

CWP-267-2017 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CWP-267-2017 (O&M)
Date of Decision: 06.02.2024

Reena Rani @ Ravinder Kaur

...Petitioner

Versus

State of Punjab and another

...Respondents

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present:- Ms. Anjali Sheoran, Advocate for the petitioner
Mr. Inderpreet Singh Kang, Assistant Advocate General, Punjab

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner through instant petition under Articles 226/227 of the Constitution of India is seeking direction to respondents to adjust petitioner's husband against any post suitable for him or keep on supernumerary post until a suitable post becomes available or he attains the age of superannuation. She further prays that son of the petitioner may be granted appointment on compassionate ground.

2. The husband of the petitioner on 05.11.1989 joined the respondent-department as Constable. He discharged his duties diligently and in 1993, he suffered from Schizophrenia which is a mental illness. A Board of Doctors declared him medically unfit and respondent-department retired him.

He was extended benefit of invalid pension. The petitioner, from time to time, approached respondent-authorities for grant of benefit of Section 47 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (for short '**1995 Act**'). The petitioner with respect to job of her son vide application dated 09.12.2015 requested the respondent-department to appoint him on the post of Constable. The son of the petitioner participated in the direct recruitment process for the post of Constables, however, he could not secure minimum marks, thus, he could not be selected.

3. Learned counsel for the petitioner submits that respondent as per Section 47 of the 1995 Act was duty bound to keep the employee on supernumerary post until the availability of alternative post. The respondent was further duty bound to continue her husband in job and pay salary as he had become disabled during service. The son of the petitioner in terms of policy of Government of Punjab was entitled to compassionate appointment and respondent has wrongly rejected his candidature on the ground of not securing minimum marks. The son of the petitioner was entitled to compassionate appointment without securing minimum marks. The petitioner's son was not claiming appointment as a normal candidate whereas his claim was under the policy and for the purpose of compassionate appointment, he was not supposed to clear the exam. The petitioner could not be denied benefit on account of efflux of time.

4. *Per contra*, learned State counsel submits that petitioner approached for compassionate appointment in December' 2015 and her husband was declared medically unfit in May' 2005. Her husband was retired

w.e.f. 22.04.2005. The petitioner, after ten years, could not claim benefit of scheme of compassionate appointment.

5. On being confronted with mandate of Section 47 of the 1995 Act, Mr. Kang, learned State counsel, expressed his inability to controvert the fact that respondent-authorities have never considered claim of the petitioner qua benefits extended by said Act.

6. I have heard the arguments of learned counsels for both sides and perused the record with their able assistance.

7. The conceded position emerging from the record is that husband of the petitioner worked with respondent-department as Police Officer from 1989 to 2005. He was retired on account of mental illness. The said employee was retired prior to attaining the age of 55 years and he was a Class-III employee. He has been granted invalid pension. The petitioner vide application dated 09.12.2015 requested the respondent-department for compassionate appointment. The son of the petitioner participated in the direct recruitment process of Constables, however, he could not cut the ice.

8. The husband of the petitioner was concededly invalid on account of mental illness. The employee was medically examined by a Medical Board and thereafter, declared medically unfit. The Board has not issued certificate of disability as contemplated by 1995 Act, thus, it cannot be concluded by this Court that husband of the petitioner was disabled person in terms of 1995 Act. This fact needs to be examined by authorities in the light of medical certificate issued by Board at the time of examination of the employee. Section 47 of

1995 Act extends protection to employees who suffer disability while on duty.

The said Section is reproduced as below:

“47. Non-discrimination in Government employment.— (1)
No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service:

Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:

Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.

(2) No promotion shall be denied to a person merely on the ground of his disability:

Provided that the appropriate Government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.”

9. It is conceded position that husband of the petitioner was not extended benefit of Section 47 of 1995 Act. The respondents have never examined case of the employee in the light of said Section. The husband of the petitioner was retired in 2005, thus, at this stage, he cannot be considered for the purpose of continuation in service, thus, prayer of the petitioner for continuing her husband in service is not sustainable. Nevertheless, authorities are duty bound to consider claim of the employee with respect to other

benefits which could be extended or at present can be extended in the light of Section 47 of the 1995 Act.

10. The petitioner is claiming recruitment of her son on compassionate ground. The respondent-State has made policy dated 05.02.1996 (Annexure P-9) with respect to compassionate appointment. The petitioner is claiming that her case is squarely covered by said policy and her son should be appointed on compassionate ground. For the adjudication of claim of the petitioner, it is indispensable to look at relevant clauses of the policy governing the appointment on compassionate ground. Accordingly, the relevant extracts of the policy are reproduced as below:

“ 5. For offering appointments on Class-II and IV posts on compassionate grounds, following categories of persons may be considered:-

<i>Sr. No.</i>	<i>Category of persons</i>
<i>1.</i>	<i>(i) A dependent member of the family of a person (bread-winner) killed or 100% physically disabled in terrorist action or by security forces acting in aid of civil power, in the state;</i>
	<i>(ii) A dependent member of the family of a person (bread-winner), died or 100% physically disabled in riots in India between October 31 to November 7, 1984 (both days inclusive);</i>
	<i>(iii) A dependent member of the family of an army deserter (bread-winner) killed or 100% physically disabled in 1984 action by</i>

the forces against deserters after Operation Blue Star;

- (iv) *To a person (bread-winner), who helped the Civil Administration; in fight, against terrorism and has suffered great loss/misery and is on the hit-list of the terrorist or to a dependent son or daughter of such a persons (bread-winner). (Under this category, compassionate appointments will be made in Police Force only).*

(No. 11/64/92-2PPI/10055, dated 7th July, 1992/14th August, 1992).

