

(2024) 11 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : CWP No. 6509 Of 2023

Smt. Chanchalo Devi

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 20-11-2024

Acts Referred:

Citation : (2024) 11 SHI CK 0008

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : Ravinder Singh Jaswal, Sumit Sharma, Balram Sharma

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, the petitioner has mainly prayed for the following relief:-

"i) That the writ in the nature of mandamus may kindly be issued to the respondents with direction to consider the case of the petitioner for appointment on compassionate grounds."

2. The case of the petitioner is that her husband late Constable (GD) Rajender Gautam was serving in the Border Security Force and was posted in the 9th Battalion, National Disaster Response Force (NDRF) at Prayagraj. Husband of the petitioner was deployed with the 9-B Team of 9th Battalion of NDRF in Kumbh Mela at Prayagraj. On 19th February, 2019, in the course of discharge of his duties, in order to save an old woman who was drowning in the river, the husband of the petitioner jumped into the river. In the process, he suffered grievous injuries. He was immediately shifted to the hospital at Prayagraj and therefrom, he was shifted through Air Ambulance to Verdhman Mahabir Medical College, Safdarganj Hospital, New Delhi, but unfortunately, he succumbed to the injuries sustained by him on 22.02.2019. He left behind the petitioner and two

minor daughters. As a mark of respect to the martyrdom of the husband of the petitioner, he was awarded with 'Jeevan Raksha Padak' by Hon'ble Prime Minister of India for his supreme sacrifice in the line of duty. This is evident from Annexure P-1 appended with the writ petition.

3. The grievance of the petitioner is that in terms of Annexure P-4, which are the guidelines issued by the respondent-State for providing employment assistance to the eligible dependents of the martyrs soldiers, the petitioner being eligible to apply for employment assistance, duly applied for the same. To cut the controversy short, in terms of Annexure P-14, communication dated 16.09.2021, the Deputy Director of the Higher Education, Bilaspur, informed the petitioner that the case of the petitioner was received by the Department for appointment as a Language Teacher on compassionate grounds, but as there is no provision of employment of Language Teacher on compassionate grounds, therefore, the office was not able to proceed further in the matter. Thereafter, the petitioner again took up the matter with the Authorities concerned, however, as nothing fructified; hence, the present writ petition was filed by her praying for the relief mentioned hereinabove.

4. Learned Counsel for the petitioner has submitted that the case of the petitioner is not any other case where a person seeks compassionate appointment in terms of the policy of the State Government of offering compassionate appointment inter alia to the kith and kin of its deceased employee. In the present case, the husband of the petitioner was serving as a Constable with the Border Security Force. He sacrificed his life in the line of duty. There is a policy of the State Government (Annexure P-4), which provides for employment assistance to the eligible dependents of the martyred soldier. The petitioner applied for employment assistance under this policy. The petitioner is possessing the qualifications of B.A., M.A.(Hindi), B.Ed., M.Ed., TET and Prabhakar, as is evident from para-8 of the writ petition. Petitioner in fact has also done her M.A.in English. In these circumstances, the rejection of the claim of the petitioner for appointment against the post of Language Teacher by relying upon the policy of the State Government which deals with its employees, is per se bad. He accordingly prayed that the writ petition be allowed by directing the respondents to forthwith offer her appointment on compassionate basis against a Class-III post and preferably against the post of Language Teacher.

5. Learned Deputy Advocate General has taken the Court through the reply filed by respondents No. 1, 3 and 4 and submitted that in terms of Annexure P-4, the dependents of the martyr soldiers are to be considered for lowest rank post of Class III and Class IV. He submitted that in fact lowest Class-III post in the Education Department is JOA(IT). He further submitted that the case of the petitioner for appointment on compassionate basis against the post of JOA(IT) and Peon was not received by the Director of Higher Education. Learned Deputy Advocate General further submitted that the policy that has been formulated by the State to offer compassionate appointment is to provide assistance to the

families in real hardship and income criteria is also an important aspect which determines the indigence of a family. He submitted that as there is no provision in the Recruitment and Promotion Rules notified by the Government of Himachal Pradesh relating to the post of Language Teacher that this post can be offered on compassionate basis, therefore, the petition deserves to be dismissed.

6. I have heard learned Counsel for the parties and also carefully gone through the pleadings as well as documents appended therewith.

7. Before the Court proceeds with the matter, it would at this stage itself like to make an observation that distinction has to be drawn between a person who approaches the State Government seeking compassionate appointment on the basis of policy of the State Government of offering appointment on compassionate basis to the family members of its deceased employees and the offer of providing "employment assistance to the eligible dependents of martyred soldiers". In fact, a perusal of communication Annexure P-4, dated 23.04.2016, demonstrates that the word 'compassionate' has not been used therein. This Court is of the considered view that the word 'compassionate' has not been used in the policy Annexure P-4 for the reason that the offer of employment to the eligible dependents of the martyred soldiers is not on account of compassion per se but it is on account of respect to the martyr and duty which the State owes to the family of the martyred soldier, who has given the supreme sacrifice of his life in the line of duty. Further perusal of the policy demonstrates that for the purpose of providing employment assistance under this policy, neither there is any reference of indigency of the family nor any minimum income limit of the family has been prescribed, which also distinguishes this policy from the compassionate employment policy which otherwise has been framed by the Government to provide succor/employment to the kith and kin of its deceased employees. Therefore, the rigors which may be prevailing for offering appointment on compassionate basis cannot be said to be ipso facto applicable to provide employment assistance to the eligible dependents of the martyred soldiers.

