

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

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Civil Writ Petition No.2218 of 2017

Date of Decision: January 17th, 2020

Amarjit Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH

Present: Mr. L.S. Sidhu, Advocate
for the petitioner.

Mr. Charanpreet Singh, Assistant Advocate General, Punjab.

AUGUSTINE GEORGE MASIH, J.

Petitioner is daughter of late Head Constable Kashmir Singh, who died in harness on 02.10.2008 leaving behind Jasbir Kaur widow and Amarjit Kaur-petitioner as his legal heirs. Petitioner was married in April 2004 with one Gursewak Singh, who started residing with Head Constable Kashmir Singh at Village Baghel Singh Wala. The family had no source of income except that of the salary of Head Constable Kashmir Singh. In these circumstances, mother of the petitioner namely Jasbir Kaur submitted a representation, which was duly accompanied with educational qualifications of the petitioner for appointment on compassionate grounds in place of her husband late Head Constable Kashmir Singh as per Policy/Instructions dated 21.11.2002 (Annexure P-12). Affidavit of the mother of the petitioner was sought for by the respondent-department, which was duly submitted on 25.10.2014 (Annexure P-13).

2. The claim of the petitioner for appointment as a Clerk/Computer Operator on compassionate grounds being dependent of late Head Constable Kashmir Singh was declined on 15.04.2015 (Annexure P-14) by the Director General of Police, Punjab-

respondent No.2. The reason assigned for not accepting the claim of the petitioner was that she being the married daughter of a deceased employee was not eligible for consideration for appointment as per para 3 Note I of the Instructions dated 21.11.2002 (Annexure P-12).

3. This order dated 15.04.2015 (Annexure P-14) rejecting the claim of the petitioner stands challenged by the petitioner by way of the present writ petition primarily on the plea that denial of appointment to the petitioner on the basis of she being a married daughter of a deceased Government employee, who otherwise fulfills the criteria for appointment on compassionate grounds as per the policy instructions dated 21.11.2002, is unsustainable being hit by Articles 14, 15, 16 and 21 of the Constitution of India. It has also been asserted that the petitioner has been discriminated against merely on the ground of her marital status despite an inquiry having been held by the Deputy Superintendent of Police, CID, Tarn Taran, who in his report dated 12.06.2009 (Annexure R-2), which related to the verification of property/income sources of the mother of the petitioner and the petitioner, had stated in his findings that she was the only daughter of her late father Head Constable Kashmir Singh, who along with her husband and children were residing with her mother Jasbir Kaur in her maternal house. Late Head Constable Kashmir Singh owned one acre of land and except for the pensionary benefits received by Jasbir Kaur, there is no other source of income besides this. It was further stated therein that the family is sustaining itself with great difficulty. Therefore, it is asserted that the impugned order cannot sustain and deserves to be set aside.

4. The facts as narrated by the petitioner have not been disputed by the respondents. It has been admitted that late Head Constable Kashmir Singh, father of the petitioner, was serving in police department

and expired on 02.10.2008 due to heart attack while on duty leaving behind his widow Jasbir Kaur and a married daughter i.e. the petitioner. Application submitted by Jasbir Kaur, mother of the petitioner, was forwarded to the higher authorities for appointment of the petitioner as Clerk/Computer Operator on compassionate grounds. Her claim was rejected on the ground that she was not entitled to be considered for appointment being a married daughter of the deceased Government employee and, thus, not dependent upon her father. It has been asserted that Amarjit Kaur was married in April 2004 while her father was alive and being a married daughter, she was dependent upon her husband and thus, cannot be termed to be a dependent family member. It has been stated that as per the Punjab Government Instructions dated 21.11.2002, petitioner would not be included in the definition of “dependent family member” as provided for under para 3 Note I. It is, therefore, asserted that the impugned order dated 15.04.2015 (Annexure P-14) being in accordance with the Instructions dated 21.11.2002 (Annexure P-12) cannot be faulted with.

5. Counsel for the petitioner as well as the counsel for the State have put forth their arguments on the basis of the above pleadings and their contentions narrow down to the issue as to whether the definition of ‘dependent family member’, which does not mention ‘married daughter’, would disentitle her for consideration for appointment on compassionate grounds as per the scheme/policy dated 21.11.2002.

