

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 07.03.2019****CWP No.19251 of 2013**

Raj Bala

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINAPresent: Mr. S.N.Yadav & Mr. Aditya Yadav, Advocates,
for the petitioner.

Mr. Harish Rathee, Sr. DAG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

1. Four times over, the petitioner was offered compassionate appointment by the police department; firstly, as Peon and then as Constable, but she refused the offers. Having refused compassionate appointment, the underlying object of the policy was sub-served and thereafter she cannot claim compassionate appointment in the present writ petition.

2. Notice of motion was issued in this case only to examine the issue of financial assistance and therefore, the scope of the petition was narrowed down to alternative claim for ex gratia financial assistance.

3. The relevant facts of the case are that the petitioner's father, a government servant, died in harness on 06.12.1994. His widow, namely, Phool Kaur moved an application on 29.12.1994 for providing a job to her son Bhupinder Singh. On 19.04.1995, she again submitted an application that her son Bhupinder Singh be appointed as Assistant. However, on

19.01.1996, she again moved an application for providing a job of Clerk to her married daughter, namely, Raj Bala i.e. the petitioner herein instead of her son. After considering her case, it was clarified by the department vide letter dated 28.04.1997 that the married daughter cannot be offered employment under ex gratia scheme in view of government instructions dated 08.05.1995. Aggrieved by letter dated 28.04.1997, Raj Bala filed Civil Suit No.360 of 2001 claiming compassionate appointment. The suit was decreed on 10.06.2002 by the Additional Civil Judge (Senior Division), Rewari to the extent directing the State Government to consider the case of Bhupinder Singh and Raja Bala for ex gratia appointment within one month. Since Bhupinder Singh was not willing to take up employment, the case of Raja Bala – petitioner was considered for appointment as Clerk. However, vide order dated 09.08.2002, the Director General of Police, Haryana considered the case of Raj Bala and found that she was not eligible for the post of Clerk, as she was a matriculate with second Division and 10+2 with third Division and, therefore, did not qualify under the rules of service. However, she was offered appointment to the lower post of Peon, which was not accepted. The petitioner filed a contempt petition for not implementing the judgment and decree dated 10.06.2002, which was dismissed. Thereafter, she filed an appeal against the judgment and decree dated 10.06.2002, which was dismissed by the Additional District Judge, Rewari being time barred vide judgment dated 22.10.2003. She then filed revision i.e. CR No.678 of 2004, which was disposed of by this Court vide order dated 02.04.2004 directing the Additional District Judge, Rewari to decide the appeal on merits. In compliance thereof, the Additional District Judge, Rewari by judgment and decree dated 16.11.2004 in remand proceedings modified the

judgment and decree of the trial Court to the extent that the claim of the plaintiff/petitioner be considered under the ex gratia scheme for Class IV post. However, she filed a review application for reviewing the order dated 16.11.2004, which was dismissed vide order dated 26.05.2007. After which, she preferred a regular second appeal bearing RSA No.3384 of 2004 in this Court. This Court modified the judgment and decree and directed that the claim of the plaintiff/petitioner be considered in accordance with the policy decision contained in letter dated 31.08.1995 in view of statement made by her that she would be satisfied if her case is considered as per policy decision contained in that letter. Pursuant to the directions of this Court, the Director General of Police, Haryana again considered the case of the petitioner and rejected the same vide order dated 23.03.2010. Still aggrieved, the petitioner filed Execution Petition No.16 of 2010, which was dismissed on 30.05.2012 by the Civil Judge (Junior Division), Rewari after which the present petition was filed in the year 2013.

4. On the other hand in refutation of the claim, Ms. Shruti Jain Goyal, learned Law Officer states that appointment was offered four times to the petitioner up till 2010, but she refused to join any of the assignments.

5. In view of flat refusal to accept offer of employment and the narrowing down of the issue to financial assistance, the case of the petitioner for compassionate appointment is shut out, for which denial I harbour no doubt. As far as financial assistance is concerned, record reveals the petitioner has already been paid a sum of Rs.25,000/- by the Department as noticed in the interim order/s of this court and certain other payments as well, one of which is Rs.13,000/-.

6. The only question which falls under consideration is whether the petitioner can take benefit under 'the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees' Rules, 2006' (for short '2006 Rules') and the instructions of 2011 clarifying pending cases in Sections 4 or 6 of 2006 Rules.

7. If the date of death is taken into consideration to determine rights, then the case has to go back to the date of death i.e. in the year 1994 and, therefore, policy instructions dated 31.10.1995, which provides only compassionate appointment are applicable. Therefore, it cannot be said that the petition has any life left as a pending case within the scope and ambit of the 2006 Rules. Thus, she cannot claim as a matter of right financial assistance of Rs.2.5 lakhs prescribed under the Haryana Compassionate Assistance to Dependents of Deceased Government Employees Rules, 2003, as modified by the Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2005 (for short '2005 Rules') and those policies being repealed and replaced by the new 2006 Rules. It may be noticed that under the 1995 policy only compassionate appointment was visualized. Compassionate appointment and financial assistance were concepts introduced for the first time in Haryana in the 2003 policy by way of rules framed under the proviso to Article 309 of the Constitution of India. Eligible person could claim one of the two benefits by exercise of option subject to terms of the policy. The two benefits by way of concession were mutually exclusive. Even then, as far as ex gratia appointment is concerned, there was no certainty of positive result of consideration of claim, which beneficial right was not indefeasible in character as it depended on a host of co-existing factors, such as availability of sanctioned post in the present or in

the near future; quota from cadre strength/posts set apart to meet such eventualities; possession of qualifications as per prescribed rules; placement of name in priority lists for each parent department; extent of poverty and penury the family may face on the death of the breadwinner; social status of the family; age of spouse and family members left behind; their effort at seeking public employment in open merit; the existence of an irreconcilable and sudden financial crisis the family is left in the wake of death of government employee; the age of the deceased employee, the number of years of service left for retirement on superannuation etc. etc.

8. Thus, in my view, the relief of financial assistance pressed is not, in the facts and circumstances of this case, even the accrued, vested and existing right of the petitioner whose present financial status is also not explained or what her husband does or earns and, therefore, the plea fails and as a result, the petition is ordered to stand dismissed without any order as to costs.

07.03.2019
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>Yes</i>