

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 11144 of 2016 (O&M)

Date of Decision: 20.01.2017

Sunil Kumar

.....Petitioner

Versus

State of Haryana and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL
HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. Ashwani Gaur, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl. Advocate General, Haryana.

RAJESH BINDAL,J.

1. The petitioner, who claims himself to be dependent of Ex-servicemen, has filed the present petition challenging clause (k) of the policy dated 11.10.2001 (Annexure-P1) pertaining to issuance of dependent certificate to Ex-servicemen or their dependents for employment, by the Zila Sainik Boards. Further challenge has been made to Annexure-P4 dated 02.12.2015 vide which the application filed by the petitioner for issuance of Ex-servicemen dependent certificate was returned back, treating the petitioner to be not eligible.

2. Learned counsel for the petitioner submitted that father of the petitioner Dalbir Singh is an Ex-serviceman. As per the policy dated 11.10.2001 one child/wife of Ex-servicemen is entitled for issuance of dependent certificate for the purpose of employment with Government. There are certain conditions attached. Dependent certificate was issued in favour of elder brother of the petitioner on 26.11.2014. It was valid for one

of that certificate. As he wanted to surrender the certificate, the petitioner filed application for issuance of dependent certificate in his favour. The application was accompanied with affidavit from the father of the petitioner and the brother having no objection. However, the prayer was rejected vide communication dated 02.12.2015 while returning the application alongwith documents furnished by the petitioner. Assailing the same, learned counsel for the petitioner submitted that the scheme is to provide benefit of reservation to the dependents of Ex-servicemen. It is available only to one child or wife of Ex-servicemen. It is a matter of choice of the Ex-servicemen as to in whose favour he wants to get certificate of dependency, especially when other dependents have no objection. The right cannot be conferred only on the elder son and then transferred to the younger one only when he had become overage. Such a condition in the policy will be totally arbitrary and will have no nexus with object sought to be achieved. The same deserves to be set aside. In the case in hand, there is no dispute, as the elder son of the Ex-serviceman and even the Ex-serviceman, the father of the petitioner, had submitted their affidavits having no objection to the issuance of dependancy certificate to the petitioner, but still the application was rejected.

3. Learned counsel further referred to the judgment of this Court in *Jai Narain Jakhar Versus State of Haryana and others*, 2012 (1) RSJ 430 where clause (f) in the same policy was challenged in terms of which married daughter of Ex-servicemen was not eligible for issuance of dependent certificate. It was held to be arbitrary declared ultra-vires. Clause was reframed by this Court to mean that even the married daughter, who does not have independent source of livelihood, will be eligible for

issuance of dependent certificate. Summing up the arguments, learned counsel for the petitioner prayed that clause (k) may also be struck down and respondents be directed to issue dependancy certificate to the petitioner.

4. On the other hand, learned counsel for the State-respondents while placing reliance on clause (k), vires of which is under challenge in the present petition, submitted that benefit of the dependent of Ex-servicemen can be given to the second son only after the first dependent had become overage and that too after having affidavit from the first dependent that he has not availed of benefit of reservation on the basis of dependancy certificate.

5. Learned counsel for the State further submitted that if clauses (a) and (k) of the policy are read together, the benefit under the policy is restricted to one dependent only. It can be extended to the another member of the family only after the first dependent becomes overage. The date of birth of first dependent Satish Kumar is 17.12.1984 and he had not become overage when application was filed by the petitioner for issuance of dependancy certificate, hence, rightly declined. The policy was introduced with an object to provide maximum benefits to the Ex-servicemen and their dependents. The State is within its power to formulate various policies. The same are not justiciable in Court. Clause (k) of the policy cannot be said to be ultra-vires. One has to fulfill the conditions laid down in the policy to avail the benefits. The judgment of this Court in Jai Narain Jakhar's case (supra) is distinguishable and not applicable in the facts of the present case and the writ petition deserves to be dismissed.