6. Learned counsel for the petitioner has placed reliance upon the Division Bench judgment of this Court passed in *CWP No.18110 of 2009* titled as *Jai Narain Jakhar Versus State of Haryana and others 2012 (1)*

BSI 430 (Annexure P15), wherein this Court had an occasion to deal with

challenge to an order rejecting the application submitted by an ex-serviceman for issuance of dependent certificate to his married daughter, which was rejected by the Secretary, Zila Sainik Board, Hisar in terms of policy/guidelines dated 11.10.2001, which specifically barred a married daughter of an ex-serviceman from issuing a dependent certificate holding her to be not eligible. The Division Bench of this Court, after considering Clause (f) of the said policy dated 11.10.2001, which barred married daughter of an ex-serviceman for issuance of a dependent certificate, as *ultra vires* of Article 14 of the Constitution, read it down by making married daughter of an ex-serviceman also eligible for dependent certificate provided she fulfills the other conditions. Reliance has also been placed upon the Full Bench judgment of the Uttarakhand High Court in *Udham Singh Nagar District Cooperative Bank Ltd. & another Versus Anjula Singh and others 2019 (3) S.C.T. 570*, Madras High Court judgment in *Management, Tamil Nadu State Transport Corporation Ltd., Kumbakonam Versus Joint Commissioner of Labour (Conciliation), Chennai and another 2012 (8) S.C.T. 652* and Gauhati High Court judgment in *Deepa Rani Das Versus The State of Assam and others 2017 (3) LLJ 623*.

7. The prayer made by the petitioner in the present writ petition is for declaring the Instructions dated 21.11.2002 (Annexure P-12) invalid to the extent it deprived the benefit of these instructions to a 'married daughter' by mentioning in definition of 'dependent family member' as 'unmarried daughter' whereas qua 'son', there is no such qualification being violative of Article 14 of the Constitution of India. Prayer for quashing the impugned order dated 15.04.2015 (Annexure P-14) as also for issuance of a mandamus directing respondents to appoint the petitioner on compassionate

grounds without any delay has also been made.

8. Perusal of the Scheme for Compassionate Appointment 2002 dated 21.11.2002 would spell out that it relates to grant of employment in State service on compassionate grounds. It is a policy statement which has been made by the Government after the judgment of the Supreme Court in *Umesh Kumar Nagpal Versus State of Haryana and others 1994 (4) SCC 138*. Government, on reconsideration of the earlier instructions issued from time to time on compassionate appointment. The said scheme dated 21.11.2002 (Annexure R-3) had been framed restricting it to the persons, who fall in the categories as mentioned in para 3 of the said scheme. Sub para 2 of the said paragraph, which would be relevant for the present case and reads as follows:-

3. Henceforth, the objective of the Scheme is limited to grant of appointment on compassionate grounds to persons who fall in the categories mentioned below:-

(1) XXX XXX XXX

(2). A dependent member of the family of the deceased Govt. employee, who dies in harness.

Note I gives the meaning of the dependent family member and the said Note I reads as follows:-

NOTE-I 'Dependent Family Member' means:

(a) Spouse; or

(b) Son (including adopted son); or

(c) Un-married Daughter (including adopted Daughter);
or

(d) Un-married Brother or Un-married Sister in the case of unmarried Govt. Servant who was wholly dependent on the Govt. Servant/member of the Armed Forces at the time of death in harness.

9. A perusal of the above para 3 (2) would show that the category of persons, who would be eligible for consideration for appointment on compassionate grounds includes a dependent member of the family of the deceased Government employee, who dies in harness. Note I deals with the dependent family member, which includes son, as also the adopted son and unmarried daughter including an adopted daughter but not a married daughter. This is apparent from the language used in the scheme as the word 'daughter' has been qualified by 'unmarried'. It may be added here that as far as the son is concerned, there is no qualification with regard to his marital status. He could be unmarried or even married but as far as a daughter is concerned, it is restricted to unmarried daughter only.

10. The intent and purpose of the scheme, which is the subject matter of the present petition, is for providing a helping hand to the family, who has all of a sudden, lost the sole breadwinner. The aim, therefore, is to save such a family from starvation so that they can tide over the extreme situation, which they are facing because of the death of the person, who provided them the food and the minimum basic amenities for their survival. Thus, the determinative factor with regard to a person being eligible for consideration for appointment on compassionate grounds, is the financial status of the family. This is so, as a benefit is being provided to a family out of the way. Only deserving cases should be provided such benefits, more so when, a person, merely because of his/her eligibility, entitles the said person for appointment as a special case. As the Hon'ble Supreme Court in Umesh Kumar Nagpal's case (supra) had observed that the object of compassionate appointment is to enable the family of a deceased employee to tide over the sudden financial crisis and not to provide employment nor it should be so done merely because of death of an employee in harness.

