

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

**CWP No.2033 of 2016 (O&M)
Date of Decision:26.10.2017**

Gurpreet Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

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

Present:- Ms. Jyoti Sareen, Advocate,
for the petitioner.

Mr. T.P.S.Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA, J.

Petitioner assails the order dated 04.06.2014 (Annexure P-10) in terms of which her claim for appointment on compassionate basis has been declined.

Pleaded case of the petitioner is that her father Sh. Amrik Singh was working as a JBT Teacher under the Punjab State Education Department and died in harness on 17.08.2001. An application for appointment on compassionate ground is stated to have been submitted on 11.12.2001. Application was returned with some objections and after removing the same, it was again submitted to the concerned Block Primary Education Officer on 07.05.2002. It has been averred that the application for compassionate appointment was kept pending and it was in the year 2012 that the petitioner was informed that her file/application is not traceable. Accordingly, petitioner submitted an application afresh in January, 2012 for the post of 'Science Mistress' as in the meantime she had improved her qualifications and was now B.A. B.Ed. and M.Sc. (Maths) qualified. Vide

letter dated 19.11.2012 issued by the Director, Education Department, Punjab, Mohali and addressed to the District Education Officer (Secondary Education), Hoshiarpur it was informed that a post under the 'Master Cadre' falls under Group 'B' and as such the petitioner's case cannot be considered for compassionate appointment as such consideration is confined to Group 'C' and Group 'D' posts. Petitioner is then stated to have given her consent for appointment as a 'Clerk' (Group 'C') post. Finally, the impugned order dated 04.06.2014 (Annexure P-10) came to be passed rejecting the claim of the petitioner seeking compassionate appointment on the ground that she is married and as such not to be treated as dependent upon the deceased employee.

Counsel representing the petitioner would submit that the relevant policy/instructions that would hold the field insofar as the petitioner's claim for compassionate appointment are dated 21.11.2002 (Annexure P-12). It is argued that the respondent authorities are misconstruing the policy/instructions dated 21.11.2002, inasmuch as the eligibility of the petitioner for appointment was to be considered at the time of death of her father or at the stage when she had submitted her application seeking appointment. It is contended that marriage of the petitioner was a subsequent event i.e. on 19.02.2012 and as such question of dependency of the petitioner for purpose of compassionate appointment had to relate back to the year 2001 when her father had died and application seeking compassionate appointment had been submitted. The second submission raised by counsel is that the delay in taking a final decision on the claim of the petitioner was attributable to the respondent department itself and as such the State cannot be allowed to take benefit of its own negligence and

lapse in not having decided the case of the petitioner for a period in excess of a decade and then confront the petitioner with her subsequent matrimonial alliance that took place on 19.02.2012.

Per contra learned State counsel would justify passing of the impugned order rejecting the claim of the petitioner seeking compassionate appointment by stating that in the year 2001 when father of the petitioner died in harness, petitioner herself was a minor and as such the onus was on the petitioner to establish her eligibility for appointment and such onus has not been discharged. State counsel argues that subsequently petitioner had applied for the Science Mistress in the month of May, 2012 but such claim could not have been considered for lack of essential and requisite qualifications as the petitioner had not passed the Punjab State Teachers' Eligibility Test. Under such circumstances documents were sought from the petitioner for considering her claim for the post of 'Clerk' and at that stage Department came in knowledge that the petitioner had got married in the year 2012 and under such circumstances she did not fall within the meaning of a "Dependent Family Member" for purposes of consideration for appointment on compassionate basis.

Counsel for the parties have been heard at length.

