

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.6007 of 2015
Date of Decision: 13.03.2020

Smt. Piari

.....Petitioner

Versus

State of Punjab and others

..... Respondents

CORAM:- HON'BLE MRS.JUSTICE LISA GILL

Present: Mr. S.L.Chander Shekhar, Advocate
for the petitioner.

Mr. H.S.Sitta, AAG., Punjab.

LISA GILL, J(Oral).

The petitioner is the unfortunate mother of a 16 year old boy killed in terrorist action on 16.02.1992. Prayer in this writ petition is for directing the respondents to afford a suitable job to the petitioner's other son, who is now 38 years old, on compassionate basis as per the terms and conditions of the Policies/Schemes of the Government of Punjab, attached as Annexure P-7 to P-11. The petitioner had three sons, one of them being Satwant Rai who was killed on 14.02.1992. The other two are Paramjit Singh and Kamaljit Singh.

It is contended that the case for appointment of the petitioner's son namely Kamaljit Singh, on compassionate basis to a Class III or Class IV post is clearly covered by the abovesaid Schemes. The respondents have wrongly denied the petitioner's claim in this regard.

Learned counsel for the petitioner points out to Annexure-P-7
i.e., the circular dated 24.04.1986 to submit that members of the family of a

person killed as a result of terrorist action in the State and members of a family who lost their bread winner in riots in Delhi and other places in India between October 31 to November 7, 1984, are entitled to appointment on a compassionate basis. He further refers to Annexure P-16 i.e., the Policy dated 05.02.1996, issued by the State of Punjab, in respect to grant of employment in the State on compassionate grounds. It is submitted that the petitioner is squarely covered under Clause 5(i) of the Policy. Learned counsel further refers to Annexure P-2, to contend that the petitioner's son is entitled to appointment on compassionate basis.

Learned counsel for the petitioner vehemently argues that in a similar situation, appointment on compassionate basis, was directed by a Coordinate Bench in CWP No. 24521 of 2015, decided on 20.07.2016 (Annexure P-18). It is thus prayed that this writ petition be allowed.

Per contra, learned counsel for the respondent-State, submits that no ground is made out for affording any relief to the petitioner as the applicable policy does not envisage appointment on compassionate basis for the brother of the deceased. Learned counsel for the State, further points out that financial assistance to the petitioner in terms of order dated 30.10.2015, passed in CWP No. 1533 of 2014 and order dated 26.11.2015 passed in LPA No. 1676 of 2015, has been afforded. It is further submitted that the petitioner or her family members were not dependent upon the deceased at the time of death of Satwant Rai. The petitioner's husband was earning and furthermore the application for appointment of petitioner's other son namely Paramjit Singh, on compassionate basis on similar grounds already stands rejected. It is thus prayed that this writ petition be dismissed.

I have heard learned counsel for the parties and have gone through the file with their assistance.

There is no dispute regarding death of the petitioner's son namely Kamaljit Singh on 16.02.1992, in the State of Punjab during terrorist action. FIR No. 18 dated 16.02.1992, under Sections 302, 307 IPC, 25 of the Arms Act, 3, 4 and 5 of the TADA, was registered at Police Station Nakodar, District Jalandhar. It is further a matter of record that ₹50,000/- was granted to the petitioner on 24.02.1992 being the legal heir of Satwant Rai. The petitioner's husband, submitted a written claim averring that neither subsistence allowance nor any job had been afforded to the family. A sum of ₹50,000/- as enhanced grant, was released in the form of Indra Vikas Patras in the year 1996. Further, Financial assistance/subsistence allowance stands released to the petitioner as is evident from the orders dated 30.10.2015 and 26.11.2015, in CWP No. 1533 of 2014 and LPA No. 1676 of 2015, respectively, which were preferred by the present petitioner.

