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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-13901-1996 (O&M)
Date of Decision: 23.08.2023

Mandeep Kaur

. . . . Petitioner

Vs.

State of Punjab and others

. . . . Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Present Mr. Arjun Pratap Atma Ram, Advocate
for the petitioner.

Mr. Charanpreet Singh, AAG, Punjab.

SANJEEV PRAKASH SHARMA, J.(Oral)

1. The petitioner has preferred this Writ Petition seeking appointment on the post of Naib Tehsildar for which she had applied on compassionate grounds. The father of the petitioner, while working as lecturer in Punjab at Government College, Zira, was killed by terrorists on 04.01.1990. As per the instructions dt.11.11.1993 (P-1) issued by the Government, the dependent family members of the deceased Government employee were entitled to be given Government job on priority basis. Subsequently, the petitioner applied claiming a class II post but the same was not considered and she preferred writ petition no.331 of 1995. The Division Bench however restricted the claim of the petitioner to a class III post vide its order dt.10.01.1995 directing the petitioner to represent mentioning options for class III job. Accordingly, the petitioner opted for the post of Naib Tehsildar/Excise and Taxation Inspector/Food and Supply Inspector. On 21.07.1995, she was informed that her request for appointment of Naib

Tehsildar could not be considered as there was no vacancy available, and the writ petition preferred by the petitioner was disposed of on 17.11.1995 with a direction to consider the claim of the petitioner for compassionate appointment. Her representation for seeking appointment as Naib Tehsildar remained unanswered and she was offered appointment as clerk. She joined the post of clerk on 21.08.1996 whereafter she learnt that the respondent/State is filling up the post of Naib Tehsildar from the family members of the deceased Government employees who were either killed by terrorists or died while in government service, and as her claim was not considered, she preferred the writ petition before this Court on the ground of discrimination.

2. Learned counsel submits that once the petitioner had applied for the post of Naib Tehsildar and other class III posts, she should have been appointed on the said post, more so, as previously and even later on, appointments have been made on the post of Naib Tehsildar on compassionate basis.
3. Reply has been filed by the respondents and the learned counsel appearing for the respondents/State submits that after the order passed by this Court in the writ proceedings initiated by the petitioner, her case was considered. However, as per the Punjab Government instructions dt.05.02.1996, the lowest rung of class III posts were to be given under the priority scheme for compassionate appointment and as the post of Naib Tehsildar did not fall in the lowest rung of class III posts, she was not entitled for the post. The petitioner was appointed as a clerk in NCC Sangathan vide order dt.30.04.1996 and once she has accepted the said appointment, she cannot further claim appointment on another post.

4. Learned counsel submits that the very purpose and scope of compassionate appointment has been reiterated by the Supreme Court in the case of ***State of West Bengal vs. Debabrata Tiwari and others***¹ wherein it has been held as under:

“7.3. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis due to the death of the bread- earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be in a position to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Having regard to such an object, it would be of no avail to grant compassionate appointment to the dependants of the deceased employee, after the crisis which arose on account of death of a bread-winner, has been overcome. Thus, there is also a compelling need to act with a sense of immediacy in matters concerning compassionate appointment because on failure to do so, the object of the scheme of compassionate would be frustrated. Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and thus lose its significance and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out for consideration.

7.4. As noted above, the sine qua non for entertaining a claim for compassionate appointment is that the family of the deceased employee would be unable to make two ends meet without one of the dependants of the deceased employee being employed on compassionate grounds. The financial condition of the family of the deceased, at the time of the death of the deceased, is the primary consideration that ought to guide the authorities' decision in the matter.”

5. On the other hand, learned counsel for the petitioner invited attention of this Court to the judgment passed by the Supreme Court in ***Surya Kant***

¹ 2023(3) SLR 361

Kadam vs. State of Karnataka and others² wherein it has been held as under:

“2. The learned counsel for the appellant contended that even though the respondents 3 and 4's appointment could not be assailed on the ground of belated approach by the appellant but the prayer with regard to consideration of the appellant for the post of Sub-Inspector of Excise could not have been rejected by the Tribunal. The learned counsel appearing for the State Government on the other hand, contended that against the earlier order when the Tribunal denied the relief of considering the case of the appellant for the post of Sub-Inspector of Excise, the appellant having not moved this Court, the same has become final and therefore should not be interfered with by this Court. There is some force in the aforesaid contention of the learned counsel for the State. But having considered the facts and circumstances of the present case and admittedly the respondents 3 and 4, who were similarly situated like the appellant and who were given compassionate appointment later than the appellant, having been appointed as Sub-Inspector of Excise, the appellant has a justifiable grievance. It is true that the appointment on compassionate ground in the State of Karnataka is not governed by any statutory rules but by set of administrative instruction and as such is not enforceable in a Court of Law. But the grounds on which the appellant makes out the case for consideration of his case, is the violation of Article 14 and discriminatory treatment meted out to the appellant. It is undisputed that the date on which the appellant was given a compassionate appointment as the Second Division Assistant/Clerk he had the necessary qualification for being appointed as Sub-Inspector of Excise. It is also undisputed that the respondents 3 and 4 were given appointment initially as Second Division Assistant/Clerk but later than the appellant. When the State therefore thought it fit to change the post of respondents 3 and 4 and appointed them to the post of Sub-Inspector of Excise, unless there is any justifiable reason exist, there is no reason as to why the appellant should be treated with a hostile discrimination. In the aforesaid circumstances, we set aside the impugned order of the Tribunal rejecting the prayer of the appellant for being considered for the post of Sub- Inspector of Excise and we direct that the State Government may consider the case of appointment of the appellant as Sub-Inspector of Excise. Be it stated, in the event he is appointed it would be prospective and he will not be entitled to any retrospective benefit. The appeals are allowed accordingly.”

² 2002(9) SCC 445

6. Learned counsel for the petitioner has also relied on judgments passed by the Coordinate Bench of this Court in *Sitara Singh vs. State of Punjab and another*³, *Harwinder Singh vs. State of Punjab and others*⁴ and *Harsimran Singh vs. State of Punjab*⁵ and submits that the respondents cannot be allowed to discriminate between the similarly situated persons who have applied for the post. He has also taken notice of this Court to the rejoinder filed by the petitioner wherein she has mentioned of other applicants who were appointed as Naib Tehsildar on account of the death of their parent.
7. I have considered the submissions.
8. This Court finds that the persons who were appointed as Naib Tehsildars on compassionate grounds were issued on 13.03.1995 whereafter there is one person who was appointed as Naib Tehsildar on 14.03.1995 on the basis of recommendations made by the then Chief Minister.
9. The petitioner's case was also directed to be considered for appointment on compassionate grounds in terms of the circular of the Government dt.11.11.1993. The case of the petitioner had been considered but there was an embargo issued by the Government vide its instructions dt.05.02.1996 not to allow compassionate appointment on any higher post of class III and the appointment was to be offered only on the lowest rung of class III posts under the priority scheme. Accordingly, the petitioner was granted appointment at class III post of clerk.
10. After the petitioner has accepted the appointment on the post of clerk, she cannot claim appointment on a higher post as has been held by the

³ CWP-16142-2014

⁴ CWP-21444-2010

⁵ CWP-19031-2011

Supreme Court in the case of ***State of M.P. and others vs. Ramesh Kumar Sharma***⁶, wherein the order of the tribunal directing the concerned petitioner to be appointed on a higher post of APP, although he was earlier appointed as LDC which he did not accept. The Apex Court held as under:

“3. Learned counsel for the appellants has contended that under the instructions in question the respondent is not entitled to a higher post of his choice merely because he fulfils the requisite eligibility qualifications. Learned counsel for the respondent has attempted to defend his case by citing the illustration of another applicant- Rajiv Dwivedi who, according to him, was appointed in similar circumstances as APP, Grade II. The facts relating to Rajiv Dwivedi are not on record and it is the mere assertion of the respondent that the circumstances are identical. Even assuming that Rajiv Dwivedi's case was similar to that of the respondent, the applicant has no right to any particular post of his choice, he can only claim to be considered for that post. It would ultimately be for the authority to decide if some common principle was involved in the two cases. If a mistake was committed in an earlier case, that cannot be a ground for directing the State to perpetuate the error for all times to come. Learned counsel for the respondent has not been able to show before us any rule or Government instructions under which the respondent can claim the post of APP, Grade II.

4. In these facts and circumstances, we think that the Tribunal was not right in allowing the case of the respondent. Accordingly, the appeal is allowed, the impugned judgment is set aside and the prayer of the respondent for his appointment as APP, Grade II is rejected. It will, however, be open to the respondent to indicate his agreement to accept the post of lower division clerk which was offered to him by the appellants in 1988 and if he does so, the appellants shall promptly appoint him against that post.”

