

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

**CWP-22527-2015 (O&M)
Date of decision : 14.01.2019**

Nitin Sehdev

...Petitioner(s)

Versus

State of Punjab and others

...Respondent(s)

CORAM: HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. R.S. Athwal, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, DAG, Punjab.

JITENDRA CHAUHAN, J.

The petitioner seeks quashing of the order dated 27.09.2011 (Annexure P-3), passed by respondent No.3, whereby, the claim of the petitioner for grant of compassionate appointment has been rejected; order dated 17.07.2013 (Annexure P-10), passed by respondent No.3, again rejected the claim of the petitioner; and order dated 12.12.2012 (Annexure P-5), passed by respondent No.2, whereby, the appeal preferred by the petitioner has also been dismissed.

It is the case of the petitioner that his mother, Smt. Soma Devi, had serving with respondent No.3. She died in harness on 10.08.2010. The petitioner-son, being the legal heir of the deceased, applied for appointment on compassionate grounds vide representation dated 12.01.2011 (Annexure P-1). Respondent No.3 vide letter dated 28.03.2011 called for the report from the Sub Divisional Magistrate, Jalandhar, to verify the financial status,

income sources and properties of the family of the deceased. Vide letter dated 30.03.2011 (Annexure P-2 colly.), it was reported that the deceased left behind one daughter and one son who were dependent upon her. Her husband was a scooter mechanic and had been operating from a rented shop. The family neither had any immovable property nor had any other source of income. However, vide order dated 27.09.2011 (Annexure P-3), respondent No.3 rejected the claim of the petitioner on the ground of receipt of the pensionary benefits of the deceased. The appeal preferred by the petitioner before respondent No.2 also came to be rejected on the same ground vide order dated 12.12.2012 (Annexure P-5). Aggrieved against the impugned orders Annexures P-3 and P-5, the petitioner approached respondent No.1 who vide order dated 09.04.2013 (Annexure P-9), directed respondent No.3 to consider the case of the petitioner in the light of instructions dated 21.02.2011 and 18.07.2005. However, respondent No.3 vide impugned order dated 17.07.2013 (Annexure P-10) again rejected the claim of the petitioner on the ground that the previous incumbent had already passed speaking orders against which the applicant had filed an appeal before the Commissioner, which already stood rejected. Again, the petitioner approached respondent No.1 again remanded the case to respondent No.3 by reiterating the directions issued vide order Annexure P-9. Respondent No.3 again rejected the claim of the petitioner without passing a speaking order.

It is contended that the case of the petitioner is squarely covered by the government instructions dated 21.02.2011 and 18.07.2005, issued in pursuance of the decision of Hon'ble the Supreme Court in ***Umesh Chander Nagpal Vs. State of Haryana, 1994(3) S.C.T. 174*** . The inquiry

conducted by the SDM, Jalandhar-1, clearly reveals that the petitioner deserves to be granted appointment on compassionate grounds.

On the other hand, learned State counsel submits that the application of the petitioner for appointment on compassionate grounds was rejected by respondent No.3 by passing a detailed and speaking order. The appeal preferred by the petitioner was also rejected by respondent No.2. Even on reconsideration of the case by respondent No.3 as per the directions issued vide order Annexure P-9 passed by respondent No.1, the case of the petitioner was not found fit for taking action afresh.

Heard.

It is to be noticed that in pursuance of the application moved by the petitioner for grant of appointment on compassionate grounds, respondent No.3 sought report from the Sub Divisional Magistrate, Jalandhar, with regard to the financial condition of the family of the deceased. In response, it was reported that the deceased had one son and one daughter. The son was unemployed, whereas, the daughter was a student. The husband of the deceased was running a scooter repair shop from a rented shop. Besides, the family did not own any immovable property and there was no other source of income. However, respondent No.3, while passing impugned order Annexure P-3, rejecting the case of the petitioner on the ground that the family had received the necessary financial help on account of death of the employee and concluded that there was no financial crises in the family. However, the reasons so recorded are in clear contravention of instructions dated 18.07.2005, issued by the government clarifying that *“While examining/verifying the financial position of the*

family of deceased employee, the payments of amount of gratuity, leave encashment, GPF and other pensionary benefits are not to be taken into account.”

It is also to be noticed that on the date of passing impugned order (Annexure P-5), i.e. 12.12.2012, respondent No.2 heard and decided another appeal filed by one similarly situated person, Kamaljit Singh and relying upon instructions dated 18.07.2005 accepted the appeal. In compliance of the said order, respondent No.3 vide order dated 08.02.2013 (Annexure P-7), issued appointment letter to said Kamaljit Singh as Patwari, on compassionate grounds. This factual aspect of the matter has not been denied by the respondents. However, no explanation has come forth from the respondents as to why selective enforcement of the government instructions is being carried out. Hon'ble the Kerala High Court in ***V. Punnen Thomas vs State Of Kerala, AIR 1969 Ker 81***, has held as under:-

“Even so, the Government is not and should not be as free as an individual in selecting the recipients for largess. Whatever its activity the Government is still the Government and will be subject to restraints, inherent in its position in a democratic society. A democratic Government cannot lay down arbitrary and capricious standards for the choice of persons with whom alone it will deal.”

In view of the above discussion, this Court is of the considered opinion that the impugned orders passed by the respondents are illegal, arbitrary and deserve to be set aside. It is ordered accordingly. The respondents are directed to issue appointment letter to the petitioner on

compassionate grounds as per Rules and eligibility of the petitioner, within

six weeks from the date of receipt of certified copy of this judgment.

Allowed.

14.01.2019
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(JITENDRA CHAUHAN)
JUDGE

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