

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CWP No.10209 of 2015(O&M)
Judgement reserved on : 09.8.2017
Date of Decision : 21.9.2017

Amandeep Singh

--Petitioner

Versus

State of Punjab and others

--Respondents

CORAM:- HON'BLE MR.JUSTICE TEJINDER SINGH DHINDSA.

Present:- Mr. G.S. Bal, Sr. Advocate with
Ms. Harmanpreet Kaur, Advocate for the petitioner.

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

Mr. Arpandee Narula, Advocate for respondent no.4.

Mr. Samuel Gill, Advocate for
Mr. R.D. Bawa, Advocate for respondent no.5

TEJINDER SINGH DHINDSA.J

Petitioner seeks appointment on the post of Assistant Sub Inspector/Sub Inspector of Police under Punjab Police on compassionate basis. A prayer in the alternative has been made to set aside the appointments of private respondents no.4 and 5 vide orders dated 30.10.2011 and 5.11.2012 (Annexure P-14 and P-15) respectively made in their favour by granting relaxation of the essential eligibility conditions.

Learned senior counsel, at the very outset, has made a statement that he would not be pressing for the alternate prayer and rather would attempt to draw support from the impugned orders dated 30.10.2011 and 5.11.2012 (Annexure P-14 and P-15) to buttress the claim of the petitioner for compassionate appointment on the grounds of parity.

Brief facts of the case may be noticed. Petitioner belongs to the

Scheduled Caste category and his date of birth is 10.9.1980. Father of the

petitioner Rajinder Singh was serving as Superintendent of Police and died in harness on 9.7.2011. Mother of the petitioner Smt. Mandeep Kaur submitted an application to the S.S.P., Batala seeking appointment in favour of her son i.e. the present petitioner as Assistant Sub Inspector/Sub Inspector on compassionate basis. Vide memo dated 26.3.2012 (Annexure P-10), issued by the D.G.P., Punjab claim of the petitioner seeking appointment on compassionate basis was rejected on the ground that he is over age and does not fulfill the conditions for grant of relaxation thereof.

For certain strange and inexplicable reasons the rejection of the claim of the petitioner vide memo dated 26.3.2012 (Annexure P-10) is not under challenge.

Learned senior counsel, however, would urge that the action of the respondent authorities in not having appointed the petitioner as Assistant Sub Inspector/Sub Inspector is arbitrary, discriminatory and violative of Articles 14 and 16 of the Constitution of India. In support of his contention the instances of private respondents no.4 and 5 herein have been cited. It is submitted that Rajinder Singh, respondent no.4, whose father Head Constable Jaswant Singh had died while in service, was appointed as Sub Inspector on compassionate grounds as a special case by giving age relaxation.

Likewise, the name of Prabhjit Singh, respondent no.5 is referred to and who also was appointed as Sub Inspector on compassionate grounds vide order dated 5.11.2012 (Annexure P-15) by according age relaxation. It is contended that the State Govt. cannot adopt different yardsticks while considering the claim for compassionate appointment and the petitioner, as such, was also vested with a right to be treated at par and

as such to be appointed on compassionate basis by grant of age relaxation.

Counsel for the parties have been heard at length.

It is by now well settled that the object of compassionate appointment is to enable the penurious family of a deceased employee to tide over the sudden financial crisis. The objective of compassionate appointment is not to provide employment and cannot be construed as a regular mode of appointment. Rather it is an exception to the same. It is imperative for the authority concerned to examine whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death in harness. Compassionate appointments on posts above Class-III and Class-IV have been held to be legally impermissible. A reference in this regard may be made to the landmark decision of the Hon'ble Apex Court in ***Umesh Kumar Nagpal Vs. State of Haryana and others, 1994(4) S.C.C, 138.***

Placed on record and appended at Annexure P-1 is the scheme formulated by the State Govt. for compassionate appointments issued on 21.11.2002. Clause 6 governs eligibility of a dependent of a deceased employee seeking compassionate appointment and reads in the following terms:-

“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 employee is unable to meet 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.”*

The clause governing eligibility is couched in unambiguous terms. A dependent would be eligible for compassionate appointment only if the family of the deceased is seen as indigent and deserves immediate financial assistance. That apart, the applicant for compassionate appointment has to be eligible and suitable for the post in all respects under the provisions of the relevant recruitment rules.

