



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

237

CWP-11918-2018 (O&M)
Date of Decision : 21.08.2024

Aakanksha Sharma

.. Petitioner

Versus

State of Punjab and others

.. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr.R.K. Arora, Advocate
for the petitioner.

Mr. Arun Gupta, DAG, Punjab.

HARSIMRAN SINGH SETHI J. (ORAL)

1. In the present petition, the prayer of the petitioner is that the order dated 06.02.2018, copy of which has been appended as Annexure P-33 by which, the claim of the petitioner for grant of compassionate appointment has been rejected, be set aside with the further prayer that the respondents be directed to grant the petitioner the benefit of compassionate appointment as the father of the petitioner namely, Kulwant Rai Sharma while in service was killed by the terrorists.

2. Certain facts may be mentioned for the correct appreciation of the issue in hand.

3. The father of the petitioner was working as a Clerk in the



Punjab Raj Bhawan, which comes under the Department of General Administration, Punjab. He was killed by terrorists on 22.11.1990 while in active service for which an FIR No. 104 dated 22.11.1990 was registered at Police Station Kurali under Sections 302, 148, 149 IPC.

4. The Deputy Commissioner, Ropar has also issued a certificate dated 12.12.1990 to the family of the petitioner that the petitioner's family is a terrorists affected family and the father of the petitioner was killed by the terrorists and he had no alliance with the terrorists.

5. At the time of the death of the father of the petitioner, the petitioner was only 01 year and 03 months of age. The petitioner attained the age of majority on 19.08.2007 and after qualifying her 10+2 examination, a request was made for the grant of compassionate appointment to the petitioner keeping in view the fact that the family of the petitioner is a terrorists affected family and his claim is covered under instructions dated 05.02.1996. The application was verified and after verifying all the documents showing that the petitioner was dependent upon her father, the claim of the petitioner for the grant of compassionate appointment was considered and accepted in terms of the policy of the Government of Punjab dated 05.02.1996, copy of which has been appended as Annexure P-10. As per the said policy, a dependent member of the family of a person where bread-winner died in a terrorists attack, is entitled for compassionate appointment to a Class-III & IV post, even if, there is an earning member in the family.

6. During the period, when the claim of the petitioner was being



considered, the petitioner enhanced her qualification and not only she passed her graduation but also completed her post graduation qualification and on the basis of the said qualification, the petitioner raised her claim for the grant of compassionate appointment to Class-III post.

7. As the mother of the petitioner was working, the respondent-department directed the petitioner to furnish the documents regarding the assets and liabilities of the deceased and income of the family from all sources and after ascertaining all the documents submitted, the respondent decided to grant the petitioner the benefit of compassionate appointment to the post of Clerk by the competent authority vide order dated 14.05.2014.

8. In order to be appointed as a Clerk, the petitioner was required to clear the Punjabi type test, which despite her best efforts, the petitioner could not clear but rather than considering the claim of the petitioner against any other Class-III post for which the petitioner was eligible, the respondent decided to reject the claim of the petitioner for grant of compassionate appointment.

9. Feeling aggrieved against the said action of not considering the claim of the petitioner against any other Class-III post, the petitioner filed CWP No. 28659 of 2017 raising a claim that the respondents be directed to grant the petitioner the benefit of compassionate appointment. Keeping in view the direction given by this Court, the respondent considered the claim of the petitioner and rejected the same on the ground that though, the petitioner was held entitled for the grant of compassionate appointment as Clerk by the Principal Secretary, General Administration vide his order



dated 14.05.2014 but as the petitioner failed to clear the Punjabi Type Test, she could not be appointed as Clerk and her request that she should be considered for any other Class-III post, cannot be accepted as, the father of the petitioner had died in the year 1990 and compassionate appointment cannot be given after such a long gap i.e. in the year 2018. The said order dated 06.02.2018, copy of which has been appended as Annexure P-33, is under challenge in the present petition.

10. Learned counsel for the petitioner argues that once, under the policy issued by the Government of Punjab, the petitioner was held entitled for compassionate appointment being a member of the terrorists victim family, but the respondent despite considering the claim of the petitioner on all aspects keeping in view the instructions dated 05.02.1996, did not grant the benefit of appointment as a Clerk to the petitioner, which was duly approved by the competent authority only on the ground that the petitioner failed to clear Punjabi Type Test. Learned counsel for the petitioner further submits that the respondents either should have given the petitioner another chance to clear the type test or should have appointed her on any other Class-III post available with the respondent -State of Punjab.