An application for appointment on compassionate basis submitted by one of the petitioner's son namely Paramjit Singh, was declined on 08.12.2011. Application by the petitioner's other son namely Kamaljit Singh for appointment on compassionate basis was also rejected on 22.08.2011 (Annexure P-12). The petitioner, who is the mother of Kamaljit Singh, aggrieved therefrom, preferred the present writ petition, seeking appointment on compassionate basis for her son-Kamaljit Singh. Appointment on compassionate basis, is admittedly a concession entailing a deviation from the normal recruitment process. Therefore, it is a settled position that appointment on compassionate basis has to be afforded strictly in accordance with the provisions of law, applicable scheme/regulations. Various circulars attached as Annexures P-7 to P-11, succinctly display that appointment on compassionate basis is to be afforded to the family members, who was/were dependent upon the deceased killed in terrorist

action. The Government of Punjab, vide the said circulars issued a slew of directions to ensure percolation of the relief to the affected persons. District level committees, were also formulated for making recommendations for appointment under the priority category. Priority lists were directed to be maintained.

Learned counsel for the petitioner is unable to point out any provision in the applicable scheme/circulars, which envisages appointment on compassionate basis to the kin of the deceased, who were not dependent upon him at the time of his death. Insofar as the question of subsistence allowance is concerned, it is apparent from the memo dated 30.08.2011 (Annexure R-2) that it was decided to release the subsistence allowance to the old parents of persons killed in terrorist action irrespective of the fact whether they were dependent or not upon the deceased son. Reference to memo dated 06.03.2016 in this regard is useful. Admittedly, the subsistence allowance is being released to the petitioner, though pursuant to litigation by the petitioner. Specific stand of the respondents is that neither the petitioner nor her son Kamaljit Singh, for whom appointment is sought were dependent upon the deceased-Satwant Rai. Reference in this regard can be made to communication dated 01.07.2014 (Annexure R-3) from the Sub Divisional Magistrate, Phillaur to the Deputy Commissioner, Jalandhar. Reference by learned counsel for the petitioner to decision dated 01.08.2012, titled as 'Malkiat Kaur Vs. State of Punjab and others' (Annexure P-17), passed in LPA No. 2240 of 2011, is not applicable to the facts and circumstances of the case. In the case of Malkiat Kaur, it was her husband who was killed in terrorist action. The dependent widow's claim for appointment on compassionate basis, was denied on the ground that she was required to apply for employment within six months from the date of death

and she had approached the authorities at a belated stage. She was, however, appointed on compassionate basis subsequently and Malkiat Kaur, sought the benefits from the date on which she became eligible for appointment. The Division Bench of this High Court has specifically observed that on death of Malkiat Kaur's husband by terrorist, she was found to be eligible for appointment in all respects as per policy dated 24.04.1986 and 08.08.1986 and it is in this situation it was held that the said petitioner's appointment would relate back to the date of filing of the writ petition for the purpose of the service benefits including seniority and notional pay fixation, though she was not held entitled to arrears of salary. Clearly, the said decision, is not relevant for adjudication of controversy in hand and is distinguishable.

Similarly, decision dated 20.07.2016 passed in CWP No. 24521 of 2015 (Annexure P-18), deals with the case of a dependent widow, seeking appointment on compassionate basis for her adopted son and is not applicable to the facts and circumstances of the present case.

The petitioner's husband, was an earning hand at the time of unfortunate death of their son Satwant Rai on 16.02.1992. Satwant Rai, was admittedly, 16 years old at the time of his death. As noted in the foregoing paras, appointment on compassionate basis, is not a vested right and such appointment has necessarily to be afforded strictly in terms of the applicable scheme/rules. Application submitted by Paramjit Singh for appointment on compassionate basis on similar grounds stands rejected. The petitioner's youngest son, Kamaljit Singh, who incidentally has not approached this Court in his own right (though this fact is not taken into consideration), is also not entitled to appointment on compassionate basis, keeping in view the facts and circumstances as above.

No other argument has been raised.

Present writ petition is accordingly dismissed with no order as to costs.

13.03.2020
s.khan

[LISA GILL]
Judge

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.