Counsel for the parties are ad idem that claim for the petitioner seeking compassionate appointment would be governed by the scheme/policy formulated by the State Government dated 21.11.2002 and placed on record and appended as Annexure P-12. Clause 3 of the policy limits the grant of appointment on compassionate ground to persons who fall in certain defined categories. Clause 3 would be relevant to the controversy in hand and is extracted hereinbelow:-

“Henceforth, the objective of the Scheme is limited to grant of appointment on compassionate grounds to persons who fall in the categories mentioned below:-

- 1) 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;*
- 2) A dependent member of the family of the deceased Govt., employee, who dies in harness.*
- 3) Disabled Ex-Servicemen (fit for Civil Service).*
- 4) A dependent member of the family of the Defence Services; Personnel.*
- 5) Killed in service, while performing duties, or*
- 6) Who are severely disabled and totally unfit for re-employment.*

NOTE-I Dependent Family Member means:

- a) Spouse; or*
- b) Son(including adopted son); or*
- c) Un-married Daughter (including adopted Daughter); or*
- d) Un-married Brother or Un-married Sister in the case of unmarried Govt. Servant.-who was wholly dependent on the Govt. Servant/member of the Armed Forces at the time of death in harness.*

NOTE-II Government Servant for the purpose of these instructions means a Govt. Servant- appointed on regular basis and not one working on daily wage or casual apprentice or adhoc or contract on re-employment or 89 days basis.

NOTE-III Confirmed Work-Charged Staff will also be covered by the terms 'Government Servant' mentioned in Note II above.

NOTE-IV Service means a period prior to the date of superannuation. It does not include extension in service

or re-employment after attaining the normal age of retirement in a civil post.

NOTE-V Re-employment does not include employment of ex-servicemen before the normal age of retirement in a civil post.”

As per Clause 3, a dependent family member includes an unmarried daughter (including adopted daughter). Admittedly, the petitioner has got married on 19.02.2012. To such extent no infirmity is found in the impugned order dated 04.06.2014 (Annexure P-10) holding the petitioner to be not eligible for consideration of appointment on compassionate basis by virtue of her being a married lady and as such now being dependent upon her husband and not on her deceased father.

Argument raised by learned counsel that dependency of the petitioner was to be seen in relation to the date of death of her father as also the date on which she had submitted her application seeking appointment on compassionate basis i.e. in the year 2001 appears attractive at first blush.

Petitioner it appears seeks to gain mileage from a situation whereby her initial application seeking compassionate appointment had not been dealt with by the appropriate State Department for a considerable length of time. Even though the respondent State has taken a stand in the written statement that no record had been traced as regards initial application having been moved seeking compassionate appointment in the year 2001 but still assuming in favour of the petitioner that she had in fact applied and sought appointment on compassionate ground in the year 2001 itself, the petitioner herself was not vigilant as regards her rights and will have to be termed to be remiss.

Counsel representing the petitioner would concede that no legal

no course had been adopted by the petitioner from the year 2001 onwards and

till 2012 when she had applied afresh for appointment as a Science Mistress on compassionate basis. The whole objective of grant of compassionate appointment is to mitigate the sudden financial crisis which had fallen upon the family on account of the death of the bread earner. By its very objective, the compassionate appointment, if any, is to be considered in close proximity of the date of death of the employee concerned.

In the facts of the present case, petitioner herself chose to keep quiet for a period in excess of 10 years. This in itself would be sufficient to non-suit the petitioner in relation to a claim seeking appointment on compassionate basis.

Further more under the scheme/policy dated 21.11.2002 (Annexure P-12), Clause 6 defines eligibility and is reproduced as under:-

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 employees is unable to meet the 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.”

It is by now well settled that compassionate appointment is not a mode of recruitment. Clause 6 reproduced hereinabove makes it apparent that a candidate to seek appointment on compassionate basis is obligated to demonstrate that by virtue of the bread earner having died in harness, the family has been placed in a situation of abject penury.

In the instant case apart from making a bald assertion in sub para (iii) of para 15 that the circumstances of the family of the petitioner

have not changed and the petitioner, her mother and brother are still

unemployed and are facing grave financial hardship, no material/documents have been placed on record and relied upon to substantiate and demonstrate the weak financial position. In any case, the petitioner is now a married lady and would be seen as dependent upon her husband post her marriage on 19.02.2012.

In the totality of the circumstances and for the reasons recorded above, this Court does not find any basis that would warrant interference in the impugned order dated 04.06.2014 (Annexure P-10) declining the claim of the petitioner for appointment on compassionate basis.

Writ petition is dismissed.

26.10.2017

vandana

**(TEJINDER SINGH DHINDSA)
JUDGE**

Whether speaking/reasoned

Yes

Whether Reportable

No