



CWP-10420-2021

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

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CWP-10420-2021 (O & M)
Date of decision: 24.01.2025

Balbir Kaur

....Petitioner

Versus

State of Punjab and Others

...Respondents

CORAM: HON'BLE MR. JUSTICE AMAN CHAUDHARY

Present : Mr. Angel Walia, Advocate, for the petitioner.

Mr. Satnam Preet Singh Chauhan, DAG, Punjab.

AMAN CHAUDHARY, J. (ORAL)

1. Prayer made in the present petition is for quashing the order/letter dated 05.05.2021, Annexure P-9, whereby claim of the petitioner for compassionate appointment was rejected, based on the fact that she is a married daughter, which issue stands decided by this Court in CWP-2218-2017, **Amarjit Kaur vs. State of Punjab**, decided on 17.01.2020, after taking a holistic view of the object of the policy, declared Clause (c) of Note-I of Scheme for compassionate appointments-2002 as ultra vires of Articles 14 & 15 of the Constitution of India and struck it off, which was upheld by the Division Bench in LPA-462-2021, vide judgment dated 25.01.2023 and has attained finality up to Hon'ble the Supreme Court wherein SLP No. 9356-2023, challenging the same was dismissed on 18.10.2023, relevant paras whereof read thus:



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“9. A perusal of the above para 3 (2) would show that the category of persons, who would be eligible for consideration for appointment on compassionate grounds includes a dependent member of the family of the deceased Government employee, who dies in harness. Note I deals with the dependent family member, which includes son, as also the adopted son and unmarried daughter including an adopted daughter but not a married daughter. This is apparent from the language used in the scheme as the word 'daughter' has been qualified by 'unmarried'. It may be added here that as far as the son is concerned, there is no qualification with regard to his marital status. He could be unmarried or even married but as far as a daughter is concerned, it is restricted to unmarried daughter only.

10. The intent and purpose of the scheme, which is the subject matter of the present petition, is for providing a helping hand to the family, who has all of a sudden, lost the sole breadwinner. The aim, therefore, is to save such a family from starvation so that they can tide over the extreme situation, which they are facing because of the death of the person, who provided them the food and the minimum basic amenities for their survival. Thus, the determinative factor with regard to a person being eligible for consideration for appointment on compassionate grounds, is the financial status of the family. This is so, as a benefit is being provided to a family out of the way. Only deserving cases should be provided such benefits, more so when, a person, merely because of his/her eligibility, entitles the said person for appointment as a special case. As the Hon'ble Supreme Court in Umesh Kumar Nagpal's case (supra) had observed that the object of compassionate appointment is to enable the family of a deceased employee to tide over the sudden financial crisis and not to provide employment nor it should be so done merely because of death of an employee in harness.

11. Article 14 of the Constitution of India gives right of equal treatment in similar circumstances both in privileges conferred as also the liability imposed. That does not mean that the State does not have the power of classifying persons/categories for legitimate purposes. However, there cannot ever be discrimination and that too against a woman merely on the basis of her sex, which would include the marital status. The only reason why the petitioner has been deprived appointment under the scheme is that she is a married daughter of a deceased government servant, whereas



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had she been unmarried or had it been the son, despite the marital status, the claim would have been considered. If this is not discrimination, what else can it be termed?

12. Classification, if any, has to be based upon reasonableness, which is justifiable on the anvil and touchstone furthering the policy for which the same had been framed. Violation of gender equality would amount to violation of Articles 14, 15 and 21 of Constitution as guaranteed to all citizens of India. Equality cannot be achieved unless there are equal opportunities for all. If a woman is deprived at the threshold by rendering

her ineligible for consideration merely because of her marital status being a woman, especially when the same is not true for the man, would amount to discrimination on the basis of gender identity. In other words, it can be said that merely because of sex, a man has a preferential right of consideration over a woman because of marital status, which has the effect of rendering the equal protection of law guaranteed under the Constitution a farce rather non est. This cannot be permitted nor can it be allowed to be perpetuated.