6. Heard learned counsel for the parties and perused the paper book.

7. The State issued guidelines in the form of a policy on 11.10.2001 for the purpose of issuance of dependent certificate to the dependents of ex-servicemen for employment, by Zila Sainik Boards. The opening para of the policy provides that it was framed considering number of representations received from Ex-servicemen and their dependents. Clause (k) thereof provides that only one child/wife of the Ex-servicemen is entitled for issuance of dependent certificate which shall be valid for a period of one year, however, can be renewed thereafter. The Ex-servicemen who joins service in the Central Government/State Government/any other public sector undertakings will not be considered for issuance of dependancy certificate. When an Ex-serviceman resigns Civil Services after joining it, his ward/wife will not be issued dependancy certificate. There is no age bar for the Ex-servicemen for issuance of dependancy certificate. There are other conditions as well which are not being referred to in detail. However, the conditions, which are relevant, are extracted below:

“(a) only one child/wife of the Ex-servicemen is entitled for issue of dependent certificate.

(b) The said certificate will be issued for a period of one year and renewed thereafter every year from the date of issue.

xx

xx

xx

(f) Married dependent son of ex-servicemen who does not have independent source of livelihood will also be eligible for dependent certificate. Married daughter of an Ex-serviceman is not eligible for dependent certificate.

xx

xx

xx

(k) In case, when the first dependent of the Ex-servicemen has become overage without availing the benefits then, this benefit be given to the next dependent after obtaining an affidavit from the first dependent that

he has not availed any benefit.

xx

xx

xx

(m) Secretary, ZSB will ensure that no ineligible person is given the dependency certificate. There have been a number of cases in the past wherein unnecessary and avoidable legal cases had to be defended. It is, therefore, necessary to institute proper documentation and checks at the level of the Zila Sainik Boards.”

8. Before issue involved in the case in hand is considered, we would like to refer to the judgment of this Court in Jai Narain Jakhar's case (supra) wherein Clause (f) of the policy was challenged which made married daughter of Ex-servicemen to be ineligible for issuance of dependancy certificate. This Court while opining that once a married son of Ex-servicemen who does not have independent source of livelihood, is considered eligible to be treated as dependent of Ex-servicemen, the married daughter cannot be discriminated. The common factor of 'being married and later on independent source of livelihood' are present in both cases. The clause was found to be offending Article 14 of the Constitution of India giving discriminatory treatment to the married daughter even though she did not have independent source of income. Clause (f) was directed to be read as under:

"(f) Married dependent son or married daughter of Ex-servicemen who does not have independent source of livelihood will also be eligible for dependent certificate.”

9. Though the policy was supposed to be revised thereafter, however, merely a memo dated 12.1.2012 was issued informing about the change in clause (f).

10. Coming to the facts of the present case, it is undisputed that

Ex-servicemen, we need to analyze the purpose for which the policy has been designed. The policy clearly provides that only one child/wife of Ex-servicemen is entitled for issuance of dependency certificate, however, clause (k) provides that only in case first dependent of Ex-servicemen has become overage without availing the benefit of reservation, that the benefit will be given to the next dependent after obtaining affidavit from the first dependent that he did not avail any benefit. In our view, the aforesaid clause has no nexus with object sought to be achieved. The underline object is to give benefit to the Ex-servicemen or the dependent. The term 'first dependent' as used in clause (k) has not as such being defined in the policy, but is sought to be explained by stating that it is elder son. Once the scheme is to give benefit to one of the dependents of the Ex-servicemen, no purpose will be achieved by qualifying that the next dependent cannot be issued certificate unless the first dependent had become over age. Even as per the policy, a certificate issued to any of the dependents is valid only for a period of one year and is to be renewed thereafter. If the dependent in whose favour the certificate had been issued does not get it renewed would mean that there is no certificate issued as on date in favour of any of the dependents of Ex-servicemen. Nothing was pointed out from the policy that at the first instance it is only the elder son who could apply for issuance of dependency certificate.

11. Once the object of the scheme is to give benefit to one of the dependents of Ex-servicemen, in our view, to restrict the same to first dependent, the term not defined, till he is over age to claim the benefit and then issue the same to the next dependent, is ultra-vires being arbitrary. The scheme has to be given purposive meaning so that object for which it has

been framed can be achieved. Only one certificate can be issued except in conditions specified to be contrary, one of which is provided in clause (n) of the policy itself.

The writ petition is allowed accordingly.

(RAJESH BINDAL)
JUDGE

(HARINDER SINGH SIDHU)
JUDGE

20.01.2017
reema

Whether speaking/reasoned

Yes/No

Whether Reportable:

√
Yes/No