

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

CWP-16134-2015 (O&M)

Date of Decision: 08.10.2018.

Gurinder Singh

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. P.S. Khurana, Advocate,
for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN.J.(ORAL)
CM-13391-CWP-2017

The application is allowed as prayed for. Replication
is taken on record subject to all just exceptions.

Main case

Through the instant civil writ petition filed under
Articles 226 and 227 of the Constitution of India, the petitioner seeks
quashing of (i) order dated 26.09.2011 (Annexure P-2) passed by
Deputy Commissioner, Jalandhar vide which the application filed by
the petitioner for appointment on compassionate grounds was rejected;
(ii) order dated 02.08.2013 (Annexure P-6); order dated 27.03.2014
(Annexure P-7) and; order dated 21.11.2014 (Annexure P-8) passed by
Deputy Commissioner Jalandhar vide which claim of the petitioner for
appointment was rejected.

The father of the petitioner had been serving as

Patwari in Department of Revenue. Unfortunately, he expired on 31.07.2010. He left behind three legal heirs i.e. Wife, son (present petitioner) and a daughter. The petitioner holds degrees of M.A and B.Ed. The petitioner submitted an application (Annexure P-1) for appointment on compassionate grounds on 05.04.2011. On the application made, the Deputy Commissioner, Jalandhar marked an enquiry to verify the financial status of the petitioner and his family members. The enquiry was conducted by Tehsildar, Jalandhar who reported that after the death of father of the petitioner, the marriage of the sister of the petitioner was solemnized and expenses to the tune of Rs.3 lakh were incurred. Father of the petitioner had been suffering from renal failure, therefore, a huge amount was spent on his treatment. The application of the petitioner was rejected vide impugned order dated 26.09.2011 (Annexure P-2) on the ground that the acute financial scarcity of the family of the deceased employee had already been overcome. Against the order dated 26.09.2011, the petitioner filed an appeal before the Commissioner Jalandhar Division, Jalandhar. Vide order dated 27.02.2013 (Annexure P-4/B) the Commissioner sent the matter back for reconsideration in the light of the clarification in the instructions dated 18.07.2005 (Annexure P-10). The application was again considered and rejected vide order dated 02.08.2013 (Annexure P-6). The application of the petitioner was also forwarded by the Department of Revenue (Consolidation), Govt. of Punjab vide memo dated 17.12.2013 vide which request of the

petitioner for compassionate appointment was forwarded to the Deputy Commissioner. The application was considered by Deputy Commissioner and vide order dated 27.03.2014 (Annexure P-7) it was rejected without assigning any reason except noticing that the previous applications had already been consigned to record room. Similarly, another application was rejected vide order dated 21.11.2014 (Annexure P-8).

It has been contended that immediately after the death of father of the petitioner, the petitioner applied on 05.04.2011 for appointment on compassionate grounds. Initially, his claim was rejected vide letter dated 12.10.2011 (Annexure P-2) on the ground that on account of pensionary benefits etc., the financial condition of the applicant had become sound and accordingly, his case was not covered under the Government Policy. Thereafter, the petitioner approached the Commissioner against the said order and the matter was remanded back for reconsideration especially keeping in view the instructions dated 18.07.2005 (Annexure P-10) wherein it had been provided that the pensionary benefits received were not to be counted at the time of giving compassionate appointment. It is further pointed out that the case was duly processed and as per Annexure P-4/C there was a positive recommendation but however, subsequently on 02.08.2013 (Annexure P-6) it was rejected by Deputy Commissioner on the ground that time had elapsed since the death of the employee.

The said rejection was reiterated on 27.03.2014 (Annexure P-7) and

21.11.2014 (Annexure P-8). It is accordingly, submitted that there was no delay on the part of the petitioner and merely due to the pendency of the application, the same could not be taken against the petitioner. It is further submitted that the deceased was suffering from kidney problem and entire resources of the family dried up on the treatment.

It has been further submitted that though, father of the petitioner was a group -C employee, the petitioner is ready to accept appointment in group-D category.

On the other hand, it is contended that the financial position of the petitioner was sound, therefore, his claim for appointment on compassionate grounds has been rightly rejected.

Heard.

Instructions dated 18.07.2005 (Annexure P-1) with regard to grant of compassionate employment in State services group 'C' and 'D' reads thus:-

I am directed to refer to the Punjab Government letter No. 11/105/98-4PPH/14420 dated 21.11.2002 on the subject cited above and to inform that the State Govt. have decided to amend some of the provisions of these instructions to the extent as given below:-

(i) Following lines may be added as sub para below para 6(a):-

“While examining/verifying the financial position of the family of the deceased employee the payment of amount of gratuity, leave encashment, GPF and other pensionary benefits are not to be taken into account.”

A perusal of instructions (Annexure P-10) goes to show that while examining/assessing the financial position of the family of the deceased employee, the payments of amount of gratuity, leave

encashment, GPF and other pensionary benefits are not to be taken into account whereas, in the given case, the payment of said amount has been made the basis of impugned order (Annexure P-2), therefore, the order dated 26.09.2011 (Annexure P-2) suffers from illegality and has been passed in violation of instructions (Annexure P-10). Not only that, the subsequent application moved by the petitioner was rejected vide order 02.08.2013 (Annexure P-6) on the ground of delay. It is to be noted that the delay, if any, was not on the part of the petitioner. The petitioner had submitted his application on 05.04.2011 (Annexure P-1) however, vide order dated 02.08.2013 (Annexure P-6), it was rejected on the ground of delay. In fact, as per record, the petitioner had moved the application well in time. The matter remained pending with the department before one officer or the other. Initially, the application was wrongly rejected vide order dated 12.10.2011 (Annexure P-2) thereafter, it was reconsidered on the orders of the higher authority, therefore, it cannot be said that the application was filed at a belated stage. It is the respondent-department which kept the matter pending. For the fault of the department, the petitioner cannot be put at a disadvantageous position. The case of the petitioner falls within the parameters laid down in instructions dated 18.07.2005 and there is no delay on the part of the petitioner.

Consequently, the present civil writ petition is disposed of; the impugned orders (Annexure P-2, P-6, P-7 & P-8) are set aside. The respondents are directed to offer appointment letter to

the petitioner in group-D, within a period of two months from the date of receipt of copy of the order.

08.10.2018.
SN

(JITENDRA CHAUHAN)
JUDGE

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