

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.10154 of 2017 (O&M)

Date of Decision: 17.01.2019

Vandana

... Petitioner

Versus

Union of India and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present: Mr.Sunil Garg, Advocate
for the petitioner.

Mr. Lokesh Narang, Advocate
for respondent Nos.1 and 2.

Mr. Vinod Sharma, Advocate
for respondent Nos.3 and 4.

ARUN MONGA, J. (ORAL)

The present petition has been filed inter alia, for issuance of a writ in the nature of Certiorari to quash the order dated 14.10.2016 conveyed to the petitioner vide letter dated 01.02.2017 (Annexure P-4), whereby candidature of the petitioner for appointment on compassionate ground has been rejected solely on the ground of her being over age.

2 Facts of the case are that the petitioner's husband died in harness on 01.10.2005 after serving under the respondents for 11 years. The petitioner's husband was a Vehicle Mechanic (Group-C) employee. He died on duty in a road accident. The petitioner applied on 23.08.2006 for compassionate appointment well within one year of the death of her husband. Yet her case was rejected on the ground that she had filed her application after a lapse of one year though as per the Government Policy, the application for compassionate

appointment of the respondent has to be submitted within one year from the date of death, and, therefore, the same should have been considered by the respondents.

3. In these circumstances, the petitioner approached Civil Court and filed a civil suit at Pathankot challenging the stand of the respondents that she had approached for compassionate appointment after a lapse of one year. The said civil suit was dismissed. However, in an appeal preferred against the judgment and decree passed by the trial Court, the Appellate Court while upholding the findings of the trial Court observed that as the action of the respondents refusing consideration of the case of the petitioner was violative of the instructions and general principles of natural justice, the respondents were required to consider the case of the petitioner on merits within a period of four months from the date of passing that judgment. It was further observed by learned Appellate Court that a perusal of application Exhibit P-1 and certificate Exhibit P-2 submitted by the petitioner to the respondents show that the same are dated 23.08.2006 and there is nothing on record as was the contention of learned counsel for the respondents that the said application was received on 04.11.2006.

4. After going through the evidence adduced before the trial Court and appreciating the same the Appellate Court had given finding that the action of the respondents in not recommending the application of the petitioner for compassionate appointment to the competent authority on the ground that it was belated by 01 month and 10 days was definitely arbitrary, unconstitutional violation of the provision of the scheme and against the principle of natural justice as the petitioner was never afforded an opportunity of being heard to explain the delay, (if any), in submitting the application for compassionate

appointment.

5. In view thereof, a direction was given by the Appellate Court to the respondents to consider the case of the petitioner for appointment on compassionate ground on merit. It is a conceded case that the said findings of the Appellate Court have since attained finality as no further appeal has been preferred by the respondents challenging the same.

6. Following the Appellate Court's order dated 05.09.2014, the petitioner approached the respondents to consider her case for compassionate appointment which led to the passing of the impugned order dated 14.10.2016.

7. A perusal of the impugned order shows that the case of the petitioner has been rejected primarily on the ground that at the time of submission of application form for compassionate appointment, her age was 39 years, 10 months and 01 days and, therefore, she was overage as the prescribed age limit for appointment to such post is 32 years relaxable up to maximum of three years. In the impugned order, it has been observed that since she was more than the prescribed maximum age including relaxation up to maximum 3 years, her case could not be considered and accordingly application of compassionate appointment was rejected.

8. Even though the entire reasoning of the impugned order seems to be that the petitioner was found overage but in the passing reference in Para-9, thereof, it has been also observed that personnel of this department (Border Roads Organization) are deployed for construction of Roads, Bridge, Airfield and other infrastructure for defence purposes in extremely remote, isolated and far-flung areas of Northern and North-Eastern part of the country including high altitude area which have very harsh and severe climatic conditions requiring young profile to be able to work and operate in harsh working conditions.

9. However, that does not seem to be the reason assigned for rejection as in concluding Para-11 of the speaking order, it has been observed that application of the petitioner was rejected on the ground that she was overage.

10. I have gone through the contents of the writ petition, respective pleadings filed by the parties along with appended records, and also considered the rival contentions of learned counsel for both the sides.

11. The primary stand of the respondents for rejecting the petitioner's claim as per the impugned order is that the petitioner was found to be overage. I am of the view that the stand of the respondents does not stand judicial scrutiny. Perusal of the record as well as findings recorded by the Appellate Court clearly show that the petitioner had applied on 23.08.2006, the date on which admittedly her age was 31 years, 04 months and 13 days. Her date of birth being 10.04.1975 is not in dispute and that being the conceded position, the petitioner cannot be non-suited for no fault of her. Admittedly, her application was wrongly rejected compelling her to agitate the matter before civil court. After success in appellate court when she approached the respondents again, her claim was declined by the respondents taking the advantage of their own wrong. This is not permissible under law. If her original application dated 23.08.2006 would not have been wrongfully rejected, admittedly she would not have been rendered ineligible on the ground of her age. That being the position, she cannot at this stage be non-suited being ineligible on account of her subsequently having become being overage.

12. As regards the other contention that the personnel of Northern Organization are to be deployed far-flung/isolated areas, the same is against the principles and policy for appointment on compassionate ground and is not even

the reason assigned for rejection of the petitioner's claim.

13. Even otherwise, this contention is not tenable. Persons like the petitioner can be posted in Administrative Offices all over the country which are known to be soft areas like Guwahati, Tejpur, Chandigarh, Pathankot, Delhi, Shimla, Manali and Srinagar. The said list is only illustrative. Therefore, the contention that the widow of the deceased employee who died in harness cannot be considered and as she cannot be sent in far-flung areas is completely misplaced and rejected.

14. In view of my observations, as noted above, the present writ petition is allowed partly to the extent that the impugned order dated 14.10.2016 is quashed. The respondents are directed to consider the case of the petitioner for compassionate appointment on the basis of her age for Group-C post as on 23.08.2006, i.e. the original date when she had applied for the post position. The respondents shall pass an appropriate order accordingly preferably within a period of three months.

17.01.2019

rekha sharma

(ARUN MONGA)
JUDGE

Whether speaking/reasoned : *Yes/No*

Whether reportable : *Yes/No*