13. There is a clear distinction, which appears to have been carved out under the 2002 scheme (Annexure P-12), where it appears that the authority has consciously omitted a married daughter from the definition of family of a deceased government servant on the assumption that she is dependent on her husband or in-laws consequent upon her marriage. This is based upon a wrong assumption that a daughter, upon her marriage, ceases to be a part of the family of her father. As the son remains a son throughout, so does a daughter irrespective of the marital status. If the son and the daughter continue to have these relations, which they attain on birth or on adoption, they cannot be deprived of such status merely because of their marital status, meaning thereby that if a married son, if dependent upon a deceased Government employee, is eligible for consideration for appointment on compassionate grounds, why would the married daughter not be entitled for the same treatment provided she fulfills the requirement of being dependent on the deceased government servant at the time of his/her demise.

14. From the intent and purpose of the 2002 policy, which was framed, what is to be examined apart from the other factors, is the dependence of the family member whether it be a son or a daughter on the deceased government servant, so how does it make a difference as to whether the son or daughter is unmarried or married? The basic test is the



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dependence of a family member on the deceased government servant at the time of his/her demise, especially when the daughter continues to be a daughter despite she being married as the son. She does not lose her old relationship.

15. If dependency has to be the primary eligibility criteria for consideration for appointment on compassionate grounds, which is the intelligible differentia for including the group for consideration then a classification, which excludes a married daughter, dependent on the deceased government servant, would violate Articles 14 and 15 of the Constitution, especially when the instructions do not exclude a married son dependent on the deceased government servant.

16. It, therefore, cannot be said that Note I of para 3 (2) of the 2002 scheme which deprives a married daughter, who is dependent upon the deceased government servant, has not been discriminated against for the reason and on the basis of her marital status, which again is dependent upon her sex, especially when a married son has not been excluded from the definition. The term used in Clause (b) of Note I is “son (including adopted son)”, whereas in Clause (c), it is “unmarried daughter (including adopted daughter)”. The non-inclusion of a “married daughter” in the definition of 'dependent family member', thus, would be violative of Articles 14, 15, 16 and 21 of the Constitution.

17. This leaves this Court with an obvious consequence of striking down the word ‘unmarried’ out of Clause (c) of Note I as by not doing so, a daughter merely because of her marital status, is deprived of her constitutional right of consideration for appointment on compassionate grounds under the 2002 scheme, provided she fulfills the other criteria laid down therein.

18. The Division Bench of this Court in Jai Narain Jakhar’s case (supra), while dealing with Clause (f) of policy dated 11.10.2001, which specifically provided that a married daughter of an ex-serviceman is not entitled for a dependent certificate, has held as follows:-

“7. The aforesaid provision in the policy is required to be examined on the anvil of Article 14 of the Constitution. The classical test of Article 14 concerning classification is well settled. It is trite to observe that Article 14 forbids class legislation but it does not forbid reasonable classification of persons, objects and transactions by the State for the purpose of achieving specific ends. However, the classification must not be arbitrary, artificial and evasive (See State



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of West Bengal v. Anwar Ali Sarkar, AIR 1952 SC 75). It must always rest upon some real and substantial distinction bearing a just and reasonable relation to the object sought to be achieved by the legislature. Classification to be reasonable must fulfil the following two conditions- (1) The classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (2) The differentia must have a rational relation to the object sought to be achieved by the Act.

8. The differentia which is the basis of the classification and the object of the policy are two distinct things. What is necessary is that there must be a nexus between the basis of classification and the object of the policy which makes the classification. It is only when there is no reasonable basis for a classification that legislation making such classification may be declared discriminatory.

