

Before Permod Kohli, J.

BIMLA DEVI,—Petitioner

versus

STATE OF HARYANA AND OTHERS,—Respondents

CWP No. 8489 of 2009

7th January, 2010

Constitution of India, 1950—Art. 226—Compassionate Assistance Rules, 2003—Husband of petitioner died in harness—Claim for appointment of her son—Rejection of—Policy/instructions of 1995 envisaging only ex-gratia appointment applicable at time of death of husband of petitioner—No provision for grant of financial assistance in policy of 1995—No act of omission or commission attributable to petitioner depriving benefit of Government policy when petitioner's son was fully eligible for appointment to at least on a Class IV post—Action of respondents is totally illegal, unwarranted and contrary to applicable policy/ Government instructions—Petition allowed.

Held, that under State Government's policy notified on 8th May, 1995 amended,—*vide* circular dated 31st August, 1995. there was no provision for grant of financial assistance. The claim of the petitioner for the appointment of her son has been rejected on the ground that job could not be granted after 3 years of the date of death and 2003 policy issued much later than the death of the husband of the petitioner has been relied upon even to deny the financial assistance. The action of the respondents is totally illegal, unwarranted and contrary to the applicable policy/Government instructions issued for the purpose. It is admitted case of the parties that the employee died on 26th August, 1999 and the petitioner made an application for appointment of her son on 6th December, 1999. The claim of the petitioner was recommended by respondent No. 3 from time to time. It was only at the level of higher authorities including the Director General of Police that the claim of the petitioner remained pending for more than 5 years when it was finally rejected on 16th June, 2006. Nothing has been indicated in the reply as to how and why the petitioner's claim is to be

rejected. There is no act of omission or commission attributable to the petitioner depriving them of the benefit of the Government policy when the petitioner's son was fully eligible for appointment to at least on a Class IV post. The plea of non-availability of Class IV post has been raised in a casual way and does not seem to be based on correct facts. In such a large State, it cannot be believed that no Class-IV post was available in the entire Police Department. In any case, it was obligatory upon the respondents to have made an effort to appoint the petitioner's son against a Class IV post in any other department in the State. Even no such step has been taken by the respondents. After keeping the matter pending for more than seven years the claim of the petitioner has been rejected. Not only this, even the financial assistance has been denied to the petitioner. The action of the respondents is totally illegal. It is unfortunate that the respondents have taken the matter in such an irresponsible manner and the family of the deceased employee kept waiting for such a long period despite various requests and representations made by the petitioner and finally denied the relief to which the family is legally entitled to.

(Para 6)

R. N. Sharma, Advocate for the petitioner.

R.K.S. Brar, Addl., A.G., Haryana.

PERMOD KOHLI, J. (ORAL)

(1) Petitioner is widow of Bir Singh, who was serving as Head Constable in the police department of the State of Haryana. The deceased husband of the petitioner died in harness on 26th August, 1999. Shortly after his death the petitioner made an application seeking compassionate appointment for her son. The case of the petitioner was recommended by respondent No. 3 to the Inspector General of Police, Gurgaon Range,— *vide* his letter dated 24th December, 1999 for appointment of petitioner's son against the post of B Grade Clerk, the boy being matriculate and eligible for the post. Matter remained pending for considerable period. The petitioner again made a representation/request dated 18th September, 2002 expressing her financial condition seeking compassionate appointment (Annexure P-3). In response to the aforesaid request the petitioner was informed,—*vide*

letter dated 15th May, 2003 (Annexure P-4) that the rules for compassionate appointment have been amended and petitioner was asked to appear before the Welfare Inspector, Faridabad up to 21st May, 2003 of any working day. The petitioner made another representation for compassionate appointment, which was again forwarded by respondent No. 3 to the Director General of Police, Haryana,—*vide* letter dated 4th June, 2003 (Annexure P-5). The aforesaid recommendation was followed by another letter by the petitioner dated 26th July, 2004 which was also forwarded by respondent No. 3 *vide* his letter dated 8th December, 2004 to the Director General of Police. The petitioner received a communication dated 12th December, 2005 (Annexure P-8) from the respondent No. 3 asking her to give option for the financial assistance of Rs. 2 lacs as after 3 years the dependants will not be given either job or financial assistance, in view of the Compassionate Assistance Rules, 2003. In response to the above, petitioner *vide* her letter dated 30th March, 2006 asked the Director General of Police, Haryana to release the financial assistance, if, his son is not provided job under the Government instructions. Respondent No.3,—*vide* the impugned letter dated 16th June, 2006 informed the petitioner that her son Narender Kumar is neither eligible for the post of Clerk or Constable nor Class-IV post is available and hence her case has been filed. It is this communication, which is challenged in the present petition.

(2) Respondents in the reply have admitted that the husband of the petitioner died in a road accident on 26th August, 1999 and the petitioner made application on 6th December, 1999 seeking appointment for her son Narender Kumar. Various communications referred to in the writ petition have also been admitted. As far as the question of grant of employment is concerned, it has been stated that the petitioner's son is not eligible for job of Clerk or for Constable as he is sub standard in physical measurements. Regarding Class-IV post, it is mentioned that no post is available under the ex-gratia scheme within the limits of 3 years from the date of death of the deceased employee. They have sought the dismissal of the writ petition.

