

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 25478 of 2015 (O&M)
Date of Decision: 24.07.2018**

Vineet Kumar

..... Petitioner

Versus

The State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE JASWANT SINGH

Present: Mr. Inderjit Sharma, Advocate
alongwith the petitioner

Mrs. Sudeepti Sharma, Additional Advocate General, Punjab
for the respondents-State.

JASWANT SINGH, J. (ORAL)

The mother of the petitioner, while working as 'JBT Teacher' died in harness on 12.02.1996 and at that time, the petitioner was around 14½ years of age. His date of birth being 15.10.1981 and belongs to *Ram Dasia* Scheduled Caste Category. It is not disputed that at the time of the death of the mother, the father of the petitioner was working as 'Principal' in the Department of Education, Punjab.

The petitioner, however, was able to secure his appointment as 'Art and Craft Teacher' on compassionate basis vide appointment letter dated 08.07.2004 (**Annexure P-4**) issued by the District Education Officer, Gurdaspur. Thereafter, a show cause notice dated 31.08.2004 (**Annexure P-7**) was issued by the District Education Officer, Gurdaspur, for cancellation of the appointment letter since the same was issued without approval of the competent authority, required in terms of the instructions dated 21.11.2002 (**Annexure P-24**) regarding compassionate appointment.

After the reply, an order dated 15.09.2004 (**Annexure P-9**) was passed,

cancelling his earlier appointment.

The petitioner, thereafter, filed a writ petition bearing CWP No. 14989 of 2004, challenging the order dated 15.09.2004 (**P-9**), which was disposed of by a Division Bench of this Court vide order dated 18.07.2006 (**Annexure P-11**), directing the authorities to pass a fresh order.

Resultantly, a speaking order dated 28.12.2006 (**Annexure P-15**) came about to be passed, rejecting the claim of the petitioner for compassionate appointment, which was ultimately challenged by filing a Civil Suit, and the same was decreed vide judgment dated 02.05.2012 (**Annexure P-18**) directing the defendant-department to reconsider the case of the petitioner for compassionate appointment.

Even the subsequent execution of the decree filed by the plaintiff-petitioner was disposed of in the light of a fresh speaking order dated 18.12.2013 (**Annexure P-22**) passed on such reconsideration, which has been impugned in the present writ petition.

Counsel for the petitioner has submitted that previous ground for terminating the services of the petitioner was rejected by learned trial Court and, therefore, while now rejecting the claim vide speaking order dated 18.12.2013 (**P-22**), the same ground cannot be invoked.

After hearing counsel for the petitioner, no case for interfering with the order dated 18.12.2013 (**P-22**) is made out.

It is conceded that the case of the petitioner was required to be considered in terms of the instructions dated 21.11.2002 (**P-24**), and the relevant Clause-11, due to the father of the petitioner being working as a Principal, was the relevant clause, which reads as under:-

- a) *In deserving cases even where there is already an earning member may be considered for compassionate appointment with prior approval of the Secretary of the Department concerned, who before approving such appointment will consult the Department of Personnel and satisfy himself that grant of compassionate appointment is justified having regard to number of dependents, assets and liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.*
- b) *In case where any member of the family of the deceased servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.*

(Copy of PD. Pb. No. 11/105/98/4PPII/14420, dated 21.11.2002, as amended vide No. 11/105/98-4PPII/2209 dated 5.02.2003)

A reading of the aforesaid Clause (a) fully supports the case of the Department that before issuance of initial appointment letter dated 08.07.2004 **(P-4)** by the District Education Officer, prior approval of the Secretary, Education Department was necessary, therefore, for the lack of requisite prior approval, the initial appointment was totally illegal.

Although an effort was made to show that the father of the petitioner was

not supporting the petitioner, however, neither any sufficient material is available on record nor seems to have been placed before the Department to substantiate such plea, so as to entitle the petitioner for compassionate appointment. It is well settled that the right to compassionate appointment cannot be enforced at the mere asking, so as to defeat the very object of deserving cases to tide over their financial crisis. There are no such circumstances available in the instant case.

To point a query, the petitioner, who is present in Court, has conceded that his father was availing the benefit of family pension, apart from his own salary on account of the death of his mother. This fact itself rebuts the claim that the father was not willing to support the petitioner. As regards the plea of discrimination stating that an identical situated Smt. Silpi D/o Pritam Singh (as set out in para-24 of the writ petition) was appointed on compassionate basis, although no satisfactory reply has been furnished by the Department, however, this Court is not inclined to go into such fact, so as to invoke the plea of hostile discrimination with regard to the nature of relief claimed.

In view of above, no case for interference in the present writ petition is made out, the same is **dismissed**.

However, **the respondent-Department is directed** to examine the case in respect of Smt. Silpi D/o Pritam Singh, and if action is required, the same be taken by offering full opportunity of representation/hearing to her in accordance with law.

July 24, 2018

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**(JASWANT SINGH)
JUDGE**

<i>Whether Speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether Reportable</i>	<i>Yes/No</i>