

CWP-15253-2013

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-15253-2013

Date of Decision: 6th March, 2020

Parminder Kaur

...Petitioner

Versus

State of Punjab & others

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Ms. Rupinder Kaur Thind, Advocate,
for the petitioner.

Mr. Mehardeep Singh, Addl. A.G., Punjab.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Petitioner has approached this Court praying for issuance of a writ of *mandamus* directing the official respondents to appoint the petitioner on compassionate ground being widow of deceased Tarlochan Singh, who was a Head Constable in Punjab Police and died during harness on 09.08.2006.

2. Briefly, the facts are that deceased Head Constable Tarlochan Singh was married to Tajinder Kaur. Out of this marriage, two daughters, namely, Amandeep Kaur (respondent No.5) and Ramandeep Kaur (respondent No.6) were born. During the subsistence of this marriage, deceased Head Constable Tarlochan Singh entered into a marriage with Parminder Kaur (the present petitioner). Out of this relationship, another daughter, namely, Husandeep Kaur, was born. After the death of Head Constable Tarlochan Singh, both the parties and their children put forth

their respective claims and it is, during the pendency of these claims that a compromise was entered into between them before the Civil Court. Petitioner and her daughter Husandeep Kaur were the plaintiffs in the said civil suit. The suit was disposed of vide order dated 30.07.2011 by the Lok Adalat, Mansa, on the basis of a compromise, which has been entered into between the parties. Copy of the said compromise has been appended as Annexure P-3 with the writ petition. As per the said compromise, petitioner was given the benefit of appointment on compassionate ground. The said compromise having been entered into between the parties, petitioner put forth her claim for appointment on compassion ground, as per the Punjab Government policy dated 19.09.2002 (Annexure P-5). Petitioner asserts that she, being the widow of deceased Head Constable Tarlochan Singh, would be entitled to the claim of appointment on compassionate ground being a dependent as per the policy and thus, denial of appointment by the respondents is unsustainable.

3. This claim of the petitioner has been opposed by the learned counsel for the State, who asserts that deceased Tarlochan Singh being a Government employee or any other person, who has a subsisting legal relationship of husband and wife, cannot enter into an alliance of marriage with a second woman. Petitioner at best would be the second wife, which would be violative of the provisions of the Hindu Marriage Act and therefore, would not have a legal status of wife and thus, cannot claim herself to be a dependent of the deceased. The claim of the petitioner, therefore, could not be accepted irrespective of the fact that there was a

compromise which has been entered into between the petitioner and the first wife, namely Tajinder Kaur, of deceased Head Constable Tarlochan Singh. A compromise which confers a right, which is not sustainable in law, cannot be made the basis for claiming the benefit of appointment on compassionate ground. He, therefore, submits that the claim of the petitioner could not be accepted and therefore, she has been denied the said benefit as per the policy.

4. I have considered the submissions made by the learned counsel for the parties and have gone through the pleadings and the documents appended along with the writ petition.

5. The facts as narrated above are not in dispute. The issue involved in the present writ petition is “whether the petitioner who happens to be the second wife of deceased Head Constable Tarlochan Singh, be termed as a dependent as per the policy dated 19.09.2002 (Annexure P-5) on the basis of a compromise which has been entered into with the first wife?”

6. Perusal of the policy dated 19.09.2002 (Annexure P-5) would show that the appointment on compassionate ground could be given to a widow. Petitioner being the second wife of deceased Head Constable Tarlochan Singh cannot be given the status of a widow in terms of the policy/instructions dated 19.09.2002 (Annexure P-5).

7. Learned counsel for the petitioner has placed reliance upon Clause 2 thereof to contend that in case the nominated person is not eligible for compassionate appointment as per the policy instructions, all dependents of the deceased employee should unanimously nominate one dependent

candidate eligible for compassionate appointment. She asserts that two daughters of Tajinder Kaur, widow of deceased Head Constable Tarlochan Singh, the first wife, have given their affidavits in favour of the petitioner and therefore, she would be entitled to the benefit of the said policy and has to be treated as dependent.

8. This contention of the learned counsel for the petitioner cannot be accepted in the light of the fact that the petitioner is not a dependent of deceased Head Constable Tarlochan Singh. She being not the dependent could not be held entitled to the benefit of the said clause as under the policy, it is one of the dependents out of the various dependents, who can only be considered for appointment. A compromise which has been entered into between the parties, which is in violation of the statute, does not confer a legal right upon a person because of the said compromise. The claim, therefore, based upon a compromise, which has been entered into between the petitioner and respondent No.4 – Tajinder Kaur, the first wife of deceased Head Constable Tarlochan Singh along with her two daughters, namely, Amandeep Kaur (respondent No.5) and Ramandeep Kaur (respondent No.6), cannot, therefore, be made the basis for grant of the benefit as per the policy/instructions dated 19.09.2002 (Annexure P-5).

9. Reliance has also been placed by the learned counsel for the petitioner on the Division Bench judgment of the Rajasthan High Court in the case of **Shashi Bala Vs. State of Rajasthan** {2001 (3) S.C.T.408}. A perusal of the said judgment would show that the petitioner therein, who was the second wife of the deceased Government employee, had been

working with the Government for 13 years when her services were terminated by the Government authority. It is, under these circumstances, the Court had proceeded to exercise its powers for setting aside the said impugned order. The said ratio and the facts being distinguishable would not confer any right upon the petitioner.

10. Reliance has also been placed upon the judgment of the Division Bench of Calcutta High Court in Smt. Namita Goldar & another Vs. Union of India & others {2010 (3) SLR 57}, wherein the son out the second marriage was held entitled to be the dependent of the deceased Government employee. There could be no dispute upon the said proposition of law as laid down by the Division Bench of the Calcutta High Court as the children of the second marriage would, in any case, be the legal heirs of the said employee for all intents and purposes.

11. In view of the above, finding no merit in the present writ petition, the same stands dismissed.

6th March, 2020
Harish

(AUGUSTINE GEORGE MASIH)
JUDGE

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