

2024:PHHC:068799-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(103) LPA-1009-2023 (O&M)
Decided on : 16.05.2024

Kamaldeep KaurAppellant(s)

Versus

State of Punjab & othersRespondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA,
ACTING CHIEF JUSTICE
HON'BLE MS.JUSTICE LAPITA BANERJI

Present: Mr.Kapil Kakkar, Advocate, for the appellant.

Mr.Saurav Khurana, Addl.A.G., Punjab.

G.S. Sandhawalia, Acting Chief Justice (Oral)

CM-2586-LPA-2023

- 1. Exemption application is allowed as prayed for.
- 2. CM stands disposed of.

CM-2211-LPA-2024

- 3. Application for placing on record policy dated 21.11.2002 as Annexure A-1, is allowed in view of the averments made in the application. Same is taken on record, subject to just exceptions. Office to append the same at appropriate place.

4. CM stands disposed of.

LPA-1009-2023 (O&M)

5. Consideration in the present appeal is to the judgment dated 20.04.2023 passed by the Learned Single Judge whereby CWP-14098-2021 was dismissed wherein challenge had been raised to the order dated 26.08.2016 (Annexure P-3) vide which, the Registrar, Cooperative Societies had declined the benefit of consideration on compassionate grounds to the writ petitioner, on the ground that she is the married daughter of the deceased employee. The offer was thus given to the son, Sukhdeep Singh that he could make an application within one month from the date of issuance of the letter.

6. The Learned Single Judge, without taking response from the State, chose to decide the writ petition on the pleaded case that the brother had migrated to Australia and thereafter, the writ petitioner had applied. It was held that it was only a mere concession and not a heritable right, while placing reliance upon judgment of the Apex Court in **The State of West Bengal Vs. Debabrata Tiwari & others, 2023 SCC Online SC 219** that there was delay and laches since 10 years had elapsed from the date of death of the father who admittedly expired on 22.06.2013.

7. Counsel for the appellant has brought to our notice that the writ petition was initially adjourned sine die on 25.04.2022, to await the decision in LPA-462-2021 titled *State of Punjab & another Vs. Amarjit Kaur*.

8. The said appeal was decided on 25.01.2023 by the Co-ordinate Bench, authored by one of us (G.S.Sandhawalia J.) and the legal issue that the married daughter could be excluded from the zone of consideration, was decided against the State. The said judgment was

contested unsuccessfully before the Apex Court by one of the appellants- Panjab University in Petition(s) for Special Leave to Appeal(C) No(s). 9356/2023 titled *Panjab University & others Vs. Sunishtha* which was dismissed on 18.10.2023.

9. Apparently, this aspect was not brought to the notice of the Learned Single Judge who proceeded to decide on a different principle altogether without taking into consideration the fact that the matter had been adjourned sine die for the legal point to be clarified since the rejection was principally was on the ground that she was a married daughter. Apparently, option had been granted to the brother, which, as noticed, has been explained by the writ petitioner that the brother did not want to take the offer because he had migrated to Australia, apparently, in search of greener pasture. In such circumstances, we are of the considered opinion that the Learned Single Judge, not having the benefit of the binding precedent, proceeded to decide against the settled law. Resultantly, we are of the considered opinion that the judgment passed by the Learned Single Judge is not sustainable and the matter has to be remanded to the authorities for re-consideration.

10. The argument raised on the issue of delay also is to be looked from another angle, to the extent that apparently though the death of the employee was on 22.06.2013 but the rejection was on 26.08.2016 (Annexure P-3). Though there is a delay of approximately 5 years in approaching this Court but apparently, notice dated 30.06.2021 was served that only on account of the marriage, she cannot be denied the said benefit.

11. The delay is not that fatal in comparison to what the judgment which has been relied upon by the Learned Single Judge wherein the delay

is as much as 10 years as would be noticeable from the observations made by the Apex Court. The said judgment is also based on the principle that there was no policy governing the compassionate appointment to the posts under local authorities in the State of West Bengal and in the absence of any policy, compassionate appointment cannot be granted apart from the delay issue. Relevant portions of the judgment in Debabrata Tiwari (supra) read as under:

“45. In the present case, the applications for compassionate appointment were made by the Respondents-Writ Petitioners in the year 2005-2006. Admittedly, the first concrete step taken by the Chairman of the Burdwan Municipality was in the year 2013, when the said authority forwarded a list of candidates to be approved by the Director of Local Bodies, Burdwan Municipality. The Respondents-Writ Petitioners knocked on the doors of the High Court of Calcutta only in the year 2015, i.e., after a lapse of nearly ten years from the date of making the application for compassionate appointment. The Respondents-Writ Petitioners were not prudent enough to approach the Courts sooner, claiming that no concrete step had been taken by the Appellant-State in furtherance of the application by seeking a Writ in the nature of Mandamus.

XXXX XXXX XXXX

60. In fine, the present appeals succeed on two counts: first, there was no policy existing to govern compassionate appointment to posts under local authorities in the State of West Bengal and hence, in the absence of such a policy, compassionate appointment cannot be granted; second, assuming that there was such a policy, it would be of no redeeming purpose to direct that the applications for appointment on compassionate grounds be considered and decided several years after they were filed.”

12. Resultantly, we are of the considered opinion that the judgment dated 20.04.2023 of the Learned Single Judge is not sustainable. Accordingly, we allow the present appeal, set aside the judgment of the Learned Single Judge and direct the competent authority to consider the case of the appellant for compassionate appointment under the policy dated 21.11.2002 (Annexure A-1) prevalent at the time of death of the employee, without keeping in mind the fact that the appellant is a married daughter. Needful be done within 3 months from the receipt of certified copy of this order.

13. The present appeal is allowed in the above-said terms.

(G.S. SANDHAWALIA)
ACTING CHIEF JUSTICE

16.05.2024
Sailesh

(LAPITA BANERJI)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :		No