11. Article 14 of the Constitution of India gives right of equal treatment in similar circumstances both in privileges conferred as also the liability imposed. That does not mean that the State does not have the power of classifying persons/categories for legitimate purposes. However, there cannot ever be discrimination and that too against a woman merely on the basis of her sex, which would include the marital status. The only reason why the petitioner has been deprived appointment under the scheme is that she is a married daughter of a deceased government servant, whereas had she been unmarried or had it been the son, despite the marital status, the claim would have been considered. If this is not discrimination, what else can it be termed?

12. Classification, if any, has to be based upon reasonableness, which is justifiable on the anvil and touchstone furthering the policy for which the same had been framed. Violation of gender equality would amount to violation of Articles 14, 15 and 21 of Constitution as guaranteed to all citizens of India. Equality cannot be achieved unless there are equal opportunities for all. If a woman is deprived at the threshold by rendering her ineligible for consideration merely because of her marital status being a woman, especially when the same is not true for the man, would amount to discrimination on the basis of gender identity. In other words, it can be said that merely because of sex, a man has a preferential right of consideration over a woman because of marital status, which has the effect of rendering the equal protection of law guaranteed under the Constitution a farce rather non est. This cannot be permitted nor can it be allowed to be perpetuated.

13. There is a clear distinction, which appears to have been carved out under the 2002 scheme (Annexure P-12), where it appears that the

authority

has consciously omitted a married daughter from the definition of

family of a deceased government servant on the assumption that she is dependent on her husband or in-laws consequent upon her marriage. This is based upon a wrong assumption that a daughter, upon her marriage, ceases to be a part of the family of her father. As the son remains a son throughout, so does a daughter irrespective of the marital status. If the son and the daughter continue to have these relations, which they attain on birth or on adoption, they cannot be deprived of such status merely because of their marital status, meaning thereby that if a married son, if dependent upon a deceased Government employee, is eligible for consideration for appointment on compassionate grounds, why would the married daughter not be entitled for the same treatment provided she fulfills the requirement of being dependent on the deceased government servant at the time of his/her demise.

14. From the intent and purpose of the 2002 policy, which was framed, what is to be examined apart from the other factors, is the dependence of the family member whether it be a son or a daughter on the deceased government servant, so how does it make a difference as to whether the son or daughter is unmarried or married? The basic test is the dependence of a family member on the deceased government servant at the time of his/her demise, especially when the daughter continues to be a daughter despite she being married as the son. She does not lose her old relationship.

15. If dependency has to be the primary eligibility criteria for consideration for appointment on compassionate grounds, which is the intelligible differentia for including the group for consideration then a classification, which excludes a married daughter, dependent on the deceased government servant, would violate Articles 14 and 15 of the

Constitution, especially when the instructions do not exclude a married son dependent on the deceased government servant.

16. It, therefore, cannot be said that Note I of para 3 (2) of the 2002 scheme which deprives a married daughter, who is dependent upon the deceased government servant, has not been discriminated against for the reason and on the basis of her marital status, which again is dependent upon her sex, especially when a married son has not been excluded from the definition. The term used in Clause (b) of Note I is “son (including adopted son)”, whereas in Clause (c), it is “unmarried daughter (including adopted daughter)”. The non-inclusion of a “married daughter” in the definition of 'dependent family member', thus, would be violative of Articles 14, 15, 16 and 21 of the Constitution.

17. This leaves this Court with an obvious consequence of striking down the word ‘unmarried’ out of Clause (c) of Note I as by not doing so, a daughter merely because of her marital status, is deprived of her constitutional right of consideration for appointment on compassionate grounds under the 2002 scheme, provided she fulfills the other criteria laid down therein.

18. The Division Bench of this Court in Jai Narain Jakhar’s case (supra), while dealing with Clause (f) of policy dated 11.10.2001, which specifically provided that a married daughter of an ex-serviceman is not entitled for a dependent certificate, has held as follows:-

“7. The aforesaid provision in the policy is required to be examined on the anvil of Article 14 of the Constitution. The classical test of Article 14 concerning classification is well settled. It is trite to observe that Article 14 forbids class legislation but it does not forbid reasonable classification of persons, objects and transactions by the State for the purpose of achieving specific ends. However, the classification must

not be arbitrary, artificial and evasive (See State of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75). It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. Classification to be reasonable must fulfil the following two conditions- (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (2) The differentia must have a rational relation to the object sought to be achieved by the Act.

