, the mother of the employee, was also one of the legal heirs as per the certificate issued by the Deputy Commissioner (Annexure P-6).

Reference can also be made to the observations made in ***Asha Rani vs. State of Punjab and others, 2015 (4) SCT 250***, wherein, it is 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 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.”

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.

11.01.2016

shivani

SHIVANI GUPTA
2016.01.25 12:33
I attest to the accuracy and
integrity of this document
Chandigarh

(G.S. SANDHAWALIA)
JUDGE