11. Learned counsel for the petitioner submits that as the petitioner was only 01 year and 03 months of age at the time of death of her father, and after she gained majority in age and gained appropriate qualification, she applied for the grant of benefit of compassionate appointment, the respondent cannot deny the said benefit only on the ground that considerable time has elapsed since the death of the father of the petitioner.



12. Upon notice of motion, the respondents filed the reply and have again reiterated same grounds as stated in the impugned order dated 06.02.2018 that the claim of the petitioner for the grant of compassionate appointment as a Clerk was approved by the competent authority in the department of General Administration on 14.05.2014 but as the petitioner failed to pass the Punjabi type test, she could not be granted the said appointment and as considerable time has elapsed since the death of the father of the petitioner, now the petitioner cannot be granted appointment on a Class-III post on compassionate ground.

13. I have heard learned counsel for the parties and have gone through the record with their able assistance.

14. It is a conceded fact before this Court that the petitioner is entitled for grant of compassionate appointment under the instructions issued by the Government of Punjab on 05.02.1996. Not only this, it is also conceded fact that after the petitioner completed all the formalities upon attaining the age of majority, the respondent allowed the claim of the petitioner for appointment to the post of Clerk in the General Administration as the same was approved by the competent authority on 14.05.2014, but merely that the petitioner could not pass the Punjabi type test, her appointment order could not be issued. Therefore, facts make clear that as per the respondents also, the petitioner was entitled for grant of compassionate appointment under the instructions dated 05.02.1996 even upto the year 2014. That being so, once the entitlement of the petitioner for compassionate appointment was approved by the respondent and the



respondent also held the petitioner entitled for a Class-III post on compassionate ground and also passed an order granting her the appointment as a Clerk on 14.05.2014 , merely that the petitioner could not clear the Punjabi type test cannot take away her right for compassionate appointment on a Class-III post. It is not a case of the respondent that the petitioner was only to be considered against the post of Clerk under policy dated 05.02.1996. The entitlement of the petitioner is against Class-III post which could be any post in the Government of Punjab. Nothing has come on record that after the petitioner could not clear the Punjabi type test for appointment to the post of Clerk, her claim for any other Class-III post for which the petitioner was eligible, was even considered. When directed by this Court vide order dated 15.12.2017, passed in **CWP-28659-2017**, the said claim has been rejected only on the ground that a considerable time has elapsed since the death of the father of the petitioner.

15. The argument of the respondent-State that a considerable time has elapsed after the death of her father, cannot be accepted as the respondents themselves allowed the benefit of compassionate appointment on a Class-III post of Clerk on 14.05.2014. Once, the petitioner's claim for a compassionate appointment was approved by respondents themselves on 14.05.2014, the respondent cannot be allowed to reject the claim of the petitioner being delayed as the petitioner was only 01 year and 03 months old at the time of death of her father That being so, once the claim of the petitioner was approved for appointment to a Class-III post of Clerk, in case the petitioner failed to clear the Punjabi type test, she should have been



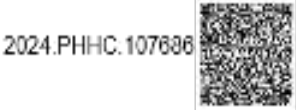
considered for any other Class-III post available within the State of Punjab and the claim of the petitioner could not have been rejected on the ground that considerable time has elapsed.

16. At this stage, learned counsel for the respondent submits that by the time, the claim of the petitioner was considered in the year 2014, the distress period was already over. It may be noticed that the father of the petitioner had died in the year 1990. The petitioner after gaining the age of majority, made a request for grant of compassionate appointment in the year 2014, after 24 years, the respondents themselves accepted the claim of the petitioner and approved her appointment to a Class-III post of Clerk. That being so, it cannot be said that the distress period was available upto the year 2014 and immediately upon the rejection of the claim of the petitioner, the distress period became “Over”.

17. The respondent cannot be allowed to undo what the respondent themselves gave to the petitioner by approving her appointment to a Class-III post on 14.05.2014.

18. Keeping in view the above, the impugned order dated 06.02.2018 (Annexure P-3) is set aside and the respondents are directed to consider the claim of the petitioner for the grant of compassionate appointment against any other Class-III post available in any of the department of the Government of Punjab for which, the petitioner is eligible keeping in view her post graduation qualification.

19. The respondents are directed to finalize the said consideration qua appointment of the petitioner on a Class-III post available in any of the



department of the State of Punjab for which petitioner is eligible to be appointed as per her qualification and grant appointment on the said Class-III post to the petitioner within a period of eight weeks from the date of receipt of certified copy of this order.

- 20. Present petition is allowed in the above terms.
- 21. All pending applications, if any, stand disposed of accordingly.

21.08.2024

Satyawan

(HARSIMRAN SINGH SETHI)

JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No