

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

**CWP-8644-2015 (O&M)
Date of decision : 27.11.2018**

Babaljit Kaur

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Chanderhas Yadav, Advocate,
for the petitioner.

Ms. Bhavna Gupta, DAG, Punjab.

JITENDRA CHAUHAN, J.

CM-17605-CWP-2018

CM application is allowed as prayed for, subject to all just exceptions.

Main case

Prayer in the instant writ petition filed under Articles 226/227 of the Constitution of India for issuance of a writ in the nature of Certiorari for setting aside order/letter dated 03.05.2014 (Annexure P-9), whereby, the claim of the petitioner for selection to the post of Clerk on compassionate basis has been rejected.

It is contended that father of the petitioner, who was working as Driver with the respondent-Department died in harness on 12.06.2004. The

petitioner is the only child of the deceased. She attained the age of majority in the year 2010 and completed her Bachelors degree on 01.06.2012. On 19.06.2012, i.e. within eighteen days from the date of declaration of result, the petitioner applied for the post of Clerk on compassionate grounds. After completing all the formalities, the petitioner was interviewed on 30.07.2013, whereas, on 11.11.2013, the petitioner underwent the mandatory medical examination before joining against the post in question. In the interregnum, the petitioner solemnized marriage with one Harinder Singh. On 24.01.2014, the petitioner was recommended for appointment by the office of the Director General of Police, Punjab. However, vide impugned order dated 03.05.2014 (Annexure P-9), the claim of the petitioner was rejected on the ground that the same was not covered under the Policy.

It is contended that the case of the petitioner was rejected by passing a non-speaking and arbitrary order dated 03.05.2014 (Annexure P-9), merely stating therein that her case is not covered under the policy guidelines dated 21.11.2002 (Annexure P-8). However, the petitioner kept pursuing her case and vide letter dated 25.07.2014 (Annexure P-10), she was informed that her case had been rejected on the ground of delay. However, in the reply filed on behalf of respondent Nos.1 to 3, solemnization of marriage by the petitioner has been shown to be the ground for rejection of petitioner's legitimate claim.

On the other hand, learned State counsel submits that though the petitioner was minor at the time of death of her father, but she attained the age of 16 years in the year 2008 and thus, became eligible for

appointment to a Group 'D' post, but she did not apply for the same at the relevant time. Further, the petitioner attained the age of majority in the year 2010 and thus, became eligible for appointment to a Group 'C' post. However, for the reasons best known to her, the petitioner applied for the post of Clerk belatedly on 19.06.2012. This delay has not been explained by the petitioner. Secondly, the petitioner solemnized marriage on 30.10.2013, therefore, she is not covered under the policy dated 21.11.2002 (Annexure P-8). It is, thus, submitted that the case of the petitioner has rightly been rejected.

Heard.

It is to be noticed that the petitioner had applied for the post of Clerk on 19.06.2012. As on the date of submission of the application, the petitioner, the only child of the deceased was unmarried, in favour of whom, her mother had also given consent. The case of the petitioner was rejected in view of the scheme notified vide letter dated 21.11.2002 (Annexure P-8), wherein, the dependant family member has been defined as under:-

- a) *spouse; or*
- b) *son (including adopted son); or*
- c) *unmarried daughter (including adopted daughter); or*
- d) *unmarried brother or unmarried sister in the case of unmarried government servant.*

It is to be seen that on the date of submission of application, the petitioner's status was that of 'unmarried daughter'. If the petitioner solemnized marriage during the pendency of her application, it does not

render her ineligible for consideration. Another aspect of the matter is that the petitioner filed additional affidavit on 10.08.2017 to the effect that her in-laws had thrown her out of the matrimonial home. Subsequently, vide judgment and decree dated 17.07.2018 (Annexure P-12), she was granted divorce. In ***Debapriya Bose Vs. The Secretary, Government of West Bengal, Education Department and others (Calcutta), 2014 (9) S.C.T. 894***, it has been held as under:-

“Thus the moot question that crops up for consideration is whether by a marriage subsequent to the death of an employee a daughter forfeits her rights to be employed on compassionate ground. Strong reliance has been placed by the petitioner on the case of Smt. Usha Singh -Vs.- State of West Bengal and Others, reported in 2003(1) CLJ 407. In that case the relevant rules governing the field inter alia provided that the Council might appoint primary teachers with the approval of the Director on compassionate ground when a teacher dies-in-harness before the date of his superannuation leaving a family which in the opinion of the Council was in extreme economic hardship. It was mentioned that the persons who might make an application were the unemployed widow or the unemployed son or the unemployed unmarried daughter. The court was not inclined to read in the said rules a restraint upon marriage. There was no guarantee that the appointment would be made immediately upon the death or even immediately upon the applicant being found eligible. She might have to wait for her turn in a roster which may take any length of time. The court further held that the rationale of the rules was that the

son or the daughter who applied for an appointment in the died-in-harness category should have been dependant upon the income of the deceased so that his untimely death left them in extreme economic hardship. The avowed object of the rules was to provide relief to the family which was in extreme financial hardship and for this an unemployed son could apply whether married or unmarried. Why then was the restriction, a learned single judge of this court posed a question, upon a daughter that she should be unmarried in order to be eligible for appointment? An unmarried daughter could be divorced being fully dependant upon the father. She might have been an abandoned wife, fully dependent upon the father. She might have been married to an indigent husband so that both the married daughter and the son-in-law would have been dependants upon the income of the bread winner whose death led them to extreme financial hardship. The court countenanced that there might be many other probabilities in which a married daughter might be fully dependant upon the income of her father so that the death of the father would leave her and the rest of the members of the family in extreme economic hardship.”

As regard the point of delay is concerned, it is apparent that the petitioner completed her BCA Degree in the year 2012 and the result thereof was declared on 12.06.2012. The petitioner admittedly applied within a week thereafter, i.e. on 19.06.2012. It has been the specific stand of the petitioner that she was under a bona fide belief that for appointment to the post of Clerk, the candidate must be a Graduate. In the circumstances, the

Court feels that there is no delay on the part of the petitioner.

In view of the above discussion, the instant writ petition is allowed. The impugned order dated 03.05.2014 (Annexure P-9), is hereby quashed. The respondents are directed to issue appointment letter to the petitioner within four weeks from the date of receipt of a certified copy of this judgment after completing the necessary formalities.

Allowed.

27.11.2018

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(JITENDRA CHAUHAN)
JUDGE

Whether speaking / reasoned :	Yes	No
Whether Reportable :	Yes	No