8. *The differentia which is the basis of the classification and the object of the policy are two distinct things. What is necessary is that there must be a nexus between the basis of classification and the object of the policy which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.*

9. *In the aforesaid clause (f) of the policy, married son of Ex-servicemen who does not have independent source of livelihood is considered eligible to be treated as dependent of an Exserviceman and entitle to such a certificate from a competent authority whereas a daughter has been excluded from the benefit. There is virtually no basis of classification once various factors of both son and daughter are the same. If common factor in both cases is unemployment and lack of independent source of income then it does not make any difference whether it is son or daughter. The common factors of being 'married and lack of independent source of livelihood' are present in both the cases and which put both of them at the same pedestal. Therefore, it would offend Article 14 and amount to giving a discriminatory treatment to married daughter who is without an independent source of livelihood by depriving her a dependent certificate to secure a job because she is as good a child of her father as the married son without independent source of income. The argument to justify the differential treatment meted out to the married daughter on the ground that she is dependent on her husband, would not require any detailed consideration because even in the case of dependent married son no*

condition has been imposed that his wife must not be earning. The emphasis is seems to be on independent source of livelihood, a feature which would be present in the case of married daughter as well. Therefore, we have no hesitation in rejecting the aforesaid argument. Moreover by an amendment dated 5.6.2005, Section 6 of the Hindu Succession Act, 1956, has been amended and now the daughter of a coparcener have the same rights and liabilities in the coparcenary property as she would have had she been a son.

10. *In view of the above, the instant petition is allowed. The offending part of clause (f) of the policy shown in italics is declared ultra vires of Article 14 of the Constitution and the clause (f) shall read as under:*

“(f) Married dependent son or married daughter of Ex-Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate”

The respondents are directed to issue dependent certificate to the petitioner for his daughter, subject to fulfilling other conditions by her.

19. The above ratio of the Division Bench judgment is fully applicable to the case in hand. The Full Bench judgment of the Uttarakhand High Court in the case of Udham Singh Nagar District Cooperative Bank Ltd.'s case (supra) would also apply with full force to the facts and issues involved in the present case.

20. The word ‘unmarried’ in Clause (c) of Note-I, sub-para 2 of para 3 of the 2002 scheme is declared *ultra vires* of Articles 14 and 15 of the Constitution and, therefore, struck off from the said policy instructions. The said clause would now read as follows:-

“NOTE-I 'Dependent Family Member' means:

a) XXX	XXX	XXX
b) XXX	XXX	XXX

- c) Daughter (including adopted Daughter); or
d) XXX XXX XXX”

21. In the light of the above, petitioner is held eligible for appointment under the 2002 scheme dated 21.11.2002 (Annexure R-3).

22. Keeping in view the report dated 12.06.2002 (Annexure R-2) of the Deputy Superintendent of Police, CID, Tarn Taran, which related to the verification of the income/property statement of the mother of the petitioner, who was the applicant namely Smt. Jasbir Kaur, as that of the petitioner, wherein it has clearly been mentioned that the petitioner along with her husband and children are residing at her mother's house at Village Baghel Singh Wala, is dependent upon the pensionary benefits of her deceased husband Head Constable Kashmir Singh. She has only one acre of land and no other source of income except this and the family is sustaining itself with great difficulty, thus, establishing the fact that the pecuniary position of her mother and petitioner is very bad and thus, fulfills the criteria of being dependent upon her deceased father entitling her for appointment on compassionate grounds.

23. In the light of the above, the present writ petition is allowed. Impugned order dated 15.04.2015 (Annexure P-14) is hereby quashed. Petitioner is held eligible for appointment under the 2002 scheme dated 21.11.2002 (Annexure R-3).

24. Direction is issued to the Director General of Police, Punjab-respondent No.2 to issue appointment letter to the petitioner on consideration of her claim within a period of one month from the date of receipt of copy of this order.

January 17th, 2020

Puneet

(AUGUSTINE GEORGE MASIH)

JUDGE

Whether speaking/reasoned:

Yes

Whether Reportable:

Yes