
(2012) 09 SHI CK 0044
In the High Court Of Himachal Pradesh
Case No : CWP No. 7052 of 2012-D

Nek Mohammed

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 14-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 09 SHI CK 0044

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Sanjay Jaswal, for the Appellant; Vikas Rathore, D.A.G., for the Respondent

Judgement

Rajiv Sharma, Judge

1. Mr. Sanjay Jaswal, learned counsel for the petitioner submits that the present Lis is covered by the judgment rendered by this Court in CWP No. 16006 of 2008, titled Jamaldeen versus State of H.P. and others, decided on 4th July, 2011. It is reiterated that the letter dated 1.4.2005 would apply prospectively and not retrospectively. In other words, case of the petitioner is required to be considered as per the norms prevalent at the time of death of father of the petitioner i.e. on 31.8.2003.

2. The full Bench of Punjab & Haryana High Court in Krishna Kumari versus State of Haryana and others, 2012(4) SLR 481 (Pb. & Hry) has held that the date of death of an employee is an important factor to be taken into consideration and the policy applicable on the date of death needs to be invoked to provide immediate relief. The Full Bench has held as under:

..in view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is up to the authority to consider the application without inordinate delay and take a decision thereon. In the

eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on the part of the employee. This appears to be the principle recognized by the apex Court in its recent judgment in Bhawani Prasad Sonkar's case. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependant belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex Court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly.

Consequently, the present petition is disposed of with a direction to consider the case of the petitioner for regular appointment as Beldar from the initial date of appointment with all consequential benefits in view of the principles laid down in the judgments cited hereinabove, within a period of 10 weeks from today. No costs.