

IN THE HIGH COURT OF PUNJAB AND HARAYANA AT CHANDIGARH

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**CM-15111-C-2017 &
CM-15110-C-2017
& RSA-5710-2017**

Date of decision: 15.01.2019

VAISHNO DEVI @ BIASO DEVI

...APPELLANT

VS.

UNION OF INDIA & ORS

...RESPONDENTS

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

**Present: Mr. S.K.Chaudhary, Advocate,
for the appellant.**

AUGUSTINE GEORGE MASIH, J. (ORAL)

CM-15110-C-2017

Prayer in this application is for condonation of delay of 218 days in re-filing the appeal.

For the reasons mentioned in the application, the present application is allowed. Delay of 218 days in re-filing the appeal stands condoned.

CM-15111-C-2017

Prayer in this application is for condonation of delay of 19 days in filing the appeal.

For the reasons mentioned in the application, which is duly supported by the affidavit of the applicant-appellant, the present application is allowed. Delay of 19 days in filing the appeal stands condoned.

RSA-5710-2017

Challenge in this appeal is to the judgment and decree passed by the Additional Civil Judge (Senior Division) Pathankot dated 31.10.2014 whereby the suit for declaration preferred by the appellant-plaintiff for appointment on compassionate ground asserting therein that the death of the husband of the appellant was attributable to Military Service and, therefore, she is entitled for appointment to the post of Peon w.e.f. 29.05.2002 with all the benefits attached to the service along with interest @ 24% per annum as also entitled to ex-gratia payment out of Army Central Welfare Fund and National Defence Fund along with interest as also mandatory injunction for release of benefits attached to service with effect from the date of appointment of the appellant-plaintiff, stands dismissed in the light of the fact that the claim for appointment on compassionate ground is not made out and the other consequential benefits such as family pension and death-cum-retirement gratuity have been released to the appellant, appeal against which preferred by the appellant-plaintiff has been dismissed by the District Judge, Pathankot vide judgment dated 16.11.2015.

It is the contention of the learned counsel for the appellant that the husband of the appellant had died while he was on active duty and because of crumbling of a pillar, he was buried resulting in his death. She is, therefore, entitled to consideration for appointment on compassionate ground because of the death of her husband during active duty which has been attributed to Military Service. His further contention is that the appellant is also entitled to the ex-gratia benefit under the Army Central Welfare Fund and National Defence Fund. Assertion has been made that the Courts below have not appreciated the correct position with regard to

the Instructions, as applicable and admitted by the respondents. The judgments, therefore, passed by the Courts below deserve to be set aside.

I have considered the submissions made by the learned counsel for the appellant and with his assistance, have gone through the impugned judgments.

There is no dispute with regard to the fact that the claim of the appellant for appointment to the post of Peon on compassionate ground due to death of her husband was considered by three Boards constituted at integrated Headquarters of Ministry of Defence (Army) but was rejected on consideration in the light of the fact that there were large number of applications, which were submitted, and there being limited number of posts available, the cases of the claimants were duly considered and those, who were most deserving, were offered appointment. The claim of the appellant, as per the Rules and Instructions applicable, was considered on three occasions but on all three occasions, she could not make the grade. The law, as has been laid down in various judgments of the Courts, has been referred to by the learned Appellate Court in this regard, which cannot be distinguished and is applicable to the case in hand.

The claim of the appellant with regard to the grant of ex-gratia benefit on the Army Central Welfare Fund also is not made out in the light of the fact that as per the Instructions, kins of two categories of soldiers are entitled for grant of such ex-gratia, one being those who were killed in action (Battle casualties) from 15th August, 1947 to 30th April, 1999 and the second being those who were killed in action (Battle Casualties) from 1st May, 1999 onwards which included the operation Vijay Kargil. The husband of the appellant died in the year 1996 and unfortunately, his death

does not fall under any of these conditions as he has not died in an operation rather his death was because of the fall of the pillar although in the operational area and cannot be termed as a battle causality.

It is also an admitted position that the appellant is being granted death-cum-retirement gratuity and is receiving family pension as well.

In view of the above, the present appeal being devoid of merit stands dismissed.

January 15, 2019

pj

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable : Yes/No