

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 25988 of 2016

Date of decision: 12.01.2018

Sushila Devi

...Petitioner

versus

State of Haryana and others

...Respondents

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

Present : Mr. Narender Pal Bhardwaj, Advocate
for the petitioner.

Mr. Harish Rathee, Senior DAG Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. The complexion of the case has been changed by the order dated 22.07.2016 passed by the Director General of Police, Haryana granting to persons like the late husband of the petitioner all benefits of previous service rendered by him from 1995 to 2001. Late Constable Sandeep Kumar was one of the 1600 odd constables who selection was set aside by the Division Bench of this Court on 16.02.1996. Several petitions for grant of leave to appeal were filed before the Supreme Court against the two separate judgments of this Court both concluding that the entire selection stood vitiated. In that petition leave was granted and the civil appeal in Suresh Kumar and others Vs. State of Haryana and others; (2003) 10 SCC 276), was dismissed by the Supreme Court on 17.01.2001 and the following directions were issued:

*(1) These 1600 vacancies in respect of which the process
of selection has already been made and the same has*

been quashed by the High Court should be re-advertised in accordance with the amended Rules of 1998 and this advertisement must be made within 2 weeks from today.

(2) Those of the selectees, who are appointed on the basis of the said selection and are continuing till date, shall be permitted to continue until the fresh selection is made.

(3) These selectees, whose selection has been set aside, would be entitled to appear at the fresh selection pursuant to the advertisement going to be issued in view of our direction made earlier by relaxation of the age.

(4) In the matter of selection the selecting authority would obviously give some preference to the experience gained by these selectees, who have been appointed and are continuing in service.

(5) Those, who have been selected but not appointed would also be eligible to appear in the selection process going to commence pursuant to the fresh advertisement and their case would also be considered by making relaxation of age, though they cannot claim any preference since they do not possess any experience.

(6) Some of the selectees, who were selected on account of voluntary retirement of the existing police personnel, their selection also has been quashed by the learned Judge of the High Court and their parents have been

brought into service by virtue of the order of the High Court. Those persons would also be eligible to make application and participate pursuant to the fresh advertisement and they will have to compete as fresh recruits and not as defendants of the voluntary retirees since there is no provision in the Recruitment Rules of 1998 for making such appointment on the basis of the voluntary retirement of the existing police personnel. In their case also the age relaxation should apply.

The entire process of selection be concluded within 6 months from today. We make it clear that those of the selectees, who appointments have been quashed and have been permitted to continue because of the interim order of this Court, would be permitted to continue till the selection process is over pursuant to our aforesaid direction and in the event they fail to get themselves selected they will make way for the fresh selectees.

2. As a result of the directions of the Supreme Court all the candidates from the 1995 selection were held entitled to appear for fresh recruitment as Constables in the year 2001. Late Sandeep Kumar was one constable who was re-selected in pursuance to the fresh selection in the year 2001. He rejoined service of the police department on 10.03.2003 but unfortunately met with an accident while on duty and died in fatal road accident on 15.04.2004. The widow-petitioner is in receipt of family pension.

In this petition she has staked claim to benefits other than family pension and revision of family pension etc. as admissible from time to time.

3. The State has contested the petition by putting in its written statement. The defense plea is that the petitioner is not entitled to ex-gratia financial assistance for the reason that her husband has not put in three years of regular service at the time of death, a condition in the policy. The case did not fall under Section 3(d) of the Haryana Compassionate Financial Assistance to the Dependents of the Deceased Government Employee Rules, 2003 which defines “deceased Government employee” to mean a Government employee:-

(i) appointed on regular basis, and not working on daily wages, casual, apprentice, work charges, adhoc, contractual or re-employment basis;

(ii) who has served the Government for at least 3 years;

(iii) Who should not have crossed the age of 55 years.

4. The written statement was filed on 14.09.2017 but it was not disclosed therein that on 22.07.2016 the Director General of Police, Haryana had already passed the order in the case of one PHC Kanwer Pal Singh No. 14 YNR identically situated as the husband of the petitioner in which the following decision was taken:

I have carefully gone through the representation dated 22.06.2016, judgment dated 17.01.2001 passed by the Hon'ble Supreme Court of India and other relevant record of the case. The representationists have also been

heard in person on 22.06.2016. These representationists have rendered services to Haryana Police continuously and they deserve all benefits accruing to them by virtue of their service as per directions of the Hon'ble Supreme Court of India. The Hon'ble Supreme Court of India never dismissed their services. Had that been the intention of the Hon'ble Supreme Court, the Hon'ble court should not have allowed them to continue in service. As such, the representation/request of the representationists is hereby accepted. They shall be entitled for all benefits of their previous service, which was rendered by them from 1995 to 2001.

5. Question of parity of treatment has arisen. Once the entire period is reckoned then relief comes automatically to the petitioner. There is no reason why the same principle should not be extended to the petitioner by virtue of Article 14 of the Constitution of India to remove discrimination. Equals must be treated equally. If this benefit is granted in favour of the petitioner then Rule 2D (II) would not, I believe, come in the way of relief. The question remains whether the claim of the petitioner should be processed under the Rules of 2003 or 2005 or by the comprehensive rules promulgated by the State of Haryana in the year 2006 replacing previous policies restricting financial benefits but not employment.

6. I have no doubt that the petitioner has a right of consideration under 2003 Policy in the first instance which gives right to both compassionate appointment and to financial assistance. However,

preferentially the claim deserves to be processed under the 2006 Rules to provide the widow the benefits in terms of the formula devised in Rule 6 etc. Her case deserves to be considered and treated as a pending case in terms of 2006 Rules.

7. The correspondence exchanged between the petitioner and the Department suggests it has been in progress since 2004 but which has yielded no result except the authority declining the request by the impugned order. Notice of motion was issued in this case limited to grant of financial benefits, and, therefore the claim for compassionate appointment is declined and for the above reasons the writ petition is allowed for financial assistance in terms of 2006 Rules.

8. The impugned order declining request is not legally sustainable and is accordingly quashed. The respondents will consider the case of the petitioner for financial assistance within three months from the date of the receipt of the certified copy of this order in the light of the order passed by the Director General of Police, Haryana dated 22.07.2016 (Annex P-10) in the case of PHC Kanwer Pal Singh No. 14 YNR, then arrears be calculated and paid to the petitioner within two months thereafter and continued to be paid regularly in terms of the policy.

9. The petition stands partially allowed.

(RAJIV NARAIN RAINA)
JUDGE

12.01.2018

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Whether speaking/reasoned : Yes

Whether reportable : No