

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

CWP No.12172 of 2016.

Date of Decision: 30.01.2018.

Neelam Rani

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Vikas Chatrath, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN.J.

This civil writ petition has been filed for issuance of writ in the nature of mandamus directing the respondents to consider the claim of the petitioner for appointment to the post of Clerk or any other suitable post commensurate to her qualification, on compassionate grounds.

It is contended that the petitioner is a widow of late Sh. Davinder Singh, Vocational Master (Weaving). The husband of the petitioner had been appointed on the said post on contractual basis after following due process of selection. He was posted at Government Senior Secondary School, Dunera (Gurdaspur) and thereafter at Jharuli. As per condition No.8 of the appointment letter dated 23.05.2011, initially his appointment was made on contractual basis for one year

which was liable to be extended from time to time subject to satisfactory work. After completion of three and a half years, he was to be considered for regularization of his services. However, unfortunately, before completion of period of three and a half years, he died on 04.10.2013, leaving behind the petitioner and minor children. The male child is mentally infirm. The petitioner being dependent applied for appointment as S.S. Mistress, in the first instance however, the post of S.S Mistress being Group-B post, her claim was rejected, thereafter she moved an application for appointing her Clerk on compassionate ground. The respondent authorities responded in the same fashion.

It is asserted that the services of all vocational masters who were appointed along with the late husband of the petitioner have been regularized by the respondents in the year 2014 on completion of contractual period of three and half years. Had the husband of the petitioner been alive, his services would have also been regularized at par with similarly situated persons. The learned counsel relies upon **Paramjit Kaur vs. State of Punjab and others CWP No.23291 of 2012 decided on 11.01.2016.**

On the other hand, the learned State counsel contends that the husband of the petitioner was not a regular government employee at that point of time as he had expired on 04.10.2013 and, therefore, in view of the instructions dated 21.11.2002 (Annexure P-10), the petitioner's case does not fall within the ambit of the

instructions and accordingly her case had been rejected.

I have heard the learned counsel for the parties and have gone through the case file.

A similar controversy as raised in the present writ petition stood decided by a Coordinate Bench in **Paramjit Kaur's case (supra)**. The relevant extract is reproduced as under:-

“After hearing counsel for the parties, this Court is of the opinion that the case is covered by the judgment of the Division Bench of this Court in Beant Kaur's case (supra) . In the said case, the relief of compassionate appointment was denied on the ground that the employee had not completed 10 years of service which would entitle the employee for the benefit of regularization and, therefore, the wife was not liable for consideration. The Division Bench, in the said case, had gone on to direct that the regularization be ordered on completion of 10 years and the consideration for appointment on compassionate grounds was also directed to be done thereafter. The relevant portion reads thus:

- “5. The case of the petitioner is that her husband is being deprived of the benefit of regularization of his services on the basis of the policy dated 7th March, 1993 Annexure R-1 which lays down that before the services could be regularised it was obligatory on the part of the employee to complete 10 years of service on or before the 31st August, 1992. The stand of the respondent- authorities is that since the husband of the petitioner joined his service as fitter coolie on 4th November, 1986 and that he had not completed 10 years of service on 31st August, 1992, rather on 3rd November, 1996,

therefore, he was not entitled to be regularised as per the policy dated 7th May, 1993. We are not in a position to accept this contention of the respondents because, in our opinion, the underlying object of the policy letter dated 7th May, 1993 was to regularise the services of those workers who had completed 10 years of service and in order to achieve that object the administration desired that cut off date should be given which was 31st August, 1992. This policy was of one time policy. The State cannot deprive regularisation of services of those temporary workers who had completed 10 years of service after 31st August, 1992. The husband of the petitioner admittedly completed 10 years of service on 3rd November, 1996 but as on that day, there was no other policy declared by the State Government, therefore, his services could not be regularised. This stand of the respondents, in our opinion, is untenable, as we have stated above that the object of the policy dated 7th May, 1993 was that a worker must have completed 10 years of service. Shri Pritam Singh had completed 10 years of service before his death. So much, so his case at one point of time was sent for regularisation which was not approved for the reason that in the year 1996 no other policy was declared after the policy decision of the year, 1993. Resultantly, we hold that the husband of the petitioner was entitled to be regularised on completion of 10 years service w.e.f. 3rd November, 1996 and we order accordingly.

6. The second point for determination in this writ petition is whether petitioner Smt. Beant Kaur

deserves to be considered for appointment on compassionate ground or not. We dispose of this Writ petition by giving directions to the respondents to consider the case of the petitioner for appointment on compassionate ground subject to her eligibility and necessary order shall be passed by respondent No. 4 within two months from the date of receipt of a certified copy of this order. There will be no order as to costs.”

In similar circumstances also in Dalbir Singh's case (supra), the employee had served for 7 years in the Punjab Home Guards Department and for 13 years as SPO but had not been absorbed as a regular member of the police force and this Court, while placing reliance upon the observations of the Division Bench, had directed that the claim be considered on a suitable post by ignoring the fact that the husband was not a regular constable. In the present case also, as noticed, similarly situated persons as the petitioner's husband already stand regularized in view of the orders dated 13.05.2011 (Annexure P-5) and only on account of the death of Karnail Singh two days before the policy was issued, his consideration for regularization was denied and has led to the denial of proper consideration to the petitioner for compassionate appointment. The purpose of compassionate appointment, as noticed, is to give immediate succor to the family of the deceased employee. A perusal of Annexure P-6 would go on to show that the petitioner is 35 years and is having a daughter of 8 years to support and Surjit Kaur, the mother of the employee, was also one of the legal heirs as per the certificate issued by the Deputy Commissioner (Annexure P-6).

