

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

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CWP-3431-2019

Reserved on : January 09, 2024

Pronounced on : January 29, 2024

MANPREET SINGH

..... Petitioner

Versus

THE PUNJAB STATE POWER CORPORATION LTD AND ORS

..... Respondents

CORAM : HON'BLE MR. JUSTICE NAMIT KUMAR

Present: Mr. A.K. Walia, Advocate
for the petitioner.

Mr. Abhilaksh Grover, Advocate
for respondent no.1 & 3/PSPCL.

Mr. Jaswinder Singh, Advocate for respondent nos.2, 4 & 5.

NAMIT KUMAR, J. (Oral)

1. The petitioner has approached this Court by way of filing the instant petition under Article 226 of the Constitution of India seeking writ of *certiorari* for quashing the impugned order dated 02.08.2018 (Annexure P-12) whereby his claim for appointment on compassionate grounds has been rejected on the basis of letter dated 22.12.2017 (Annexure P-13) on the ground that the spouse of the deceased employee was in service at the time of death of the employee.

2. The brief facts leading to the filing of the present petition, as have been pleaded in the writ petition are that the mother of the petitioner namely Late Smt. Gurmeet Kaur wife of Gurcharan Singh was working as Circle Assistant under Additional Superintending Engineer, TLSC Division, Ablowal, Patiala, who died on 05.02.2015 while in service and she was survived by the petitioner (son)

and one daughter namely Jaspreet Kaur. It has further been pleaded that father of the petitioner was also a Punjab Government Employee, who had already retired in the year, 2012 and was getting a meagre pension of Rs.10,900/- + DA per month.

3. It is the case of the petitioner that he applied for appointment on compassionate basis to the post(s) of UDC/LDC on 07.05.2015 as he was fully eligible for the said post(s) and his claim for compassionate appointment has been rejected by the respondents vide impugned order dated 02.08.2018 (Annexure P-12), which is based upon the letter dated 22.12.2017 (Annexure P-13).

4. Learned counsel for the petitioner submits that claim of the petitioner has wrongly been rejected vide impugned order dated 02.08.2018 mainly on the ground that the husband of the deceased employee was in service on the date of death of the mother of the petitioner whereas his father stood already retired in the year, 2012, who was getting a meagre pension to the tune of Rs.10,900/- + DA per month. He further submits that the claim of the petitioner has been rejected by the respondents on the wrong premises and, therefore, the directions may be issued to the respondents to reconsider the case of the petitioner for compassionate appointment while considering the fact that the father of the petitioner was not in service on 05.02.2015, when mother of the petitioner died. Learned counsel for the petitioner has further referred to the affidavit dated 14.03.2019 filed by the petitioner before this Court, which reads as under :-

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3. *That the mother of the deponent died on 05.02.2015. After her death, there was no earning member in the family. The father of the deponent who had retired in the year 2012 was only getting pension and as per instructions Annexure P-11, the pension and other retiral*

benefits are not to be taken into consideration while considering the case for compassionate appointment.

4. *That therefore at the time of death of Smt. Gurmit Kaur on 05.02.2015, the family of the deponent was without any source of income as there was no earning member, whereas the case of the deponent has been rejected on the ground that there is an earning member in the family, and this stand is also violated of the instructions Annexure P- 11.*

5. *That the family had/ has no other source of income. The father of the deponent only owns one small house number 116-C, Rattan Nagar, Tripri Town, Patiala which consists of two rooms, kitchen and toilet and is a single story house built on a plot measuring 177 sq. yards purchased in the year 1980 for Rs.3995/- only. The colony in which the said plot/ house is situated was regularized later on. The present house on the plot was built in the year 1982 by the parents of the deponent by taking advance from the provident fund.*

After retirement, the father of the petitioner has spent considerable amount for renovating this house.

