

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

CWP No.22115 of 2017

Date of Decision: 09.10.2017

Urmila Devi and another

....Petitioners

Versus

State of Punjab and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Krishan Singh Dadwal, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

Prayer in the present petition is for issuance of a writ in the nature of *certiorari* for quashing of impugned letters dated 24.07.2014 (Annexure P-7), 11.03.2015 (Annexure P-9) and letter dated 31.05.2016 (Annexure P-10), whereby, the claim of the petitioners has been rejected. A further prayer has also been made for issuance of a direction to the respondents to consider and appoint petitioner No.2 to the post of Constable or any other suitable post by considering his qualifications as well as physical standard.

Briefly, the facts of the case, as made out in the present petition, are that husband of petitioner No.1 and father of petitioner No.2 was working as Head Constable. After his death on 05.08.2003, an application was moved by petitioner No.1 for appointment on compassionate ground as all family members including the old parents and

un-married sister were dependent upon income of the deceased. However, the claim of the petitioners was not considered in spite of making representation as petitioner No.1 was also working. As per claim made in the application submitted by petitioner No.1, petitioner No.2 was minor at the time of death of his father. Thereafter, the claim was submitted, when petitioner No.2 qualified 10+2 examination, for appointment to the post of Constable. A list of all such candidates was prepared and name of petitioner No.2 figured at serial No.11 of said list. Thereafter, petitioner no.2 appeared for physical measurement and other tests and he was found fit for appointment. Thereafter, his medical examination was conducted by Civil Surgeon, Hoshiarpur as is clear from communication dated 24.01.2013 (Annexure P-4). However, vide communication dated 03.08.2013, it was informed that since mother of petitioner No.2 was already in service, his case was sent for approval to the Government. Later on, it was informed that the case of petitioner No.2 was not covered under Instructions dated 21.11.2002 and a decision was taken by the authorities to reject the claim for compassionate appointment. Petitioners also submitted representations giving instances where similarly situated candidates were granted approval. Thereafter, the claim of the petitioners was again rejected vide letter dated 11.03.2015, which was communicated to them on 20.03.2015. Subsequently, a representation was again submitted but it was also rejected.

Learned counsel for the petitioners submits that communications dated 24.07.2014 (Annexure P-7), 17.10.2014 (Annexure P-8) and 11.03.2015 (Annexure P-9) are illegal, unlawful and have been passed without any application of mind. Neither the number of family members dependent upon the income of the deceased have been taken into

consideration nor any specific ground has been taken while rejecting the claim of the petitioner. It is a case of discrimination as other similarly situated persons have been granted the benefit of compassionate appointment by adopting pick and choose method. Learned counsel also submits that nothing has been conveyed to the petitioners by mentioning the factors like financial condition of the family and the grounds for not considering their case, whereas, other similarly situated persons have been considered.

Learned counsel for the petitioners has relied upon the judgments of this Court in case ***Bhupinder Batra vs Union of India and others 2012(1) SCT 268, Rajinder Kumar Khera vs State of Haryana and another 1996(3) SCT 99, Shri Chand vs State of Punjab and others 1995 (2) SCT 679, Inder Singh vs State of Haryana and others 2013(2) SCT 762*** and ***Mrs. Surinder Kaur vs State of Punjab 1992(2) SCT 416***, in support of his contentions.

Heard the arguments of learned counsel for the petitioners and have also perused the documents available on the file.

Facts relating to death of deceased; filing of representations for appointment to the post of Constable and rejection thereof are not disputed. It is also not disputed that petitioner No.1, who is wife of deceased and mother of petitioner No.2, is still in service. The claim of the petitioners has been rejected on the ground that there was an earning member in the family.

Admittedly, the deceased expired on 05.08.2003. No doubt, there was no concealment on the part of the petitioners regarding income of petitioner No.1 but when this fact came to the notice of respondent authorities, the claim was rejected on the ground that one family member

was already earning. After getting applications from such like candidates, a list was prepared and thereafter, after conducting physical test, medical examination was also conducted. Ultimately, the claim of the petitioners was rejected vide various communications, which have been challenged in the present petition.

Initially, the claim of the petitioners was rejected vide letter dated 24.07.2014, thereafter, also vide letters dated 11.03.2015 and 31.05.2016. The purpose of compassionate appointment is to give financial assistance on account of death of the government employee, where, there is no source of income and whole of the family is dependent upon the salary of sole bread earner.

In the present case, the mother of petitioner No.2 was in service at the time of death of his father and it is not the case of the petitioners that they were residing separately. Meaning thereby, the whole of the family members were residing together.

In case, ***Shiv Kumar Dubey vs State of U.P and others*** ***UPLBEC 2014(1) 589***, full Bench of Hon'ble Allahabad High Court, has held as under :-

“(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or

rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner.”

Similar view was held in judgment of Division Bench of this Court in case ***Daljit Kaur vs Life Insurance Corporation of India 1995(6) SLR 115.***

While dwelling upon this aspect, it has been held by the Supreme Court in ***Haryana State Electricity Board v. Hakim Singh (1997) 8 SCC 85 :-***

“8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception belief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.”

Similar view was held in judgment of Division Bench of

Jharkhand High Court in case *Fulchand vs Central Coalfield Limited and others 2013(2) SCT 512.*

By considering the ratio of judgments and facts as mentioned above, I find no merit in the contentions raised by learned counsel for the petitioners and the petition, being devoid of any merit, is hereby dismissed.

09.10.2017
gurpreet

(DAYA CHAUDHARY)
JUDGE

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