

(2006) 08 P&H CK 0257
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 14364 of 2004

Jitesh Kumar Dembla

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 — Rule 18, 3

Citation : (2006) 08 P&H CK 0257

Hon'ble Judges : M.M.S. Bedi, J; M.M. Kumar, J

Bench : Division Bench

Advocate : S.P. Khatri, for the Appellant; Harish Rathee, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

M.M. Kumar, J.—The petitioner is a hapless orphan who has approached this Court for issuance of appropriate directions to the respondents to employ him on a suitable post in accordance with Exgratia Employment Scheme or the Rules.

2. The writ petition came up for motion hearing on 16.9.2004 when a Division Bench of this Court issued notice for 14.12.2004, then learned State counsel had asked for time to file the written statement. The written statement was required to be filed within four weeks and the hearing was deferred to 7.4.2005. The learned State counsel again asked for time to file reply and the hearing was deferred to 25.8.2005 when again request for filing reply was made. The case was adjourned to 20.12.2005 and again a request was made for more time to file reply. Then the hearing was deferred to 28.3.2006. On 28.3.2006, the Division Bench thought it appropriate to pass the following order:

This is a writ petition filed by an orphan, claiming appointment on compassionate grounds, wherefor a special provision has been prescribed in statutory rules to keep alive the claim of such an orphan till he acquires the eligibility of appointment and/or attains the age of entry into service.

Learned Counsel for the respondents seeks yet another adjournment so as to enable him to file written statement.

A perusal of the order sheets reveals that the respondents entered appearance as far back as on December 14, 2004 and sought time to file written statement. Despite the passage of more than one year, written statement is still not forthcoming.

However, in the interest of justice, one last adjournment is granted to the learned Counsel for the respondents so as to enable him to file written statement.

Written statement e filed within four weeks from today, with an advance copy to the learned Counsel for the petitioner, subject to payment of Rs. 5,000/- as costs. List again on July 18, 2006.

3. However, no reply was filed and again request was made for more time to file reply. The request was accepted by the Division Bench subject to payment of Rs. 10,000/- as costs. We have taken up the matter in the morning session when the learned State counsel requested for taking the reply on record without making payment of costs for which the learned Counsel for the petitioner insisted. The matter was passed over and taken up again in the morning session, however, cost was not yet paid and the matter was kept for post lunch session.

4. Learned State counsel has failed to deposit the costs of Rs. 10,000/- and in the absence thereof we strike off the defence of the respondents and refuse to take on record the written statement. The petitioner has asserted that his mother was working as a JBT Teacher, who died along with his father on 6.9.1993 in an unfortunate accident. At the time of their death the petitioner was less than six years old having been born on 11.11.1983. He attained majority on 11.11.2001 and filed an application on 6.5.2003 (P-5) for exgratia employment under the Exgratia Employment Scheme as prevailing at that time. It has been claimed that he has a younger brother with the name of Himansu Dembla, who was 5 years old at the time of death of their parents, and sells vegetables as a street hawker as there is no source of income. The father of the petitioner was an employee in a private firm at Faridabad and no benefit from his service has been paid to the petitioner. The petitioner has acquired the qualification of 10+2 in the year 2004. The Director, Primary Education, Haryana, on a representation made, had addressed a communication on 22.1.1994 to the Chief Secretary to reserve one post for him as the petitioner was below 17 years of age. The aforementioned communication reads as under:

Deceased Santosh Devi JBT, Teacher was posted at Primary School Dakola, district Faridabad. She died on 6.9.1993 during service. The father in law of deceased employee has requested because he don't want service and their children are minor and one out of them Jitesh Demble studying in 4th class and his date of birth is 11.11.1983. The resolution for service can't be submitted according the Exgratia Scheme of the Government because his age is below 17 years. Please reserve the post for him, so that at the age of 17 years after

sending the resolution of service he may get facility of service. The relevant documents are attached in this regard. The deceased employee was a permanent employee of the government.

Sd/- Joint Director, Primary Education, For Director, Primary Education, Haryana, Chandigarh. Dated: 22.1.1994

5. Despite the representation made, no action has been taken.

6. Having heard the learned Counsel we are of the view that the matter appears to be covered by our judgment in the case of Kumari Bandana Sharma v. State of Haryana 2006 (4) SLR 37. In that case, we had the opportunity to examine Rule 18 read with Rule 3(k) of the Haryana Compassionate Assistance to Dependents of the Deceased Government Employees Rules, 2003 (for brevity, "the Rules"). Referring to the exceptions carved out by Rule 18 of the Rules, we have observed as under:

5. Having heard the learned Counsel for the parties, we are of the view that there is merit in this petition. Rule 3(k) and Rule 18 of the Rules are necessary to be extracted to appreciate the arguments raised by the learned Counsel for the parties and the same reads as under:

3(k) "orphan" means a child who has previously lost one parent and has become an orphan upon the demise of the Government employee;

18. There shall be no relaxation of any provision of these rules. However, as a special case, these rules shall be relaxed only in the cases of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans, shall remain alive till one child has attained majority/minimum eligible age for entry into Government service.

6. A perusal of the definition of expression "orphan" would show that if a child lost one of his parents at the earlier stage then he become orphan upon the demise of Government employee. In other words, if both the parents have expired, the children would be considered to be orphans. Rule 18 carves out an exception in the case of orphan by providing that there has to be relaxation of Rules in the cases of children who have become orphan. The use of word "shall" before the word "relaxed" in the Rule would point out that the Rule is mandatory and it must remain alive till one child attain majority/minimum eligible age for entry into Government service. Again the expression "shall" has been used before the expression "remain alive". It is, thus, obvious that the petitioner who has lost both her parents in 1988 and 1993 has to be regarded as an orphan and her case is required to be considered by relaxing the Rules. It has come on record that the date of birth of the petitioner is 9.7.1980. She has acquired the qualification of B.A. B.Ed. and then applied for compassionate appointment to the respondents on July 28, 2004. Her claim has been rejected without examining her case in the light of Rule 3(k) read with Rule 18 of the Rules by applying the principle that the petitioner should have applied for compassionate appointment

within three years of the death of her mother. In other words, she was required to apply for compassionate appointment in the year 1996 when she was 15-16 years old. At that stage she was not qualified to enter government service nor she had requisite qualification. The case of the petitioner is required to be considered by relaxing the Rules and without insisting upon the period within which she was required to apply. According to Rule 18 of the Rules, she could have applied on attaining the age of majority or minimum eligible age for entry into Government service and her claim for appointment was to continue to remain alive. Therefore, we are of the view that the petitioner deserves to be given appointment on compassionate basis.

7. In the present case, the petitioner has qualification of 10+2 and his age is more than 22 years. Therefore, the petitioner fulfils the qualification for a Class III post.

8. In view of above, we allow the writ petition and direct the respondents to appoint the petitioner on any Class III post within a period of two months from today. The petitioner is held entitled to costs of Rs. 10,000/-, which shall be paid by the respondents in the form of draft or cheque in the name of the petitioner.

9. The writ petition stands disposed of in the above terms.