(No. 11/64/92-2PP1/I9989 dated 2nd December, 1992).

(2) *A dependent member of the family of the deceased Government employee, or of a Government employee who is retired from service on medical grounds before attaining the age of 55 years in the case of Class-III employees and before attaining the age of 57 years in the case of Class-IV employee.*

(3) *Regular Government employees declared surplus on account of abolition of post(s)/Department(s) of the State Government for any reason, including reduction of post(s) etc. (No. II/I5/92-2PP1/ 5376, dated 13th March, 1995).*

(4) *Disabled Ex-servicemen (not unfit for Civil Service).*

(5) *A dependent member of the family of the defence Services Personnel;*

(i) *killed in service while performing duties; or*

(ii) *who are severely disabled and are totally unfit for re-employment.*

(6) *Physically Handicapped Persons.*

6. *While making appointments against Class-III and or IV posts out of the categories of persons mentioned above the aforesaid judgments may be kept in view and the following conditions/clarifications may be meticulously followed:-*

- (i) *For appointment on compassionate grounds, only a widow or a dependent son or dependent unmarried daughter or adopted dependent son or adopted unmarried daughter of the deceased, may be considered. This is in line with the policy of Government of India contained in their letter No. 14014/20/94-Estt (D), dated 9th December, 1993 (Copy enclosed at Annexure-II).*
- (ii) *Applicants for compassionate appointment should be appointed only if they are eligible and suitable for the posts in all respects under the provisions of the relevant departmental service rules. In other words, it should be essential to fulfill the conditions of basic educational qualifications and experience prescribed for the post in respective Departmental service rules and no relaxation will be given.*
- (iii) *In deserving cases, even where there is an earning member in the family, compassionate appointment may be considered but the appointing authority would satisfy himself that the grant of concession is justified having regard to the number of dependents the assets and liabilities left by the deceased, the income of the earning member as also his liabilities including the fact that the earning member is residing with the family of deceased and whether he should not be a source of support to the other members of the family*
- (iv) *Compassionate appointments to a dependent in the case of Government employee retired from Government Service on medical ground may be considered only in exceptional cases when the competent authority is satisfied that the condition of family is indigent and is in great distress.*
- (v) *No compassionate appointment may be considered if a Government employee dies during the period of re-employment. However, die compassionate appointments*

may be considered in the case of death during the period of extension in service,

(vi) *Compassionate appointments can be made only against direct recruitment quota posts.”*

[Emphasis Supplied]

11. From the perusal of policy, it is quite evident that appointment to a dependent in case Government employee retires on medial ground may be considered only in exceptional cases when the competent authority is satisfied that family of employee is indigent and in great distress. The petitioner applied for compassionate appointment in 2015 i.e. 10 years after the date of retirement of her husband.

12. Hon’ble Apex Court in ***Umesh Kumar Nagpal Versus State of Haryana; (1994) 4 SCC 138***, has held that appointment on compassionate ground is a concession and cannot be claimed as a matter of right especially after passage of substantial time. The relevant extracts of the said judgment read as:-

“2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his

family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and

affairs, of the family engendered by the erstwhile employment which are suddenly upturned.”

13. From the perusal of above-cited judgment and policy of the State Government, it is evident that object of the scheme is to protect family of the deceased from being driven to destitution and penury.

14. In the case in hand, husband of the petitioner retired w.e.f. 22.04.2005. The petitioner with respect to job of her son vide application dated 09.12.2015 requested the respondent-department to appoint him on the post of Constable. The son of the petitioner participated in the direct recruitment process of Constables, however, he could not secure minimum marks, thus, he could not be selected. On the date of application dated 09.12.2015, a period of more than 10 years had passed away from the date of retirement of husband of the petitioner. The intent and purport of compassionate scheme is to prevent the family of employee from being driven to destitution and penury and not to give employment. As substantial period has passed away from the date of retirement of the employee and there is no plausible explanation for the delay in approaching authorities, the claim of the petitioner for compassionate appointment cannot be countenanced. Any order of this Court for appointment would be contrary to the Scheme as well as settled legal position.

15. In the wake of above discussion and findings, the present petition stands disposed of with a direction to the respondents to decide claim of the petitioner in terms of Section 47 of the 1995 Act within three months from

today. The petitioner is at liberty to submit documents in support of her contention.

16. Pending application(s), if any, shall also stand disposed of.

(JAGMOHAN BANSAL)
JUDGE

06.02.2024
Mohit Kumar

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>