In the facts of the present case, there is no dispute that at the relevant point of time i.e. in the month of July, 2011 the age of the petitioner was 30 years and 10 months. As per Punjab Govt. Personnel Department instructions the age limit for general category candidates for recruitment is 18 to 25 years and for S.C/B.C category relaxation up to 5 years is provided. Petitioner, as such, does not fulfill the requirement of clause 6(b) of the policy governing compassionate appointment. That apart, there is not even a whisper in the entire petition as regards the family of the petitioner being in a state of financial destitution on account of the unfortunate demise of father of the petitioner. Claim of the petitioner under such circumstances would not be covered even as per clause 6(a).

Apparently, as per orders dated 30.10.2011 and 5.11.2012 (Annexure P-14 and P-15) respectively, private respondents no.4 and 5 have been appointed on compassionate basis by affording relaxation in age. Would this translate into a vested right with the petitioner on the ground of parity?

Claim of the petitioner has to be considered and dealt with as per the policy instructions taken by the State Govt. on the subject. As has been noticed herein above claim of the petitioner is not covered under the policy governing compassionate appointment dated 21.11.2002

(Annexure P-1). Even though, the State Govt. has sought to distinguish the cases of private respondents no.4 and 5 by urging that they were wards of police personnel killed during days of terrorism, yet, assuming a benefit has been accorded to respondent no.4 and 5 *de hors* and contrary to the instructions/policies formulated by the State, it would not be open for the petitioner to seek issuance of a Writ of Mandamus to direct the respondent authorities to perpetuate an illegality.

Petitioner's claim for compassionate appointment was rejected vide memo dated 26.3.2012 (Annexure P-10) by the D.G.P., Punjab. There is no prayer made in the petition seeking quashing of such order. The claim for compassionate appointment is being pressed on the basis that even after rejection vide memo dated 26.3.2012 (Annexure P-10) the claim has been under active consideration. Learned senior counsel would argue that the petitioner had appeared before the D.G.P on 17.4.2017 for his Physical Screening Test (P.S.T) as per directions issued by this Court during a previous date of hearing i.e. on 30.3.2017.

An additional affidavit has been filed in this Court on behalf of the State taking a stand that the Selection Committee had adjudged the suitability of the petitioner in the Physical Screening Test and found that he could not qualify the first event i.e. 1600 meter race in 6 minutes and 30 seconds and as such, was found ineligible for enlistment as a Sub Inspector. Faced with such a situation learned senior counsel has impressed upon the Court that even though, petitioner does not belong to the Ex-Service Man category, still, being over age, there ought to have been a concession in his favour and by applying relaxed standards in the Physical Screening Test (P.S.T) and as is admissible to male candidates in the Ex-Service Man

category.

This Court finds such submission to be wholly misconceived. It proceeds on the fallacious premise that compassionate appointment is a right. To the contrary compassionate appointment is a concession.

In the totality of circumstances and in view of the discussion herein above, this Court does not find merit in the prayer of the petitioner seeking compassionate appointment.

Petition is, accordingly, dismissed.

It is clarified that while dismissing the instant petition this Court has not examined the legality of the orders date 30.10.2011 and 5.11.2012 (Annexure P-14 and P-15) respectively, whereby private respondents no.4 and 5 have been appointed on compassionate basis.

(TEJINDER SINGH DHINDSA)
JUDGE

21.09.2017

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Whether speaking/reasoned:	Yes/No
Whether Reportable:	Yes/No