

(2015) 11 CHH CK 0010
In the Chhattisgarh High Court
Case No : WPS No. 4324 of 2015

Anusuiya Oti

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 23-11-2015

Acts Referred:

Citation : (2016) 1 CGLJ 399 : (2016) LabIC 963

Hon'ble Judges : Sanjay K. Agrawal, J.

Bench : Single Bench

Advocate : Dharmesh Shrivastava, Advocate, for the Appellant; Varun Sharma, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay K. Agrawal, J.—The focal question falling for consideration would be petitioner having been appointed on the post of Female Constable (G.D.) on compassionate ground, whether she is again entitled for second/further consideration for higher post on the ground of compassion?

2. Petitioner's husband namely Toman Singh Oti, while working as Constable No. 670, died in harness. She made an application for appointment on compassionate ground, that application was considered and the petitioner was granted compassionate appointment on the post of Female Constable (G.D.) on 6.8.2009, pursuant to which, she has joined on the said post on 10.08.2009 and since then discharging her duties sincerely with the satisfaction of her superior officer.

3. Thereafter, on 17.09.2014 the petitioner made an application seeking compassionate appointment on the higher post i.e. Assistant Sub Inspector on the ground based on compassion that she being the widow and taking into consideration the job entrusted to her, it is very difficult to maintain herself by discharging her duties as Constable (G.D.) and, therefore, she be appointed on the higher post of Assistant Sub Inspector on compassionate ground.

4. The respondent authorities, by order dated 26.12.2014, has rejected the application holding that she is not entitled to be appointed on the post of Assistant Sub Inspector as appointment has already been given to her as Female Constable (G.D.) on compassionate ground, which is sought to be challenged by way of this petition.

5. Mr. Dharmesh Shrivastava, learned counsel appearing for the petitioner would submit that petitioner being the woman and the nature of duty, which is entrusted to her time to time, it is very difficult for her to discharge the duties and maintain herself and her family responsibilities and, therefore, she be appointed on the higher post of Assistant Sub Inspector. He further submits that on 15.11.2007 one Smt. Kavita Sahu was initially appointed as Constable (G.D.) on compassionate ground on account of death of her husband but subsequently she appointed as Assistant Sub Inspector on compassionate ground by order dated 22.1.2014 issued by respondent No. 2 and, therefore, her application may also be considered in the light of appointment of Kavita Sahu being similarly placed employee on the principle of parity.

6. On the other hand, learned counsel appearing for the state on advance copy would submit that once the petitioner has been appointed as Female Constable (G.D.) on compassionate ground, appointment on the higher post on the same ground is impermissible in law.

7. I have heard learned counsel for the parties on the question of admission and given thoughtful consideration to their rival submissions made therein.

8. It is not in dispute that the petitioner was appointed on the post Female Constable (G.D.) on compassionate ground by order dated 6.8.2009 and since then she is performing her duties on the said post for last five years and now she is claiming appointment on the higher post i.e. Assistant Sub Inspector on compassionate ground.

9. The issued raised in this writ petition is no longer res integra and concluded by judgment of their Lordships of the Supreme Court. The following judgments may be noticed herein usefully & profitably.

9.1 In the matter of State of Haryana Vs. Naresh Kumar Bali, , their Lordships of the Supreme Court have held that once the person is considered and appointed against the compassionate ground as per scheme, he cannot be considered again as right to make appointment on compassionate ground stood exhausted. Para 15 of the report states as under:--

"15.....In fact, the respondent did not object to his appointment as a clerk and his claim for consideration for the post of teacher was one year after his appointment. Thus, the appointment on compassionate ground as per the scheme had been completed. The claim for appointment as Inspector was never made earlier. The High Court without even analysing the circumstances under which the seven persons mentioned in its judgment came to be appointed as

Police Officers (ASI or Inspector), straight away has chosen to conclude that there was discrimination. We are not in a position to appreciate this line of reasoning...."

9.2 In the matter of Umesh Kumar Nagpal Vs. State of Haryana and Others, , their Lordships of the Supreme Court, while highlighting the object of granting compassionate appointment, have held as under:--

"The object is not to give a member of such family a post muchless a post for host held by deceased."

9.3 Their Lordships further observed pertinently in the aforesaid case (supra) as under:--

"If the dependent of deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status, but to see the family through the economic calamity."

9.4 Later on, in State of Rajasthan Vs. Umrao Singh, , Their Lordships of the Supreme Court has clearly held that dependents having accepted the appointment as LDC on compassionate ground, therefore, the right to be considered for the appointment on compassionate ground was consummated and no further consideration on compassionate ground would ever arise, otherwise it would e a case of "endless compassion". Para 8 the report states as under:--

"8. Admittedly, the respondent's father died in harness while working as Sub-Inspector, CID (Special Branch) on 16-3-1988. The respondent filed an application on 8-4-1988 for his appointment on compassionate ground as Sub-Inspector or LDC according to the availability of vacancy. On a consideration of his plea, he was appointed on the post of LDC by order dated 14-12-1989. He accepted the appointment as LDC. Therefore, the right to be considered for the appointment on compassionate ground would ever arise. Otherwise, it would be a case of "endless compassion". Eligibility selection is yet another thing. Merely because of the so-called eligibility, the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case."

9.5 Later on, in I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, , their Lordships of the Supreme Court have clearly held once the right is exhausted, any further ore second consideration for the higher post on the ground of compassion would not arise.

10. In the light of the ratio of law laid down by the supreme Court in above referred cases, if the facts of the present case are examined, it is quite vivid that the petitioner has already been considered on compassionate ground on the post of Female Constable (G.D.) by order dated 6.8.2009 and she has very well accepted & joined on the said post on 10.08.2009 and performing her duties on the said post and, thereafter her right to appointment on the ground of compassion stood exhausted, now she cannot turn around and make claim for

further/second consideration on the compassionate ground for the higher post, which is clearly impermissible being endless compassion as held by their Lordships of the Supreme Court in the above-stated cases (supra) and thus, this petition, being without substance, is liable to be dismissed.

11. As a fall out and the consequence of the aforesaid discussion, the writ petition is held to be devoid of merit and required to be dismissed, and is, therefore, dismissed.

12. There shall be no order as to cost(s).