

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.21157 of 2015

Date of Decision: 08.01.2018

Sushila Devi

... Petitioner

Versus

The State of Haryana and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Yogesh Chaudhary, Advocate,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J.

1. The petitioner's husband died in harness on July 27, 2002. He was a policeman. She had two minor children to look after and an ailing mother. She applied for appointment as a Lady Constable in place of her late husband under the Ex-Gratia Scheme. She was offered appointment by letter dated July 14, 2003 of the Director General of Police, Haryana against an existing vacancy in District Police, Karnal on cancellation of her first appointment in District Police Gurgaon on June 19, 2003. Though issued appointment letter she was not actually appointed as her educational certificate of 10+2 submitted by her in support of her case issued by the

Bihar Intermediate Education Council, Patna was on verification found to be fake and false. The permission to appoint the petitioner was withdrawn by order dated June 11, 2004. Not only was the order withdrawn but FIR No.211 dated May 17, 2006 was registered against her under Sections 420, 467, 468, 471 and 511 IPC in Police Station, Civil Lines, Karnal.

2. The Judicial Magistrate 1st Class, Karnal by her judgment dated February 16, 2013 acquitted the petitioner of the charges framed against her by giving her the benefit of doubt. Prosecution claimed that the Bihar Board by its report Ex.PW-3/F declared the educational documents to be bogus but the prosecution did not produce any person from the Bihar Board to testify to this fact. Therefore, the report was held to be *per se* inadmissible by the magistrate. The prosecution failed to produce formal evidence and this is how the acquittal came by giving the benefit of doubt.

3. Apart from the criminal case, the cause of action had accrued to the petitioner on June 11, 2004 when the impugned order was passed withholding and cancelling the offer of appointment for her to have prayed to court for setting aside the order withdrawing offer of appointment. The petitioner lied low and waited till her acquittal on February 16, 2013, only then to make a prayer to the Director General of Police, Haryana by her representation dated September 16, 2013 for restoration of appointment. The request was by reason of acquittal in the criminal case. This was followed by a reminder request of January 16, 2015 praying for recall of adverse order and for taking a sympathetic view due to the acquittal in the criminal case. She sought appointment to the post of Lady Constable under the Ex-Gratia scheme on compassionate grounds. The representations

unheeded were followed by a legal notice (Annex P-10) issued on May 09, 2015 by her counsel.

4. Mr. Chaudhary for the petitioner argues that the minimum qualification for a Lady Constable was Matriculation at the time of offer of appointment. He relies on information received from the District Police Headquarters, Rohtak by letter dated August 11, 2014 that for appointment in Haryana Police the educational qualification of Class XII pass was implemented from the year 2005. This means that in 2003 the qualification was Matric and even if the 12th class certificate is fake even then the petitioner should be offered appointment since there is no doubt on her 10th class certificate. This position has been refuted in the written statement filed by the Superintendent of Police, Karnal. It has been stated there that the Haryana Government, Home (Police) Department vide notification dated June 18, 2002 amended Rule 12.15 (3) of the Punjab Police Rules, 1934 as applicable to Haryana. The amended provision reads as follows:-

“(3) The minimum educational qualification for a candidate to be eligible for selection as a Constable shall be 10+2 for both General and Backward Class category and Matric for Scheduled Caste, Scheduled Tribe and Ex-serviceman category.”

5. If the 10+2 certificate is not genuine then the petitioner would have nothing to fall back on to support claim for ex gratia appointment. As far as the certificate is concerned it has been explained in the preliminary objections that the Intermediate class pass educational certificate of petitioner was got verified from the Bihar Intermediate Education Council, Patna and it was found that the said certificate submitted by Smt. Sushila Devi (petitioner) was fake and false and the computerized detailed marks

format was also not according to the format of the Council. The Secretary, Bihar Intermediate Education Council, Budha Marg, Patna vide his letter No.BIEC/AS/RTR/2642-04 dated 17.02.2004 informed that neither Admit Card nor Enlistment Certificate for the intermediate examination has been issued to Smt. Sushila Devi.

6. In view of the above, the petitioner was not eligible for compassionate appointment under the Ex-Gratia Scheme since she did not possess the minimum educational qualification of 10+2 essential for consideration for appointment as Lady Constable.

7. There is another reason for dismissal of the petition. The cause of action accrued to the petitioner on June 11, 2004 when the offer of appointment was cancelled. She should have approached Court against the order within reasonable time and ought not to have waited for the conclusion of the criminal trial. If she had a strong *prima facie* case for declaration that the certificate was valid she could have either filed a suit or writ petition for ventilation of her grievance. It seems that she was afraid to lay challenge to a fake certificate. If she were to file a suit it should have been presented by Mid 2007. If a suit was filed on the date when the present writ petition was filed the suit would have been barred by limitation.

8. Other than the lack of essential educational qualification, the present writ suffers from delay and laches as well.

9. As a result of the aforesaid factual position, the petition has no substance and is hereby dismissed.

10. Nevertheless, the dismissal of the petition on the issue of appointment will not affect any other right the petitioner may have arising

out of the death of her husband, including claim for financial assistance, if any, under the ex gratia policies of the Government of Haryana.

(RAJIV NARAIN RAINA)
JUDGE

08.01.2018
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Whether speaking/reasoned *Yes*

Whether reportable *No*