

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

201

CWP No.19755 of 2009

Date of decision: 20.09.2017

Birmati Devi

...Petitioner

Versus

State of Haryana & others

...Respondents

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

Present: Mr.Jai Bhagwan Sharma, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

G.S. SANDHAWALIA, J. (Oral)

Petitioner seeks quashing of the order dated 30.04.2008 (Annexure P-1) whereby the case of the petitioner for compassionate appointment for her son was rejected on the ground that the 5% sanctioned posts of Clerk had already been filled up. Therefore, the respondents were unable to give appointment to the son of the petitioner on the post of Clerk and resultantly, the petitioner was only held entitled for *ex-gratia* amount of Rs.2.5 lakhs.

State Counsel has submitted that in view of the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2006, coming into force, the case could only be considered for financial assistance. It is further submitted that since there was no vacancy against the 5% of the sanctioned posts of Clerk, as per the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2003 (for short, 'the 2003 Rules') therefore, the order could not be faulted in any manner.

Counsel for the petitioner has rightly pointed out that the husband of the petitioner-Desh Raj, who was working as JBT teacher in Government Primary School, Karora, Kaithal, had expired on 18.07.2005. On account of his death, application had been moved for compassionate appointment for the son of the petitioner-Navrattan. In view of the non-availability of the post of Clerk, the petitioner had also submitted an affidavit dated 22.06.2006 (Annexure P-5) that she has no objection if her son is considered for a Class-IV post in the Education Department.

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Resultantly, an application had also been filed on 10.01.2007 (Annexure P-6) that at the time of death, the employee had left behind the widow, three sons and one daughter and only one of them was major, namely, Navrattan and qualified, having a BA degree and therefore, the rejection order was passed on 06.10.2006 (Annexure P-10) on account of new Rules coming into force.

It is not disputed that CWP-8641-2007 was filed challenging the order dated 06.10.2006 (sic. 26.10.2006), whereby the claim was rejected. The Division Bench had set aside the said order on 23.01.2008 (Annexure P-2) and directed fresh consideration of the case of the petitioner, under the 2003 Rules. The present order dated 30.04.2008 (Annexure P-1) which has now been passed, is not in consonance with the order of the Division Bench. The petitioner had scaled down her request from the post of Clerk to Class-IV post, only on account of the fact that there was no vacancy available against the 5% sanctioned posts of Clerks. The said order, thus, smacks of non-application of mind and has not even considered the genuine request of the petitioners, who have been litigating for their right and had also, in view of the extreme financial exigencies, claimed appointment at a much lower level.

In view of the above, the order dated 30.04.2008 (Annexure P-1) cannot be held to be justified in any manner and the same is quashed. Let a fresh decision be taken by respondent No.2, within a period of 3 months, keeping in view the earlier directions passed by the Division Bench that the application of the petitioner has to be considered as per the 2003 Rules and in view of the judgment of the Apex Court in **Abhishek Kumar Vs. State of Haryana & others 2007 (3) RSJ 121.**

Writ petition stands allowed, in the above-said terms.

20.09.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No