(3) I have heard learned counsel for the parties.

(4) Admittedly, the petitioner applied for compassionate appointment within four months of the death of her husband in the year 1999. At the relevant time i.e. at the time of death of the husband of the

petitioner State Government's policy notified on 8th May, 1995 amended,—
vide circular dated 31st August, 1985 was in vogue. The relevant extract
of the said policy is as under :—

“I am directed to invite a reference to Haryana Government Circular
letter No. 16/5/1995 GS-II, dated 8th May, 1995 on the
subject cited above *vide* which policy for giving employment to
a dependant of a Government employee who dies while in
service was laid down. The matter has been further examined
by the Government and it has been decided to make the
following modification/clarification :—

- (1) All the cases of Ex-Gratia appointment pending on the
date of issue of policy shall be examined and decided in
the light of the new policy irrespective of the date of the
death of the deceased.
- (2) The married dependent shall also be considered for the
appointment under Ex-Gratia scheme in view of the
early marriages in many cases. An undertaking shall be
obtained from the married dependents that he/she will look
after the family of the deceased employee. This
undertaking should be attested by two respectable
members of the society. The married dependent will be
eligible only if there is other eligible unmarried son/daughter
in the family.”

(5) Under the aforesaid policy there was no provision for grant
of financial assistance. The claim of the petitioner for the appointment of
her son has been rejected on the ground that job could not be granted
after 3 years of the date of death and 2003 policy issued much later than
the death of the husband of the petitioner has been relied upon even to deny
the financial assistance. The action of the respondents is totally illegal,
unwarranted and contrary to the applicable policy/Government instructions
issued for the purpose. It is admitted case of the parties that the employee
died on 26th August, 1999 and the petitioner made an application for
appointment of her son on 6th December, 1999. The claim of the petitioner
was recommended by respondent No. 3 from time to time. It was only
at the level of higher authorities including the Director General of Police that

the claim of the petitioner remained pending for more than 5 years when it was finally rejected on 16th June, 2006. Nothing has been indicated in the reply as to how and why the petitioner's claim is to be rejected. There is no act of omission or commission attributable to the petitioner depriving them of the benefit of the Government Policy when the petitioner's son was fully eligible for appointment to at least on a Class-IV post. Hon'ble Supreme Court in case of **Abhishek Kumar versus State of Haryana and others (1)** has held as under :—

“5. Appellant herein has sought for appointment on compassionate grounds at a point of time when 2003 rules were not in existence. His case therefore, was required to be considered in terms of the rules which were in existence in the year 2001. Evidently, in the State of Haryana a State-wise list is maintained. In terms of the said list so maintained by the State of Haryana, the appellant was entitled to obtain an appointment on compassionate grounds. He was offered such an appointment by the State. It was the District Magistrate who come on the way refused to provide for the post.”

(6) It is only the policy which was applicable at the time of death of the husband of the petitioner which was applicable i.e. Policy of 1995. From the relevant extract reproduced herein above, it is abundantly clear that the policy envisages only the ex-gratia appointment. Even though no time limit was prescribed under the aforesaid policy. The fact remains that the petitioner applied within 4 months from the date of death of her husband. Clause 4 of the policy clearly provides for appointment against Class-III or Class-IV post. It also stipulates, if, these posts are not available within the department, the appointment has to be made in some other department. From the reply and various communications, referred to herein above, it appears that no effort was made by the respondents to appoint the petitioner's son in some other department. Otherwise also, no details are given of the Class-IV posts in the police department. The plea of non-availability of Class-IV post has been raised in a casual way and does not seem to be based on correct facts. In such a large State, it cannot be believed that no Class-IV post was available in the entire Police Department. In any case

(1) 2007 (2) S.C.T. 457

it was obligatory upon the respondents to have made an effort to appoint the petitioner's son against a Class-IV post in any other department in the State. Even no such step has been taken by the respondents. After keeping the matter pending for more than seven years the claim of the petitioner has been rejected. Not only this, even the financial assistance has been denied to the petitioner. The action of the respondents is totally illegal. It is unfortunate that the respondents have taken the matter in such an irresponsible manner and the family of the deceased employee kept waiting for such a long period despite various requests and representations made by the petitioner and finally denied the relief to which the family is legally entitled to.

(7) This petition is, accordingly, allowed. Respondents are directed to appoint the petitioner's son Narender Kumar against a Class-IV post, if, available in the police department or else in any other department of the State of Haryana within a period of three months.

R.N.R.

Before M.M. Kumar & Jitendra Chauhan, JJ.

ARVIND KUMAR—Petitioner

versus

KENDRIYA VIDYALAYA SANGTHAN

AND OTHERS—Respondents

CWP No. 15090 of 2009

2nd March, 2010

Constitution of India, 1950—Art. 226—Appointment of petitioner as Trained Graduate Teacher (Maths)—Non-disclosure of information in Attestation Form—Termination of services during probation period—No case pending against petitioner in any Court of law at time of filling up Attestation Form—Complaint against petitioner had already been filed by Gram Panchayat due to non-prosecution—Action against petitioner initiated on a wrong report sent by Police—Orders of termination held to be arbitrary—Petition allowed, orders of termination quashed.