Reference can also be made to the observations made in Asha Rani vs. State of Punjab and others, 2015 (4) SCT 250, wherein, it is held that it sometimes becomes necessary and expedient in extra ordinary situations and for extra ordinary measures to fall back on the principle of compassionate appointment in the interest of justice. In the said case, the petitioner had applied for a job for her son on compassionate grounds under the ex gratia scheme in place of her late husband and her son was accordingly appointed as a sweeper. Unfortunately, the son also died and, therefore, she claimed the appointment on the same basis and her case was rejected on the ground that the mother was not included as a dependent family member and there could not be two appointments on compassionate grounds and the benefit of compassionate appointment, which would have normally flown to her on account of death of her husband, could not be given. It was held that liberal interpretation is to be given to such policies to do real justice and the decisions sometimes may not be in perfect harmony with the instructions or the rules but as long it is based on fair and just application, there would be no loss to the State. The relevant observations read as under:-

“8. This Court finds that the present is not a case of transfer of an appointment and the reasoning adopted by the administrative authority is rather wide off the mark in its humanistic approach and is not acceptable as an ouster clause of rights arising from the death of Sham Lal are not accounted for in the impugned view. It is well to remember once again that extraordinary situations require extraordinary measures and broadly speaking executive instructions under

Article 162 of the Constitution are themselves the prescription and the medicine for curing human problems and leave enough elbow room to the administrator social justice where rule or previous instructions may not necessarily be the controlling, limiting or the determining factor in the matter of grant of relief when justice demands. To speak teleologically, Parliament and State Assemblies made the law tailored to suit and to govern lives of citizens while the administrator has set about to fill the gaps in the law by framing rules and instructions but neither of them made the working life to run like machines without a heart. These do not nor should overly obsess us while dealing with out of the way cases which demand social justice by using so to speak- forks to lift food for our survival or to put it better; to apply the head of a pragmatic man and the hands of a liberal person acting within the sympathy that judicially manageable standards can afford. The rules and regulations on the statute and rule book or instructions in manuals are not just a makeup kit with just as many things put into into the basket. There is more to life than what meets the eye in legal documents and papers and that extra component lies is equity. To best understand the significance of the teleological explanation of why forks have prongs is that this design helps humans eat certain foods; stabbing food to help humans eat is what forks are for. Mercifully, forks are not found in rules or instructions of government otherwise even this principle may not work to tide over an encountered human issue because of the wide variety of forks in the cutlery shop which

make choices even more difficult. This is what is meant by a teleological explanation. This is how I think power of issuing executive instructions should be exercised and permitted by the court of law to be applied while judicially reviewing work of administrators who should never be afraid or shy in creating a new precedent or a fresh instruction when the call of social justice demands or a situation creates which can recur in other people's lives. There are many bad precedents anyway scattered on the path, both administrative and judicial for anyone to worry.

9. On the other hand, the purpose and object of Article 162 of the Constitution is also to give to a class of persons not only the minimal but at the same time the much needed freedom to the Government to act or respond to newly emerging situations as never before witnessed in government files or addressed and to respond to them in a fair and just manner. To do real justice, rules and instructions are not enough to be obsessed with and the ex aequo et bono principle may deservedly apply to the case in hand to make the decision ameliorative in nature and pulsating with life which decision may sometimes not necessarily be in perfect harmony or in sync with the instructions/rules, but a decision based really on what appears to be fair and just, just as one might view the case of the widow in this case. If she is appointed by compassion heavens won't fall nor would all hell break loose.”

In such circumstances, this Court cannot lose sight of the fact that the benefit of the instructions is being denied only on account of the technicality of the cut off period

and the husband having been granted the extension in service was obviously liable to be considered for regularization on the strength of the instructions dated 20.10.2010. Thus, keeping in view the principle which is laid down by the Division Bench, as noticed above, the order dated 12.08.2011 is liable to be quashed and the writ petition is allowed accordingly. The prayer for mandamus directing respondent no. 1 to consider the case of the petitioner unfettered by the fact that the husband was a regular employee or not, is allowed.”

The appointment of the petitioner and the factum that the appointment of the husband of the petitioner as Vocational Master (Weaving) after following due process is not in dispute. The factum of regularization of services of the other Vocational Masters is also not disputed. Due to untimely demise of the husband of the petitioner, his services could not be regularised. There is nothing on record to suggest that the late husband of the petitioner did not perform his duties to the satisfaction of the respondents.

In view of above, the Court feels that the case of the petitioner is identical to that of **Paramjit Kaur's case (supra)**.

It is asserted that in pursuance of the judgment passed by this Court in **Paramjit Kaur's case (supra)**, on consideration, the petitioner in the said petition was given appointment letter.

The petitioner being identically placed deserves to be treated identically. Accordingly, the present petition is disposed of with a direction to the respondents to consider the case of the petitioner in

terms of *Paramjit Kaur's case (supra)*. The consequential relief be allowed to her, within a period of six weeks from the date of receipt of certified copy of the judgment.

30.01.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No