

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND
HARYANA AT CHANDIGARH

CWP No.22906 of 2016

Date of Decision: November 07, 2017

Devender Kumar and another

. . . . Petitioners

Vs.

State of Haryana and others

. . . . Respondents

CORAM: - HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present: Mr.J.P. Sharma, Advocate, for the petitioners.

Mr.Saurabh Mohunta, DAG, Haryana.

RAKESH KUMAR JAIN, J.

The petitioners have challenged the orders dated 05.01.2015 passed by respondent No.3 and 09.11.2015 passed by respondent No.2 by which their prayer for appointment of petitioner No.2 on compassionate ground has been declined.

Learned counsel for the petitioners has submitted that Dharam Pal Yadav, father of petitioner No.1 and grand-father of petitioner No.2 was 2nd Lieutenant in the 14th Kumaon regiment when he died in Indo Pak War 1971 on 25.11.1971 at Mirdhyar Bazar (Bangladesh). A certificate to this effect was issued by the General, Army Chief on 16.12.1999 and also by the Colonel, Commanding Officer, 5 MECH INF (14 Kumaon) on 02.07.2015 that he was a battle casualty. The petitioners have alleged that the State of Haryana issued a policy on 30.05.2014 for providing compassionate appointment to a dependent of Martyr of Armed Forces Personnel/Para Military Forces Personnel of domicile of Haryana. It is submitted that insofar as the petitioner No.1 is concerned, he is 50 years of age and has become over aged for the purpose of Government service but a prayer has

been made for giving appointment to petitioner No.2, who is 25 years of age and B.A., B.Ed. It is submitted that the policy of 2014 was also made applicable by the Government of Haryana to the Martyrs who sacrificed their lives prior to 1.01.2014 as it is reflected in the letter dated 10.3.2015. The petitioners are aggrieved that their application was turned down by the impugned orders on the ground that the grandson is not covered in the Policy.

Learned counsel for the petitioners has submitted that the case of the petitioners was not sent to the council of the ministers otherwise in some of the cases, which are referred to in the petition, the compassionate appointment has been given to the persons who were not even covered by the definition of 'eligible family members'.

Learned counsel for the respondents has submitted that petitioner No.1 was appointed as salesman on *ad hoc* basis in Golden Line Canteen, Mohindergarh on 01.05.1996. The widow of Dharampal Yadav made an application on 20.03.1988 for permanent appointment of petitioner No.1, who was given permanent appointment on 01.06.2001 and at present he is working as Canteen Assistant Chinkara Canteen, Rewari in the pay scale of 14400-450-21600. It is also submitted that the grandson is not covered in the policy, therefore, the impugned orders have rightly been passed. It is also submitted by learned counsel for the respondents that the petitioners cannot claim equity with other persons, who have wrongly been given the appointment.

I have heard learned counsel for parties and perused the record.

The Policy of 2014 was basically meant for compassionate appointment to the dependent son or daughter or widow, who is not earning and is fully dependent upon the Martyr. The compassionate appointment is

given in Class III & IV posts to one eligible living spouse/dependent children of Martyr of Armed Forces Personnel/Para Military Forces Personnel, who was domicile of Haryana and was killed in action in border skirmishes, terrorist attacks or riots. The term 'Martyr' has also been defined in the Policy which means a person serving in Armed Forces (Army, Navy and Air Force) or in Para Military Forces (BSF, CRPF, CISF, ITBP, Assam Rifles, Rapid Action Force etc.) under the Home Ministry on permanent basis and is killed in action in border skirmishes, terrorist attacks or riots and is declared Martyr by Ministry of Defence, Government of India and Ministry of Home Affairs, Government of India respectively.

Dharam Pal Yadav since deceased was a battle casualty of Indo Pak War 1971, however, he has not been declared a Martyr by the Ministry of Defence as no such declaration has been placed on record except the certificate of the General, Army Chief that he had given highest sacrifices to protect his mother land during the war and Colonel, Commanding Officer of his Regiment has also certified that he was a battle casualty.

Be that as it may, the Policy is made for 'eligible family members' which is also defined in the Policy and means dependent son or daughter or wife who is not earning and is fully dependent upon the Martyr. Even if it is presumed that the deceased was the Martyr, his grandson was not wholly dependent upon him as his father is alive, who is a permanent employee in the pay scale of 1400-450-21600 and thus petitioner No.2 is depending upon his father, who is not a Martyr. Insofar as the petitioner No.1 is concerned, he has crossed the age for getting compassionate appointment because he is already 50 years of age. The benefit of discrimination pleaded by the petitioners cannot be given because petitioner

given the benefit to some other persons wrongly then the wrong cannot be perpetuated by giving the same benefit to the petitioners.

Thus looking from any angle, there is hardly any scope to interfere in this petition and hence, the same is hereby dismissed though without any order as to costs.

November 07, 2017

Vivek

**(RAKESH KUMAR JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No