

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP-2621 of 2023(O&M)
Date of decision: 09.02.2023

Amandeep Singh

..Petitioner

Versus

State of Punjab and others

..Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Puja Chopra, Advocate
for the petitioner.

Mr. R.K.Kapoor, Addl.A.G., Punjab

ANIL KSHETARPAL, J(Oral)

1. The petitioner, aged about 33 years, prays for the issuance of a writ in the nature of certiorari to quash Clause 12(b)(i) of the Punjab Government's letter dated 21.11.2002. In essence, the petitioner prays for considering his case for compassionate appointment on priority basis.

2. It is claimed that the petitioner's father Sh. Kulwinder Singh, who was working as Junior Engineer in the Department of Water Supply and Sanitation, Punjab, went missing on 08.08.2015, i.e. before his retirement from service which was due on 31.12.2016. A suit filed by the legal heirs, seeking a declaration that Sh. Kulwinder Singh be declared as civil dead, has been decreed on 01.10.2019. The petitioner applied for the job in May, 2018.

3. The learned counsel representing the petitioner contends that Clause (i) of 12(b) of Government letter dated 21.11.2002 has no nexus with the object sought to be achieved by compassionate appointment which provides support to the destitute family in case of unfortunate circumstances.

She submits that the period of 7 years of absence of person is with reference to Section 108 of Indian Evidence Act, 1872.

4. Before the court proceeds to examine the arguments of the learned counsel representing the petitioner, it is considered appropriate to extract Clause 12 of the aforesaid letter dated 21.11.2002, which reads as under:-

“12. Missing Government Servant

Cases of missing Government servants are also covered under the scheme for compassionate appointment subject to the following conditions:-

(a) A request to grant the benefit of compassionate appointment can be considered only after a lapse of at least 7 years from the date from which the Government servant has been missing provided that:-

(i) An FIR to this effect has been lodged with the police.

(ii) the missing person is not traceable and

(iii) the competent authority feels that the case is genuine.

(b) This benefit will not applicable to the case of Government Servant:-

(i) who had less than 7 years to retire on the date from which he has been missing ; or

(ii) who is suspected to have committed fraud or suspect to have joined any terrorists organization or suspected to have gone abroad;

(c) Compassionate appointment in the case of missing Government servant also would not be a matter of right as in the case of others and it will be subject to fulfillment of all the conditions including the availability of vacancy laid for such appointment under the scheme.

(d) While considering such a request the results of the Police investigation should also be taken into account; and

(e) A decision on any such request for compassionate appointment should be taken only at the level of the Secretary of the Department concerned in consultation with Department of Personnel.”

5. As per Clause 12(b), the family member of an employee has been excluded from the benefit of the policy in two different eventualities.

Clause (i) provides that a government servant who was due to retire in a time span which is shorter than 7 years from the date on which he went missing

shall not be entitled to claim the benefit of the policy.

6. A provision for compassionate appointment on priority basis is a matter of concession extended by the Government. The family members of the employee cannot claim the grant of compassionate appointment on priority basis as a matter of right. While regulating such appointments, the government is entitled to modulate its policy in order to achieve the desired purpose of extending immediate support to the family of the deceased/missing person. By providing for the exclusion clause, the government has taken a conscious decision to exclude the family members of the employee, who was due to retire in a period which was shorter than 7 years from the date on which he went missing or who is suspected to have committed fraud or suspected to have joined terrorist organization or suspected to have gone abroad. Such clause, in the considered opinion of the court, does not suffer from any illegality or arbitrariness. This court, in the exercise of powers of judicial review, is not expected to sit in appeal over the correctness of the conscious policy decision taken by the government unless such provisions suffers from a patent illegality, arbitrariness or results in the infringement of the constitutional or other legal right of the petitioner.

7. In view of the aforesaid facts and discussion, the writ petition is dismissed.

8. All the pending miscellaneous applications, if any, are also disposed of.

February 09, 2023

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**(ANIL KSHETARPAL)
JUDGE**

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