

CWP No.24521 of 2015

[1]

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

**CWP No.24521 of 2015
Date of decision:20.07.2016**

Sukhwinder Kaur

...Petitioner

Versus

State of Punjab and others

...Respondents

CORAM: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Navkiran Singh, Advocate, and
Mr. Navratan Singh, Advocate, for the petitioner.

Mr. Anant Kataria, DAG, Punjab.

Rakesh Kumar Jain, J.

The petitioner is a widow. Her husband Gurcharan Singh, retired from BSF and her minor son Karanvir Singh along with three other persons were killed by the CRPF on account of their mistaken identity. FIR No.16 dated 16.02.1991, under Sections 302/148/149 IPC read with Section 25 of the Arms Act was registered at Police Station Sarhali, District Tarn Taran, which was closed as un-traced on 23.12.1991. The petitioner received ex-gratia grant from the State of Punjab and is also receiving the monthly aid for her survival to the tune of ₹5,000/- for the loss of life of her husband and the only minor son. It is alleged that the Civil Administration as well as the then Governor of Punjab assured the petitioner at the time of cremation of her husband and son that the Government would provide job to a member of her family but since the petitioner was left alone, therefore, she

CWP No.24521 of 2015

[2]

adopted Jaskaran Singh, her brother's son, at the time of his birth on 15.07.1991 and thereafter by way of an adoption deed on 29.01.1993. The adopted son has now passed B.Com and the petitioner made an application dated 15.01.2013 to the Deputy Commissioner, Tarn Taran for seeking employment for her adopted son on compassionate ground, which was rejected on 07.02.2013. The petitioner made another application to the Deputy Chief Minister, Punjab at the time of Sangat Darshan, which was forwarded to the Special Chief Secretary (R) and further to the Secretary, Revenue and Rehabilitation and Disaster Management, Punjab, who informed the Deputy Commissioner, Tarn Taran that the employment to the son of the petitioner on compassionate ground cannot be given as Jaskaran Singh is not the adopted son of Gurcharan Singh. The said order dated 02.09.2014 is under challenge in this petition *inter alia* on the ground that it violates the policy dated 05.02.1996 issued by the Department of Personnel and Administrative Reforms on the subject of grant of employment in the State Services on compassionate grounds.

Counsel for the petitioner has submitted that as per Clause 5 of the aforesaid policy, for the purpose of offering appointments on Class-III and IV posts on compassionate grounds, the following categories of persons were to be considered:-

- “(1) (i) A dependent member of the family of a person (bread-winner) killed or 100% physically disabled in terrorist action or by security forces acting in aid of civil power, in the state:
- (ii) A dependent member of the family of a person (bread-winner), died or 100% physically disabled in riots in India between October 31 or November 7,

CWP No.24521 of 2015

[3]

1984 (both days inclusive).

- (iii) A dependent member of the family of an army deserter (bread-winner) killed or 100% physically disabled in 1984 action by the forces against deserters after Operation Blue Star;
- (iv) To a person (bread-winner), who helped the Civil Administration in fight, against terrorism and has suffered great loss/misery and is on the hit-list of the terrorist or to a dependent son or daughter of such a persons (bread-winner). (Under this category, compassionate appointments will be made in Police Force only).

(No.11/64/92-2PP1/10055, dated 7th July, 1992/14th August, 1992).

(No.11/64/92-2PP1/19989, dated 2nd December, 1992).

- (2) A dependent member of the family of the deceased Government employee, or of a Government employee, who is retired from service on medical grounds before attaining the age of 55 years in the case of Class-III employees and before attaining the age of 57 years in the case of Class-IV employee.
- (3) Regular Government employees declared surplus on account of abolition of post(s) Department(s) of the State Government for any reason, including reduction of post(s) etc. (No.11/15/92-2PP1/5376, dated 13th March, 1995).
- (4) Disabled Ex-servicemen (not unfit for Civil Service).
- (5) A dependent member of the family of the Defence Service Personnel:-
 - (i) Killed in service, while performing duties; or
 - (ii) Who are severely disabled and totally unfit for re-employment.
- (6) Physically handicapped persons.”