11. The scope of power available with the Court to direct and compel the appointing authority to appoint on a particular post was examined by the ***Apex Court in Pepsu Road Transport Corporation vs. Satinder Kumar and another***⁷ and it held as under:

⁶ 1994(3) SCC 661

⁷ 1995(4) SCC 597

6. *We understand the predicament into which the order under appeal has put the petitioner-Corporation. The High Court in the course of its order observes:*

"Though the factual position is admitted by the respondents, yet it has been pleaded by the respondent-Corporation, that no doubt for appointing a person as a clerk, the petitioner does fulfil the qualifications, yet if the post is to be filled by open competition by direct recruitment, the applicant must be either M.A. or second division graduate, with three years' service in Government, Semi-Government or Local Body Organisation.

After hearing the learned counsel for the parties, we are satisfied that the plea taken by the respondents is untenable, inasmuch as when employment is to be provided under the policy instructions of the State Government, on compassionate grounds, it is not to be treated as appointment by open competition and direct recruitment. Therefore, the qualifications possessed by direct recruits are not to be taken into consideration. When an employee dies in harness and his widow or the ward is to be helped by providing employment on priority basis, in place of the deceased, the appointment is always on compassionate grounds, even by relaxation of rules, if necessary."

We find it difficult to approve this reasoning. The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be matric, however, generally graduates and even post-graduate degreeholders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of the post, taking into account the realities of the employment-market, should be available. Then again it would be erroneous for the courts to compel appointment to particular posts. The fact of the matter is that though this kind of appointment is sui generis, and it is reasonable to expect that as and when such claims arise a provision should be made for accommodating such claims from out of the posts available for direct recruitment, the Corporation is not unreasonable when it suggests that the qualifications for such appointments should broadly be commensurate with the level of candidates who offer themselves for appointment and not merely the minimum qualification."

12. Again in recent judgment of the Supreme Court in the case of **Bank of Baroda and others vs. Baljit Singh**⁸ decided on 21.06.2023 , it held as under:

“12. It is necessary to reiterate that the appointment of a candidate on compassionate basis does not create any vested right and that it is only when a candidate is covered under all clauses of the Scheme applicable at the relevant point of time that he/she could be considered for compassionate appointment.

13. In Balbir Kaur v. Steel Authority of India Ltd., (supra) it was observed that the family benefit scheme assuring monthly payment to the family of deceased employee on the facts therein was not a substitute for compassionate appointment by the Steel Authority of India - Respondent in the said case. The said case proceeds on its own facts. The said judgment can be distinguished from the facts of the instant case as the 1998 Scheme specifically disentitles a candidate for compassionate appointment benefit on the application of the formula for calculation of monthly income if the same is less than 60% of the total emoluments which the deceased was drawing at the time of his death. The object is that it is only when a deceased employee's family is in penury and without any source of livelihood when the employee died in harness, compassionate appointment can be considered. Since appointment on compassionate basis is an exception to the general rule for appointment by an open invitation, the exception has to be resorted to only when the candidate and his family is in penury so as to provide immediate succor on the death of the employee in harness. The same has been observed in General Manager (D&PB) v. Kunti Tiwary (supra). In N.C. Santhosh v. State of Karnataka (supra) a three Judge Bench of this Court reiterated that appointment on compassionate basis is a concession and not a right and the criteria laid down in the Rules and Schemes applicable must be satisfied by all aspirants. Therefore, the case for compassionate appointment has to be considered in accordance with the prevalent Scheme. Similarly, in State of Himachal Pradesh v. Shashi Kumar, (supra), this Court has observed that compassionate appointment being an exception to the general rule, the dependents of deceased government employee are made eligible by virtue of the policy of compassionate appointment and they must fulfil the terms of the policy which are framed by the States/Employers.”

⁸ 2023 SCC online SC 745

13. The judgment cited by learned counsel for the petitioner, *Surya Kant Kadam* (2 supra) was passed on different facts. It is to be noticed that the respondents therein were also initially appointed as clerks but later their appointment were changed to the post of Sub Inspector of Excise while the appellant therein was not given the said benefit. In view thereof, the Court found hostile discrimination *per se* and therefore passed the orders directing to consider the case of the said appellant as Sub Inspector of Excise.
14. In the present facts, the said judgment is distinguishable and this Court does not find that there is any discrimination while issuing appointment orders on different posts. Earlier scheme which was applicable for appointing on any of the class III posts was limited by the State Government by issuing instructions in February, 1996 limiting it to the lowest rung of class III posts. Action of the respondents therefore cannot be said to be discriminatory or arbitrary.
15. Writ Petition is devoid of merits and is accordingly *dismissed*.
16. Pending application(s), if any, also stands disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

August 23, 2023
Mohit goyal

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |