

(2003) 05 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 834 of 1996

Maina Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 13-05-2003

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226

Citation : (2003) 2 ShimLC 244

Hon'ble Judges : Lokeshwar Singh Pant, J

Bench : Single Bench

Advocate : Ashok Sharma, for the Appellant; Vinod Sharma, Additional C.G. S.C., for the Respondent

Final Decision : Dismissed

Judgement

Lokeshwar Singh Pant, J.—Smt. Naina Devi wd/o Constable deceased Kirt Ram has filed this writ petition under Article 226 of the Constitution of India seeking to quash memorandum dated 22.12.1995 of Area Organizer(s)(Annexure P-2) rejecting her claim for appointment on compassionate ground against Group-D post in SSB Directorate.

2. The Petitioner is resident of village Bamala, Tehsil Karsog, District Mandi. Her husband Kirt Ram Constable No. 68103 was found dead on 2.12.1993 while he was serving at SSB Training Center at Sarhan, Tehsil Rampur, District Shimla. The Petitioner applied for employment on compassionate ground after the death of her husband. Her claim was referred to the Cabinet Secretariat by the Area Organizer (Respondent No. 3 herein) for clarification as there was restrictions of 50% of reservation of vacancies due to recent orders of Government reserving additional 27% for OBCs in addition to 22.5% for SC/ST candidates and she was informed by memorandum dated 22.9.1994 (Annexure P-1) that it would not be possible to consider cases for compassionate appointment at that stage and further action would be taken on receipt of the decision from Cabinet Secretariat which was awaited. According to the Petitioner, she made a number of

representations to various officials of the Respondents during the period from 1994 to 1995 and one of such representation was forwarded by the Directorate General of Police, H.P. to the Divisional Organizer, SSB, H.P. Division. The case of the Petitioner for compassionate appointment remained under consideration of the Respondents right from the year 1993 till 22nd December, 1995 when she was informed by memorandum dated 22.12.1995 issued by Respondent No. 3 mark Annexure P-2 whereby and whereunder she was informed that as per the decision of the SSB Directorate no vacancy existed in the "Group-D" post against compassionate appointment quota and therefore the Petitioner could not be appointed against the said post.

3. The case of the Petitioner is that while considering her case for employment on compassionate ground the vacancy position in the Department for "Group-D" post had to be considered for the years 1993, 1994 and 1995 and it was unbelievable that during three years period and even in the subsequent year 1996 no vacancy was available in "Group-D" against which the Petitioner could have been appointed. The Petitioner contended that the basic purpose for appointment on compassionate ground is to help the family of the deceased to tide over the crises caused due to sole bread earner of the family and in the present case the appointment of the Petitioner was dragged for years together thereby the very object of giving the compassionate appointment to her was defeated. The Petitioner submitted that her husband was the only bread earner of the family consisting of three children and herself and after his death the entire family has been left high and dry. She also stated that fixing of 5% quota for appointment on compassionate ground by the Respondents is arbitrary, illegal and in violation of Articles 14 and 21 of the Constitution of India.

4. In opposition to the writ petition, reply on the affidavit of Sh. Prem Singh, the then Deputy Inspector General, SSB Punjab-Himachal Pradesh Divisions was filed by the Respondents in which it is stated that Constable Kirt Ram died on 2.12.1993 by hanging himself. The Respondents have stated that after the death of the Petitioner's husband all the benefits, namely, (i) GPF, (ii) DCRG, (iii) CGEGIS, (iv) Central Welfare Fund, (v) DGS Staff Fund, (vi) Leave encashment and (vii) SSB Allied Organization fund, amounting to Rs. 1,11,260/were paid to the Petitioner. In addition to the above mentioned benefits, monthly pension @ Rs. 525 per month has also been authorized to the Petitioner and that she is also holding 1-12-1 bighas of land.

5. The Respondents also stated that case of the Petitioner for compassionate appointment was forwarded by the Commandant Group Center, SSB Shamshi to the Headquarter vide memo No. III/53/Estt./GCS/94/7103 dated 31.5.1994, a copy thereof is placed as Annexure R-I. The authority of the Headquarter vide Memo No. A-2/10/74-DO(P)-18539 dated 28.10.1995 intimated the SSB Directorate that the Petitioner had applied for appointment on compassionate grounds for "Group-D" post and the SSB Directorate vide Memo No. 42/SSB/A-1/94(4)-III dated 3.11.1995 asked Divisional Organizer Headquarter, HP

Division (Respondent No. 2 herein) to furnish information regarding the movable and immovable property and annual income accruing therefrom to the family of the deceased alongwith supporting documents to assess the financial condition of the Petitioner. In the meantime, Director SSB as the Head of the Department had considered the claim of 14 numbers of cases for appointment to "Group-D" posts on compassionate grounds against two vacancies falling to the share of the category of those persons for appointment on compassionate ground for the years 1994 and 1995. Out of those 14 candidates, Director, SSB vide memo No. 42/SSB/A-I/94(4)-III-2255 dated 13.11.1995 approved appointment of two candidates, namely, Smt. Reshwati and Smt. Kamla Devi. The application form submitted by the Petitioner for compassionate appointment was incomplete and therefore her claim could not be considered alongwith those 14 candidates. The case of the Petitioner alongwith 23 other similar cases received from the different units of SSB all over India for the posts of "Group-D" in the year 1996 was considered by the competent authority who found that there was no element of compassion in her case and as such SSB Directorate being competent authority had not approved her case for compassionate appointment.

6. No rejoinder to the reply filed by the Respondent, has been filed by the Petitioner.

7. I have heard Mr. Ashok Sharma, learned Counsel for the Petitioner and Mr. Vinod Sharma, Additional Central Government Standing Counsel for Respondents.

8. Mr. Ashok Sharma, learned Counsel contended that the Respondents have dealt with the case of the Petitioner casually without considering the urgency of her claim as she alongwith her three minor children were left high and dry after the death of the sole bread earner of the family and the application filed by her in the year 1993 remained pending with the Respondents and her claim should have been considered against the vacancies filled up during the years 1994 and 1995. He submitted that the Commandant, Group Center, SSB. Shamshi vide Memo dated 31st May, 1994 (Annexure R-1) submitted the application of the Petitioner alongwith the relevant documents detail of which was given in the said memorandum duly verified from the record available at group center to Respondent No. 3 and the defence of the Respondents that the application of the Petitioner was found incomplete is after thought and also to cover up their deplorable conduct and inhuman approach.

9. Per contra, the learned Additional Central Government Standing Counsel contended that the claim of the Petitioner for appointment against "Group-D" post on compassionate ground against the available vacancies was considered by the Respondents but her claim was not found genuine as against the claim of other persons as stated in the reply affidavits by the Respondents.

10. I have duly considered the respective contentions of the learned Counsel for the parties.

11. On scrutiny of the material on record, it is found that the Petitioner made

application dated 12.5.1994 for compassionate appointment against the post of Peon, "Group-D" post, after her husband died on 2.12.1993 when he was posted at B-Coy Headquarter Sarahan. Her application in triplicate alongwith the relevant documents duly verified from the record of the Group Center was forwarded by the Commandant to Respondent No. 3 vide memorandum dated 31st May, 1994 (Annexure R-1) for taking suitable action. The Directorate, SSB as Head of the Department had considered 14 applications for appointment to "Group-D" posts on compassionate grounds against two vacancies falling to the share of such category during the years 1994 and 1995. The names of the Applicants who were considered by the competent authority are given in Annexure R-II. While considering the above cases the norms laid down in DP&T OM No. 14014/6/86-Estt. (D) dated 30.6.1987 and OM No. 12/5/90-CS-II dated 22.9.1992 as amended from time to time and considering the observations of the Supreme Court in Sh. Umesh Kumar Nagpal v. State of Haryana and Ors. decided on 4.5.1994 and Umesh Kumar Nagpal Vs. State of Haryana and Others, on the subject as communicated vide DP and TOM No. 14014/22/94-Estt. (D) dated 28.11.1994, the Assistant Director (EA) II of the Director General of Security approved the appointments of Smt. Reshwati and Smt. Kamla Devi in H.P. Division and UP Division respectively of the Organization against Group-D posts on compassionate ground against the share of compassionate appointment during the years 1994 and 1995.