It is further submitted that while making appointment against Class-III and Class-IV posts on compassionate ground out of the categories of the persons mentioned here-in-above, the following conditions/

CWP No.24521 of 2015

[4]

clarifications were to be meticulously followed:-

“(i) For appointment on compassionate grounds, only a widow or a dependent son or dependent unmarried daughter or adopted dependent son or adopted unmarried daughter of the deceased, may be considered. This is in line with the policy of Government of India contained in their letter No.14014/20/94-Estt. (D), dated 9th December, 1993 (Copy enclosed at Annexure-II).”

According to the counsel for the petitioner, the adopted dependent son is also eligible for consideration for appointment on compassionate ground in view of Clause 5(1)(i) of the aforesaid policy, wherein it is provided that a dependent member of the family of a person (bread-winner) killed or 100% physically disabled in terrorist action or by security forces, acting in aid of civil power in the State, is eligible for compassionate appointment. It is further submitted that there is no denial that husband and the only minor son of the petitioner were killed by the CRPF while working in the aid of civil administration on their mistaken identity as terrorists. It is also not denied that the petitioner has been paid monthly survival amount of ₹5,000/- on account of the said killing. There is no denial as well that there is a policy of the State to give appointment to an adopted dependent son but the only objection raised by the respondents is that the adopted son is not the son of deceased Gurcharan Singh because he is alleged to have died on 16.02.1991, whereas Jaskaran Singh was born on 15.07.1991 and was, thereafter, adopted by the petitioner.

Counsel for the petitioner has submitted that had the husband and minor son of the petitioner not been killed by the CRPF, mistaking them as terrorists, her sole bread-winner would not have died and she had no occasion to adopt the son of her brother in the presence of her own son. He

CWP No.24521 of 2015

[5]

has further submitted that the son adopted by widow gets transplanted from the family of his natural parents to the adoptive family and becomes son not only of widow but also of deceased husband of the widow. In support of his submission, he has relied upon a judgment of this Court in the case of **Kanwaljit Singh vs. The State of Haryana and others**, 1982 PLJ 64.

After hearing learned counsel for the parties and examining the available record, I am of the considered opinion that the impugned order is totally unreasonable. Husband of the petitioner, who retired from the BSF, was mistaken as a terrorist along with her minor son and three others was killed by the CRPF, as a result thereof, practically, the petitioner, not only became widow but also an orphan and in order to survive emotionally, she adopted her brother's son at the time of his birth and thereafter the adopted son is recorded in all the public documents i.e. the certificate issued by the Punjab School Education Board etc. as son of Gurcharan Singh and Sukhwinder Kaur and not the son of her natural parents. The policy dated 05.02.1996 appears to have been made to rehabilitate the families whose bread-winner is either killed or 100% physically handicapped either in terrorist action or by security forces by offering employment on compassionate ground either to the widow, dependent son, dependent unmarried daughter, adopted unmarried son or adopted unmarried daughter.

In the present case, the adoption is not of a major/adult person just in order to obtain the benefit of the policy rather the adoption took place even before the policy came into being. The adoption was for the purpose of giving support to the widowed petitioner in her old age and for that matter, her own brother came forward by giving his son in adoption to his

CWP No.24521 of 2015

[6]

sister. The objection raised by the respondents in the impugned order that the adopted son Jaskaran Singh is not the son of the deceased Gurcharan Singh is really fantastic because the petitioner has placed on record voluminous documentary evidence such as his academic testimonials in which he has been recorded as the son of Gurcharan Singh and not the son of his natural father. Even otherwise, as per Section 12 of the Hindu Adoptions and Maintenance Act, 1956, after the adoption takes place, the ties of the adopted person are permanently disconnected with his natural family for all intents and purposes. Moreover, in **Kanwaljit Singh's case (supra)**, relied upon by the counsel for the petitioner, this Court has categorically held that the son adopted by widow gets transplanted from natural parents to adoptive family and becomes son not only of widow but also of deceased husband of the widow.

Keeping in view the aforesaid discussion, the present writ petition is hereby allowed, impugned order is set aside and the respondents are directed to consider case of the petitioner for the purpose of compassionate appointment to her adopted dependent unmarried son as early as possible, preferably within a period of 2 months from the date of receipt of certified copy of this order.

July 20, 2016
vinod*

(Rakesh Kumar Jain)
Judge