9. In the aforesaid clause (f) of the policy, married son of Ex-servicemen who does not have independent source of livelihood is considered eligible to be treated as dependent of an Ex serviceman and entitle to such a certificate from a competent authority whereas a daughter has been excluded from the benefit. There is virtually no basis of classification once various factors of both son and daughter are the same. If common factor in both cases is unemployment and lack of independent source of income then it does not make any difference whether it is son or daughter. The common factors of being 'married and lack of independent source of livelihood' are present in both the cases and which put both of them at the same pedestal. Therefore, it would offend Article 14 and amount to giving a discriminatory treatment to married daughter who is without an independent source of livelihood by depriving her a dependent certificate to secure a job because she is as good a child of her father as the married son without independent source of income. The argument to justify the differential treatment meted out to the married daughter on the ground that she is dependent on her husband, would not require any detailed consideration because even in the case of dependent married son no condition has been imposed that his wife must not be earning. The



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emphasis is seems to be on independent source of livelihood, a feature which would be present in the case of married daughter as well. Therefore, we have no hesitation in rejecting the aforesaid argument. Moreover by an amendment dated 5.6.2005, Section 6 of the Hindu Succession Act, 1956, has been amended and now the daughter of a coparcener have the same rights and liabilities in the coparcenary property as she would have had she been a son.

10. In view of the above, the instant petition is allowed. The offending part of clause (f) of the policy shown in italics is declared ultra vires of Article 14 of the Constitution and the clause (f) shall read as under:

“(f) Married dependent son or married daughter of Ex-Servicemen who does not have independent source of livelihood will also be eligible for dependent certificate”

The respondents are directed to issue dependent certificate to the petitioner for his daughter, subject to fulfilling other conditions by her.

19. The above ratio of the Division Bench judgment is fully applicable to the case in hand. The Full Bench judgment of the Uttarakhand High Court in the case of Udham Singh Nagar District Cooperative Bank Ltd.'s case (supra) would also apply with full force to the facts and issues involved in the present case.

20. The word ‘unmarried’ in Clause (c) of Note-I, sub-para 2 of para 3 of the 2002 scheme is declared ultra vires of Articles 14 and 15 of the Constitution and, therefore, struck off from the said policy instructions.

The said clause would now read as follows:-

“NOTE-I 'Dependent Family Member' means:

- a) XXX XXX XXX
- b) XXX XXX XXX
- c) Daughter (including adopted Daughter); or
- d) XXX XXX XXX”

21. In the light of the above, petitioner is held eligible for appointment under the 2002 scheme dated 21.11.2002 (Annexure R-3).

22. Keeping in view the report dated 12.06.2002 (Annexure R-2) of the Deputy Superintendent of Police, CID, Tarn Taran, which related to the verification of the income/property statement of the mother of the petitioner,



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who was the applicant namely Smt. Jasbir Kaur, as that of the petitioner, wherein it has clearly been mentioned that the petitioner along with her husband and children are residing at her mother's house at Village Baghel Singh Wala, is dependent upon the pensionary benefits of her deceased husband Head Constable Kashmir Singh. She has only one acre of land and no other source of income except this and the family is sustaining itself with great difficulty, thus, establishing the fact that the pecuniary position of her mother and petitioner is very bad and thus, fulfills the criteria of being dependent upon her deceased father entitling her for appointment on compassionate grounds.

23. In the light of the above, the present writ petition is allowed. Impugned order dated 15.04.2015 (Annexure P-14) is hereby quashed. Petitioner is held eligible for appointment under the 2002 scheme dated 21.11.2002 (Annexure R-3).

24. Direction is issued to the Director General of Police, Punjab-respondent No.2 to issue appointment letter to the petitioner on consideration of her claim within a period of one month from the date of receipt of copy of this order.

2. Learned State counsel despite his best efforts has been unable to controvert regards the factual position and draw out any distinctive aspects in the aforementioned judgment or cite any contrary law.

3. In wake of the above, the present petition is disposed of in terms of **Amarjit Kaur**(supra).

24.01.2025

parveen kumar

(AMAN CHAUDHARY)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No