12. It appears that the name of the Petitioner could not be considered by the competent authority for appointments on compassionate ground against "Group-D" post during the year 1994-95 as her application form submitted by her was found incomplete. The complete application form alongwith all the documents required by the authority concerned was sent to SSB Directorate on 15.11.1995 alongwith 23 other similar situate cases received from different Units of SSB all over India for the posts of Group-D for the year 1996, was considered by the competent authority who found that there was no element of compassion in the case of the Petitioner and therefore, her claim for appointment had not been approved as per categorical statement made by the Respondents in the reply affidavit. The claim of the Petitioner that had her case been considered by the competent authority alongwith 14 Applicants against two vacancies falling to the share of compassionate appointments during the years 1994 and 1995, she would have got the appointment cannot be accepted. The Respondents had considered the cases of only those Applicants whose applications were found complete for appointment on compassionate grounds against two posts for the years 1994 and 1995 and the deserving candidates as per the assessment of the appointing authority were selected and appointed. The case of the Petitioner was considered alongwith 23 similarly situated candidates during the year 1996 by the competent authority but it was found that there was no compassion in her case as against other deserving Applicants. In that view of the matter the contention of the learned Counsel for the Petitioner that the deplorable behaviour and conduct of the Respondents not considering the claim of the Petitioner,

cannot be accepted as the Petitioner has not shown any bias or mala fide against any of the authority of the Respondents, who was responsible to debar the Petitioner from seeking employment.

13. The Petitioner has failed to show as to how the order of the Central Government reserving additional 27% posts for OBCs in addition to 22.5% for SC/ST candidates and reserving only 5% quota for employment on compassionate grounds are in violation of Articles 14 and 21 of the Constitution of India. The ratio of the decisions of the Division Bench of this Court in CWP No. 1076/1995 titled Bhim Singh v. Union of India and Ors. decided on 14th March, 1996 and CWP No. 2121/1995 titled Subhash Chand v. Union of India and Ors. decided on 31.5.1996 relied upon by the Petitioner will not be of any help or assistance to her in the peculiar facts and circumstances of the present case.

14. In Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, their Lordships held that the High Courts or the Tribunals cannot confer benediction impelled by sympathetic consideration and the Courts are to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law.

15. In State of Rajasthan Vs . Chandra Narain Verma;, (1994) 2 SCC 752 it is held by the apex Court that compassionate appointment should be in consonance with the rules and the court cannot direct the Government to appoint a person on compassionate ground to a post for which he is ineligible under the Rules.

16. True it is that in all claims for employment on compassionate ground there should not be any delay in appointment. The purpose of providing employment on compassionate ground is to mitigate the hardship due to the death of bread earner in the family. Such appointment therefore be provided immediately to redeem the family in distress. In recent decision of the Supreme Court in Union of India v. Joginder Sharma (2002) 8 Supreme Court Cases 65, their Lordships held as under:

Compassionate appointment is intended to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the sole bread winner, who died leaving the family in penury and without sufficient means of livelihood. If under the scheme in force any such claim for compassionate appointment can be countenanced only as against a specified number of vacancies arising, in this case 5 per cent, which ceiling it is claimed came to be imposed in view of certain observations emanating from the Supreme Court in an earlier decision, the Tribunal or the High Court cannot compel the department concerned to relax the ceiling and appoint a person. Since this method of appointment is in deviation of the normal recruitment process under the rules, where people are waiting in the queue indefinitely, the policy laid down by the Government regarding such appointment should not be departed from by the courts/tribunals by issuing directions for relaxations, merely on account of sympathetic considerations or hardships of the person concerned. A mere

recommendation or expression of view by an authority at the lower level that if relaxation is accorded there is scope for appointment does not obligate the competent authority to necessarily grant relaxation or that the Courts/Tribunals can compel the competent authority to grant relaxation. Where the question of relaxation is in the discretion of an authority in the Government and not even in the realm of any statute or statutory rules but purely administrative and that authority as a matter of policy declines to accord relaxation, there is hardly any scope for the tribunal/court to compel relaxation. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been proved, otherwise.

17. In the present case as noticed above the Respondents have considered the cases of all the eligible persons in accordance with the norms laid down by the Directorate from time to time relying on the ratio of the above said judgments of the Supreme Court as stated in Memorandum dated 13th November, 1995 (Annexure R-2) for appointment to "Grpup-D" posts on compassionate grounds against the share of 5% during years 1994 and 1995 and thereafter in the year 1996 when the case of the Petitioner was considered alongwith 23 similarly situated candidates, her claim was not found sustainable as against the other most deserving candidates in the category. In that view of the matter, I find no merit in the submissions of the learned Counsel for the Petitioner.

18. No other point was urged by the learned Counsel on either side.

19. For all the reasons stated above, this writ petition is devoid of any merit and it is accordingly dismissed. No costs.