6. *That apart from the above house, the family of the deponent has no other immovable property or any rental income or income from any shares/ dividends etc. The father of the deponent owns only one scooter purchased about 25 years back. The family could not afford to purchase any four wheeler.*

7. *That the mother of the deponent was a chronic patient of diabetes and kidney for the last more than 10 years prior to her death and an amount of Rs.4/5 thousand used to be spent on her medicines. Due to her illness, she frequently remained on leave. From the year 2013 onwards she used to be taken to the hospital for blood transfusion as her kidney were not working properly. She had to be frequently got admitted at Amar Hospital Patiala and Columbia Asia Hospital Patiala for treatment.*

8. *That the retiral benefits of father of the deponent got depleted on the expenditure incurred for treatment and frequent hospitalization of mother of the deponent.*

9. *That due to financial constraints the deponent and his sister Jaspreet Kaur could not be imparted higher education by their parents. Since the mother of the deponent remained seriously ill and had to be looked after the deponent and his sister could not be married and still are unmarried and unemployed.*

10. *That from the year 2013, the condition of mother of the deponent deteriorated and she had to be frequently admitted in hospital at Patiala where huge expenditures were incurred on her treatment. A few months before her death, she was shifted to DMC, Ludhiana from where she was referred to Fortis Mohali. As the family could not afford expenditure at Fortis hospital Mohali, she was brought back to Patiala in Columbia Asia Hospital. Later on she had to be got admitted to Ivy hospital at Mohali where the family had to incurred the expenditure and had to borrow from relatives. Ultimately Smt. Gurmit Kaur died on 05.02.2015. A copy of her death summary prepared at Ivy Hospital is reproduced as under: -*

" 55 year female known as case of DM2/Ht/CKD on irregular Haemodialysis from last about 2 years anemia/having right sided pleural effusion and getting repeated pleural tapping from last on year Presented to Columbia Asia Hospital, Patiala on 12.01.2015 with complaint of recurrent vomitings, UGIE done on 14.01.2015 revealed severe oesophagitis with curdy white deposition? Candidiasis Chest x ray done there revealed right sided pleural effusion with complete rt lung collapse in view of which ICD right side was done there. Thereafter patient developed altered sensorium and was then then taken to DMC Ludhiana, MRI Brain done there revealed chronic ischaemic changes. Patient did not improved much and was then shifted to Ivy Hospital, Mohali. On admission patient was drosy with GCS E3M3V2. ICTD right sided in situ with right sided opaque lung on chest x ray for which Pulmonolist opinion sought and managed accordingly. In view of progressive worsening of hypoxia patient was intubated and put on mechanical ventilator Diagnostic Therascopy done on

30.01.2015 Total 5-6 haemodialysis were done in view of deranged RFT and metabolic acidosis Patient was extubated on 02.02.2015 but again intubated in view of hyper carbia on same day patient was being managed with iotropic support broad spectrum antibiotics and other supportive treatment accordingly Patient had sudden cardiac arrest around 12:30 PM on 05.02.2015 revival as per ACLS sought but patient could not be revived and declared dead at 01:05 PM on 05.02.2015. Dr. Raka Kaushal, Consultant, Nephrologist, Ivy Hospital, Mohali". The mother of the deponent had not taken any health insurance cover.

11. That after the death of Smt. Gurmit Kaur on 05.02.2015 the family had no source of income or any earning member, the case of the deponent on compassionate appointment is fully covered under the instructions dated 21.11.2002 Annexure P-10 and instructions dated 18.07.2005 Annexure P-11, and the deponent deserves to be offered appointment on compassionate grounds. The financial condition of the family of the deponent remains the same as it was at the time of death of mother of the deponent.

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5. On the other hand learned counsel for the respondents could not justify the passing of impugned order as the same is cryptic and non-speaking because of the very fact that the father of the petitioner was not in service on 15.02.2015, when the mother of the petitioner died as he already stood retired in the year, 2012, has not been considered and cases of 69 other candidates have been rejected in one go without considering their individual claims.

6. I have heard learned counsel for the parties and perused the record meticulously.

7. A perusal of impugned order dated 02.08.2018 (Annexure P-12), which is based upon the letter dated 22.12.2017 (Annexure P-13), shows that the same has been passed in a stereotype manner without considering the basic

parameters, like financial constraints of the bereaved family, having regard to number of dependant, assets and liabilities left by the Government Servant as well as income of the earning member(s), which are primarily required to be looked into, while considering such claims of compassionate appointments, as the same has been passed just by compartmentalizing the case of the petitioner in the ambit of such declined cases, where either husband/wife of the deceased employee are already in Government Service or where there is another supporting earning member in the family whereas in the present case neither any family member of the petitioner was in service at the time of death of the deceased-employee nor there was any supporting earning member in the family, as father of the petitioner, who retired as a Punjab Government Employee, was getting a meagre pension of Rs.10,900/- + DA per month, which cannot be equated or categorized in the ambit/zone of a supporting earning member in the family, by any stretch of imagination, whatsoever.