8. In the backdrop of what has been observed hereinabove, the Court proceeds to decide the writ petition. It is not in dispute that the husband of the petitioner gave extreme sacrifice of his life in line of duty while saving the life of an old woman who was drowning in the river. The husband of the petitioner jumped into the river and in the course of saving the life of an old lady, he lost his life. The sacrifice of the late husband of the petitioner has been duly recognized by conferring upon late husband of the petitioner the 'Jeevan Raksha Padak' by Hon'ble Prime Minister of India, which is evident from Annexure P-1 appended with the writ petition.

9. The qualifications of the petitioner as have been mentioned in para-8 of the writ petition are not in dispute. A perusal of policy, on the basis of which the petitioner has applied for the post in issue, demonstrates that if an application is received in terms of said policy, then, the concerned Deputy Commissioner has

to ascertain the vacancy position and also scrutinize the papers of the applicant in terms of policy and submit the same to the concerned appointing authority under intimation to the Sainik Welfare Department.

10. Not only this, a perusal of the contents of the policy also demonstrate that when the issue with regard to providing employment assistance to the eligible dependents of martyrs soldiers was under consideration of the Government, after thorough consideration, the State Government decided to provide employment assistance to one of the eligible dependent of martyr soldier "in relaxation of provision of direct recruitment prescribed in the Recruitment and Promotion Rules prevailing in the State of respective category".

11. A perusal of Annexure P-14 demonstrates that after the petitioner applied for offer of appointment in terms of Policy Annexure P-4, her case was duly processed for the purpose of offer of appointment to her as a Language Teacher and the Deputy Director of Higher Education, Bilaspur, had received the case of the petitioner for appointment as Language Teacher on compassionate grounds from the office of the Director of Elementary Education.

12. The post was not offered to the petitioner by the Deputy Director on the ground that Recruitment and Promotion Rules of the post of Language Teacher do not provide for appointment as Language Teacher on compassionate grounds.

13. This Court is of the considered view that the denial of appointment to the petitioner against the post of Language Teacher on the basis of the reasoning as is spelled out in Annexure P-14 is not sustainable in law. First of all, there is no provision in any Recruitment and Promotion Rule with regard to appointment on compassionate basis. The appointment on compassionate basis is governed by policies which have been framed by the Government from time to time.

14. It is settled law that appointment to a post on compassionate grounds is not the main source of recruitment to the post in issue. It is by way of exception to the general mode of recruitment. However, as far as this case is concerned, the Court reiterates that here the petitioner is not seeking appointment on compassionate basis per se. She is seeking employment assistance in her capacity as an eligible dependent of a martyred soldier in terms of Annexure P-4, dated 23.04.2016. In the backdrop of this particular exception in the case of the petitioner as compared to any other case where an incumbent is seeking appointment on compassionate basis, this Court is of the considered view that as the petitioner possessed all the qualifications for appointment as a Language Teacher and the post of Language Teacher being a Class-III post, denial thereof to the petitioner on the ground that Recruitment and Promotion Rules does not envisage appointment to the said post on compassionate basis is bad in law.

15. When Policy Annexure P-4 contemplates appointment against a Class-III post in relaxation of provision of direct recruitment prescribed in Recruitment and Promotion Rules, then insistence upon provision of this mode of appointment in the Recruitment and Promotion Rules is not understood.

16. Besides this, this Court is of the considered view that in light of the extreme sacrifice of his life that was given by late husband of the petitioner in the line of duty, least that the State could have done to honour the martyrdom of the deceased husband of the petitioner was to honourably have had offered the post of Language Teacher to the petitioner, rather than dragging her to this unnecessary litigation. This Court deprecates the attitude of the respondents of treating the wife of a martyred soldier of the country like this.

17. Accordingly, in view of above discussion, this writ petition is allowed. Impugned communication Annexure P-14, dated 16.09.2021, issued by the Deputy Director of Higher Education, Bilaspur, is quashed and set aside and the respondents are directed to offer appointment to the petitioner against the post of Language Teacher as from the date of filing of the writ petition with all consequential benefits including seniority and monetary benefits and also regularization against the post after completion of requisite years of service as from the date of appointment as per the policy of regularization, if the post is offered on contract basis.

With these observations, the writ petition is allowed with cost assessed at Rs.25,000/-. Pending miscellaneous application(s), if any, also stand disposed of accordingly.