

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

206

CWP No.14589 of 1999
Date of Decision: 21.02.2024

Kundan Singh
...Petitioner
Versus
State of Punjab and others
...Respondents

CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MR. JUSTICE VIKAS SURI

Present:- None for the petitioner.
Mr. Vishnav Gandhi, DAG, Punjab.

SANJEEV PRAKASH SHARMA, J. (ORAL)

1. The present writ petition has been filed for challenging/quashing the notification dated 15.11.1999 (Annexure P-7), whereby the Punjab Civil Services (General and Common Conditions of Service) Rules, 1994, were amended; circular dated 19.08.1999 (Annexure P-5); and order dated 01.10.1999 (Annexure P-6) being illegal and arbitrary.
2. Counsel for the petitioner, who had filed the present writ petition, is stated to have expired. Today, no one is present on behalf of the petitioner. It seems that the petitioner has not engaged any other counsel/person to plead his case. The case is pending since the year 1999 and, therefore, we have examined the case on merits.
3. In the instructions dated 19.08.1999 (Annexure P-5), the

compassionate appointment to the dependents of the deceased defence services personnel, has been provided. The challenge has been posed on the said notification by stating that the Government would have no power to relax the conditions of essential educational qualifications and experience for appointing a particular category of persons. It is submitted that once the object of relaxing the requirement of essential qualifications would not be achieved by exercising the power of relaxation, the State Government could not amend the rule by adding a provision to the substantive rule waving the condition of qualification and experience etc. and such exercise of power is a colourable exercise of powers. It is further submitted that the persons, who have been selected for compassionate appointment, do not possess the minimum qualification as provided for Class-III service rules. The said relaxation has been provided for compassionate appointment to the dependents of war heroes, the qualification has been mould out.

4. We have carefully gone through the pleadings and found that the petitioner, first of all, does not have any locus to challenge the rules as he is not an applicant, who can be said to be the dependent on the war heroes. The appointments made on compassionate ground are a separate class altogether and the rules can be framed by the State Government for appointing such persons on compassionate ground. The selection process would be a separate mode, wherein the candidates are also identified. Other persons who may be aspirant for the post equivalent to the post for which compassionate appointments are made, cannot be said to have a *lis* with such aspirants. The qualifications for appointment under a particular category is required to be similar for all the aspirants, however, the same can be

different to the qualifications required for other persons, who do not fall in the category of aspirants for appointment on compassionate ground. Thus, the plea of the petitioner for quashing the impugned rules/instructions on the ground of arbitrariness is found to be wholly misconceived and is rejected.

5. This Court further holds that any amendment brought by the State cannot be a subject matter of challenge on the ground of colourable exercise of power, once the power of amendment is available with the State Government in terms of Article 309 of the Constitution of India as well as provisions thereto. The said power being exercised in the public domain, cannot be impugned on the ground of colourable exercise nor the same can be alleged to be a *mala fide* action and on the ground of *malice*, same cannot be challenged. The petition, therefore, would not be maintainable.

6. Further, in view the law laid down by the Apex Court in *State of Punjab vs. V.K. Khanna and others*, (2001) 2 SCC 330, this Court does not find any merit in the present writ petition and thus, the same deserves to be dismissed.

7. In view of the above, the writ petition fails and is accordingly, dismissed.

(SANJEEV PRAKASH SHARMA)
JUDGE

(VIKAS SURI)
JUDGE

February 21, 2024
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No