Further, a perusal of the impugned order dated 02.08.2018 (Annexure P-12) shows that even the qualification of the petitioner has also not been considered by the competent authority/board, while passing the impugned order, since it has been mentioned as 'NIL' in its respective column whereas a perusal of Letter dated 30.07.2015 (Annexure P-7), which is correspondence between the Chief Engineer/TS, Establishment Branch, PSTCL, Patiala and Addl. Superintending Engineer. TLSC, Circle, Patiala, shows that the educational qualification of the petitioner was conveyed by the addresser to the addressee as M.A. by attaching original certificates, therefore, it can be held that the impugned order has been passed in stereotype/compartmentalized manner by keeping the case of the petitioner in the ambit of those cases, of which claimants were having either husband/wife in Government Service or a supporting earning member in the

family, which shows that the impugned order is bad, cryptic and non-speaking, since neither any family member of the petitioner was in service nor he was having any supporting earning member at the time of the death of his mother.

8. Further, even if the respondents-Department might have dealt/considered the case of the petitioner under the ambit of having a supporting earning member of the family at that point of time, the same was not righteous course of action at that time, since this identical issue was dealt by Hon'ble Supreme Court of India in **Balbir Kaur and another versus Steel Authority of India Ltd. & Ors., (2000) 6 SCC 493**, while dealing with the application made by the widow for employment on compassionate ground applicable to the Steel Authority of India, wherein contention raised was that since she is entitled to get the benefit under Family Benefit Scheme assuring monthly payment to the family of the deceased employee, the request for compassionate appointment cannot be acceded to. Rejecting that contention in paragraph (13), Hon'ble Apex Court held as under:-

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“13.But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family — this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.” Referring to Steel Authority of India Ltd.’s case, High

Court has rightly held that the grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The High Court also observed that it is not the case of the bank that the respondents' family is having any other income to negate their claim for appointment on compassionate ground.

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So, it is crystal clear that even, if the family member of the deceased Government employee is fetching any family pension or has availed certain terminal benefits on account of death of the employee, the claim for compassionate appointment cannot be negated in the purview of supporting earning family member and in the case of the petitioner, his father was getting only a meagre pension of Rs.10,900/- + DA per month, which was not suffice enough to cope up the sudden jerk in the family by reason of the death of a bread earner.

9. Further more, a bare perusal of the Punjab Government Instructions *re: Compassionate Appointments* dated 21.11.2002 (Annexure P-10) and dated 18.07.2005 (Annexure P-11) in para 6 (a) provides that “*in deserving cases where there is already an earning member may be considered for compassionate appointment with prior approval of the Secretary of the Department concerned, who before approving such appointment will satisfy himself that grant of compassionate appointment is justified having regard to number of dependant, assets and liabilities left by the Government servant income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government Servant and whether he should not be a source of support to other members of the family.*”

In this view of the matter, at least the case of the petitioner, where neither any member of his family was in Government Service nor there was any supporting earning member at the time of death of the deceased employee, could have been sent to the higher authorities of the department to consider his claim for compassionate appointment, as per Punjab Government Instructions *re: Compassionate Appointments* dated 18.07.2005 (Annexure P-11), by keeping in view the financial constraints of the bereaved family, which have been elucidated in his affidavit dated 14.03.2019, having regard to number of dependant, assets and liabilities left by the Government Servant as well as income of the earning member. Therefore, the impugned dated 02.08.2018 (Annexure P-12) is cryptic and non-speaking, which is not sustainable in the eyes of law.

10. Keeping in view the above, the case of the petitioner is required to be reconsidered by considering the above said factual position. Consequently, the impugned order dated 02.08.2018 (Annexure P-12) is hereby set-aside being cryptic, non-speaking and albeit unwelcomed in dealing/considering the claim of the petitioner and the matter is remanded back to the respondents to reconsider the case of the petitioner, especially by taking into consideration the financial constraints of the bereaved family and other relevant factors, which have been elucidated in petitioner's affidavit dated 14.03.2019, for compassionate appointment, within a period of three months, from the date of receipt of the certified copy of this order and convey the outcome of the same to the petitioner.

11. Disposed of.

January 29, 2024
mkkoundal

(NAMIT KUMAR)
JUDGE

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