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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP-20573-2021 (O&M)
Date of Decision: 10.03.2023

Ms. Kumad Sharma

....Petitioner(s)

Versus

State of Punjab and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE JASGURPREET SINGH PURI

Present: Mr. H.S. Saini, Advocate, for the petitioner.

Mr. Sandeep Chopra, DAG, Punjab.

Mr. Anupam Singla, Advocate for respondent No.3.

JASGURPREET SINGH PURI, J. (Oral)

The present petition has been filed under Articles 226/227 of the Constitution of India seeking a writ in the nature of *Certiorari* for quashing of impugned order dated 23.06.2020 (Annexure P-7) passed by respondent No.3 whereby the case of the petitioner for grant of family pension and other benefits has been rejected.

Learned counsel for the petitioner has submitted that it is a case where the petitioner is the daughter of one Smt. Ranju Sharma who was appointed as Principal on 02.08.2010 in the office of respondent No.3 vide Annexure P-2 on purely contractual basis. While she was already working as Principal on contractual basis, she unfortunately died on 13.07.2017 due to cancer. The petitioner is a girl and an orphan since her father has also died

earlier and at the time of the filing of the present petition, she was only 16 years of age and now in January, 2023, she has attained the age of majority which is 18 years. Learned counsel further referred to Annexure P-5 by which the Government of Punjab, Department of Education took a decision for regularizing the services of Teachers recruited under Sarv Sikhia Abhiyan, Rashtria Madyamik Sikhia Abhiyan (including Adarsh and Model Schools) and by virtue of the aforesaid conscious decision taken by the Government of Punjab vide Notification dated 09.10.2018, all the teaching faculty including the Principals were regularized w.e.f. 01.04.2018. The other similarly situated persons who were also working as Principals alongwith the mother of the petitioner were also regularized by virtue of the aforesaid Notification. However, since the mother of the petitioner had already died on 13.07.2017 and at that point of time the aforesaid notification had not come into play but had the mother of the petitioner been alive, she would have been entitled for regularization in view of the aforesaid notification Annexure P-5. He submitted that it is not in dispute that had the mother of the petitioner been alive, she would have been regularized by now in view of the aforesaid notification but because of the death of the mother of the petitioner no action was taken for the purpose of granting notional regularization. He submitted that the grievance of the petitioner is only to the extent that the petitioner be granted the family pension and other benefits which would accrue to the mother of the petitioner in view of the aforesaid notification. He submitted that a legal notice was served by the petitioner vide Annexure P-6 dated 18.05.2020 to both the Department of Education, Punjab and respondent No.3. Respondent

No.3 however filed reply to the aforesaid legal notice vide Annexure P-7 in which it was stated that the case of the petitioner could not be considered for grant of compassionate appointment in view of the death of her mother whereas the grievance of the petitioner was something different. However, no such reply was filed by the State of Punjab. He submitted that after the aforesaid notification in fact the entire staff was merged with the Government of Punjab since it was absorbed by the State of Punjab and therefore the onus lies upon the State of Punjab to consider the grievance of the petitioner for grant of notional regularization of the mother of the petitioner so that the petitioner can raise the grievance with regard to the grant of family pension and other such like benefits as admissible under the law. Learned counsel has also referred to a judgment of this Court vide Annexure P-8 whereby the employee had died and benefit was given to the legal heirs with regard to the compassionate appointment on the ground that had the employee being alive, he would have been regularised and the benefit of compassionate appointment therefore could not have been deprived. He submitted that the rationale in the present case would also be the same. In the aforesaid judgment Annexure P-8, the benefit of compassionate appointment was given on the basis of notional regularization whereas in the present case the benefit of family pension is being sought on the basis of notional regularization and therefore the case of the present petitioner is fully covered by the aforesaid judgment.

On the other hand, Mr. Anupam Singla, Advocate appearing on behalf of respondent No.3 has submitted that after the staff including the Principal were absorbed by the State of Punjab in the year 2018, there was

no role to play by respondent No.3 and relief, if any, can be granted by the State of Punjab and not by respondent No.3.

Mr. Sandeep Chopra, learned DAG, Punjab has submitted that the petitioner was not entitled for the grant of any benefit since her mother had worked as a contractual employee and therefore the petitioner is not entitled for the grant of family pension.

I have heard the learned counsel for the parties.

A perusal of the reply which has been filed by the State would show that by and large it has dealt with issue with regard to the grant of compassionate appointment to the petitioner which is clear from para No.5 of the reply. However, the controversy in the present case is not pertaining to the prayer of the petitioner for grant of compassionate appointment but is for the grant of family pension and other such like permissible benefits and therefore, the reply filed by the State is not proper. The legal notice which was served by the petitioner upon the State of Punjab vide Annexure P-6 has not been replied by the State. The prayer of the petitioner is that since all the similarly situated persons have already been granted the benefit vide notification Annexure P-5 and it was only because the mother of the petitioner had died about 1 year prior to that, the benefit of family pension cannot be denied to her by not giving the benefit of notional regularization to her mother. Learned counsel for the petitioner has also referred to a judgment of this Court vide Annexure P-8 wherein compassionate appointment was given on the same principle.

Therefore, this Court without observing anything on the merits of the case deems it fit and proper to direct respondent No.1 i.e. Principal

Secretary, Department of School Education, Punjab to consider the entire case of the petitioner with regard to her prayer for grant of family pension and other such admissible benefits and by considering the effect of notification Annexure P-5 upon the mother of the petitioner. While considering and deciding the prayer of the petitioner as raised in the legal notice and in the present petition, the Principal Secretary, Department of School Education shall also consider the effect of the judgment passed by this Court vide Annexure P-8 upon the present case. The order has to be a well-reasoned speaking order and which shall be conveyed to the petitioner by way of a registered post. The order shall be passed within a period of three months from today. Thereafter, in case the petitioner is found to be entitled for any benefit as admissible under the law, then the benefits shall be released to the petitioner within next three months.

The present petition stands disposed of accordingly.

10.03.2023

rakesh

Whether speaking
Whether reportable

(JASGURPREET SINGH PURI)
JUDGE

: Yes/No
: Yes/No