

(2002) 09 P&H CK 0114
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 12448 of 2001

Ashu Malik and Another

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2003) 96 FLR 264 : (2003) 1 LLJ 942 : (2003) 133 PLR 45

Hon'ble Judges : Viney Mittal, J;H.S. Bedi, J

Bench : Division Bench

Advocate : Harsh Aggarwal, for the Appellant; Amol Rattan, Assistant A.G., for the Respondent

Judgement

Viney Mittal, J.—The petitioners have filed the present petition under Articles 226 and 227 of the Constitution of India for the issuance of a writ in the nature of certiorari for quashing the order dated March 5, 2001 and for the issuance of a further writ of mandamus for directing the respondents to grant appointment to petitioner No. 1 on compassionate grounds as per his eligibility.

2. Petitioner No. 1 is Ashu Malik son of Madan Lal Malik. Petitioner No. 2 is Madan Lal Malik himself. As per the averment in the petition, Madan Lal Malik was appointed as Welder in the Haryana Roadways and was posted under the General Manager, Haryana Roadways, Gurgaon Depot, Gurgaon on September 5, 1973. He was working on permanent basis. The petitioners have stated that while serving on January 6, 1995, the aforesaid petitioner No. 2 Madan Lal Malik met with an unfortunate accident in the Haryana Roadways Workshop, Gurgaon due to which he was crushed between a bus and the wall of the depot. Due to the aforesaid accident, the right side of the body of petitioner No. 2 was badly crushed. His right kidney was ruptured, liver was badly damaged and ultimately his right kidney was removed. Even his liver was repaired with high medical technology. The petitioner has produced a medical certificate issued by the Medical Superintendent, General Hospital, Gurgaon as Annexure P-2. In the

aforesaid medical certificate the disability of petitioner No. 2 is described as follows:-

"As per report of Surgeon Dr. Vidhur Jyoti of Batra Hospital New Delhi that the patient Madan Lal due to injuries and damage to the liver and (rt) kidney. Rt. Kidney removed) he runs the risk of getting kidney failure at any stage of life and is unable to do any hard work. Also in loss of one kidney: Photo copy of latest advises complications mentioned in the report of the Surgeon Dr. Vidhur Jyoti, Batra Hospital, N. Delhi, Photocopy of statement recorded in court of Sh. M.M. Sharma, Addl. Session Judge, Gurgaon."

3. Because of the aforesaid medical incapacity, petitioner No. 2 sought voluntary retirement. It is the case of the petitioners that at the time of seeking aforesaid voluntary retirement, petitioner No. 2 was assured that his eldest son on attaining the age of majority and becoming eligible would be given employment on compassionate grounds. The request of petitioner No. 2 seeking voluntary retirement, was accepted vide orders dated October 22, 1997 w.e.f. October 31, 1997. At that time the aforesaid petitioner No. 2 Madan Lal Malik was merely 44 years of age. He had at least 14 years to go before his superannuation. The petitioners have averred that at that stage Ashu Malik - petitioner No. 1, who is the eldest son of petitioner No. 2, was 16 years II months and 10 days and already passed 12th class examination. Later on becoming eligible, petitioner No. 2 moved an application dated January 12, 2000 seeking an employment for Ashu Malik -petitioner No. 1 on ex-gratia basis as per the Government instructions. A copy of the aforesaid application dated January 12, 2000 has been appended as Annexure P-7 with the petition. A reminder dated April 27, 2000 was submitted by petitioner No. 2 to respondent No. 3 namely the General Manager, Haryana Roadways, Gurgaon. No action was still taken. A registered notice was also served on October 20, 2000. The said notice has been appended as Annexure P-9 with the petition.

4. The petitioners claimed appointment for petitioner No. 1 under a policy issued by the State Government for employment on ex-gratia basis issued vide circular dated May 8, 1995. The aforesaid policy has been appended as Annexure P-10 with the petition. Subsequently, the aforesaid policy was modified vide another circular dated August 31, 1995, which has also been appended as Annexure P-11 with the petition.

5. Since petitioner No. 1 was fully eligible for seeking employment on ex-gratia basis in terms of the aforesaid policy of the State Government of Haryana and his case was not being considered by the respondents, therefore, the petitioners approached this Court through CWP No. 525 of 2001. The aforesaid civil writ petition was disposed of by this Court vide orders dated January 12, 2001. The respondents were directed to dispose of the legal notice issued by the petitioners to the aforesaid respondents.

6. As a consequence of the aforesaid directions issued by this Court, vide orders

dated January 12, 2001, an order has been passed by respondent No. 3 - the General Manager, Haryana Roadways, Gurgaon on March 5, 2001. The aforesaid representation/legal notice filed by the petitioners for giving an employment to petitioner No. 1 on ex-gratia basis was rejected. A copy of the aforesaid order dated March 5, 2001 has been appended as Annexure P-12 with the petition.

7. The petitioners are aggrieved against the order dated March 5, 2001, Annexure P-12 and have approached this Court through the present writ petition.

