
(2005) 04 SHI CK 0013
In the High Court Of Himachal Pradesh

Hussain Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Citation : (2005) 107 FLR 690 : (2005) 2 ShimLC 123

Hon'ble Judges : Surjit Singh, J;Arujn Kumar Goel, J

Bench : Division Bench

Judgement

Arun Kumar Goel, J.—Petitioner has filed this writ petition for being appointed on compassionate ground after the death of his father.

Facts as they emerge from the pleadings of the parties are, that father of petitioner Deen Mohammad was working as Senior Attendant with respondent No. 3. At the relevant point of time he was posted at Moga. He died on 21.9.2000 due to carcinoma right main bronchus. Thereafter, on 4.1.2001, petitioner submitted an application vide Annexure P-9, to respondent No. 3 for being appointed on compassionate ground.

2. When employment was not provided to the petitioner, a legal notice was sent on behalf of the petitioner on 24.4.2001. When needful was not done by respondent No. 3, petitioner has filed the present writ petition.

3. Respondents No. 2 and 3 when put to notice have contested and resisted the claim of the petitioner. Their stand is that respondent is governed by memorandum of agreement between the Management of the Corporation and the National Bipartite Committee. In terms of clause 0.5.4 of this agreement, compassionate appointment can only be made to one of the dependents of the workman who is permanently disabled or dies as a result of accident while on duty. For ready reference, this clause is extracted hereinbelow:

0.5.4 Employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty will continue to be provided as at present. Dependent for this purpose will mean spouse of the employee, his/

her son or daughter or legally adopted son/daughter.

4. It is also stand of the respondents that substantial amount to the tune of Rs. 7,33,567/- has been paid to the nominee of the deceased as per rules of the Corporation. In addition to this, EPS-95 was in the process with the RPFC. Thus, petitioner was not entitled to any relief.

5. Before dealing with the case in hand, it may be appropriate to observe that so far compassionate appointment if concerned, it is meant to tide over the situation in which a family is placed after the death of its bread winner. Such appointment cannot be claimed as a matter of right which is in the nature of an exception to the "general rule that every incumbent has to go through the mill and the ensure that he successfully qualifies for being considered in the matter of public employment alongwith other competing candidates. Whole purpose behind providing compassionate appointment after the death of earning member of the family is to provide immediate succour so that the family is not left high and dry.

6. Cases relating to compassionate appointment had been attending the attention of the Supreme Court from time to time and controversy has been set at rest in this behalf.

7. Shri Verma, learned Counsel for the petitioner placed reliance on a decision of the Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and urged that respondents No. 2 and 3 need to be directed to consider the case of the petitioner. Great emphasis was laid by him on para 19 of this judgment. Relevant portion from this para is extracted hereinbelow for ready reference:

19.xxxx xxx The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law Courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law Court would be to administer justice having due regard in that direction.

8. In National Hydroelectric Power Corporation v. Nanak Chand 2004 (103) FLR 707 (SC) identical question came up before the Supreme Court for consideration. While selling aside the judgment of this Court, and allowing the appeal of the appellant. Supreme Court after noticing the case law on the subject, observed as under:

6. xxxx xxx xxx The appointment on the compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on

compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

9. Looking to the decision in case of National Hydroelectric Power Corporation v. Nanak Chand (supra), as well as relevant rule extracted in preceding paras of this judgment, in our considered view petitioner cannot be granted any relief whatsoever in this writ petition. Admittedly, it is not the case of petitioner, that his father died as a result of accident while on duty, covering his case. Thus, this writ petition is dismissed at the admission stage.