8. Upon a notice of the writ petition issued to the respondents, they have put in appearance. A written statement has been filed on behalf of respondents No. 1 to 3. The claim of the petitioners has been contested. The order Annexure P-12 dated March 5, 2001 is sought to be defended by the respondents. In the written statement also, similar grounds, as have been mentioned in the order Annexure P-12, have been taken to contest the claim made by the petitioners. The averment made by the respondents in the written statement are that the case of petitioner No. 1 is not covered under the Government instructions. The respondents have even gone to the extent of saying that petitioner No. 2 had never been got examined by the department from medical board and had never been declared unfit for the job. It is further stated by the respondents that petitioner No. 2 had already received an amount of Rs. 5,03,164/- as compensation from Motor Accident Claims Tribunal and after the receipt of the aforesaid amount and retiral benefits, the compassionate appointment could not be claimed. It is further the case of the respondents that a voluntarily retired employee is not entitled for the employment under the ex-gratia scheme.

9. We have heard Sh. Harsh Aggarwal, learned counsel for the petitioners and Sh. Amol Rattan, learned Assistant Advocate General, Haryana appearing for the respondents.

10. Sh. Aggarwal, learned counsel for the petitioners has submitted that petitioner No. 2 had suffered an accident while working in the Haryana Roadways Depot. He has pointedly brought to our notice the incapacity of petitioner No. 2, which we have noticed above in the earlier part of the judgment. Sh. Aggarwal submits that as per the policy dated May 8, 1995 modified through a subsequent policy dated August 31, 1995, an employee who had retired on or before attaining the age of 55 years, on having been declared medically unfit/incapacitated, was entitled to get an employment for his dependent. Our pointed attention has been drawn by Sh. Aggarwal to clause 5 of the policy dated August 31, 1995 (Annexure P-11) which reads as follows:-

"The facility of compassionate employment to a dependent of a government servant shall be available, if the latter is declared medically unfit/incapacitated by the Special Medical Board and retired on or before attaining the age of 55 years in the case of Class I, II, III Officers/Officials and 57 years in case of Class IV employees. A government employee who is declared incapacitated/blind after 55 years of age in the case of Group A, B, C and after 57 years in the case of

Group D employees, will not be entitled to this facility. Subject to this, terms and conditions and procedure applicable in the case of compassionate employment to a dependent of a deceased employee would be applicable in these cases as well."

11. On the other hand, Shri Amol Rattan, learned Assistant Advocate General, Haryana submits that petitioner No. 2-Madan Lal Malik had already received an amount of Rs. 5,03,164/- as compensation from Motor Accident Claims Tribunal and had also received retiral benefits. He submits that as per the policies Annexures P-10 and P-11, a voluntarily retired employee was not entitled for the employment of his dependent under the ex-gratia scheme. Shri Amol Rattan further points out that the case of the petitioners is also not covered under the aforesaid Government instructions because petitioner No. 2 had never been got examined by the department from medical board and had never been declared as unfit for the job by the medical board.

12. We have given our thoughtful consideration to the entire matter and feel that the present petition deserves to succeed.

13. It is specifically averred in the petition by the petitioners that on January 6, 1995 petitioner No. 2 while working in the Haryana Roadways Workshop, Gurgaon was hit by a bus No. HYG 4440 due to which his body was crushed between the bus and the wall of the depot. We have already noticed the extent of injuries and his incapacity which has been detailed out in Annexure P-2. The respondents in their written statement have not denied the accident. They have also not denied the nature of injuries or the medical incapacity of petitioner No. 2. It has been merely stated in para 3 of the written statement which reads as follows:-

"That para No. 3 of the petition is admitted to the extent that accident took place on 6.1.1995. Rest of the para is a matter of medical record. However, it is further submitted that the petitioner No. 2 was voluntary retired and has not been retired on medical grounds. The present petition deserves dismissal on this ground alone."

14. It is not in dispute that as per clause 5 of the policy dated August 31, 1995, a person who was declared medically unfit/incapacitated and was retired on or before attaining the age of 55 years, was entitled to an ex-gratia appointment for his dependent. We fail to see any distinction between a person who was retired having been declared medically unfit/incapacitated by the medical board and a person who sought such voluntary retirement on his medical unfitness/incapacitation. In our considered view, if all other conditions are fulfilled, the aforesaid clause 5 would be fully attracted to the case of a person who had sought voluntary retirement on the basis of his unfitness/incapacitation.

15. For the reasons stated above, we find that order Annexure P-12 whereby the claim made by the petitioners for the appointment of petitioner No. 1 on ex-gratia basis has been rejected, cannot be legally sustained. While quashing the aforesaid order, we direct that the respondents shall grant an appointment to

petitioner No. 1-Ashu Malik on ex-gratia basis, as per his eligibility, in terms of the policies/instructions dated May 8, 1995 and August 31, 1995.

16. We further direct that the respondents shall implement the aforesaid directions within a period of four months from the date a certified copy of this order is received by them. No costs.

Sd/- H.S. Bedi, J.