
(2015) 05 P&H CK 0107
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12705 of 1999

Parmeshwari and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 06-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 05 P&H CK 0107

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Subhash Ahuja, for the Appellant; Ashok Kumar, Deputy Advocate General, Advocates for the Respondent

Final Decision : Allowed

Judgement

Amit Rawal, J.—Petitioner has filed the present writ petition for issuance of writ of mandamus, directing the respondents to provide the ex-gratia employment to petitioner No. 2 son of deceased Krishan Lal, who died while in service on 25.01.1988, in view of policy 07.03.1991. It has been submitted that the petitioner No. 2 attained the majority in the year 1997 and submitted an application on 01.07.1997 (Annexure P3). However, the said application was returned vide letter dated 02.02.1998 (Annexure P4) on the ground that the petitioner No. 2 cannot be granted employment under ex-gratia scheme after 3 years of death of deceased by relying upon the instruction of 1995 (Annexure P5).

2. Mr. Subhash Ahuja, learned counsel appearing on behalf of the petitioner submits that now it is a settled proposition of law that the policy which was in vogue/inexistence, would be applicable for the purpose of granting the relief of ex gratia employment to the awards of the deceased who died while in service.

3. Mr. Ashok Kumar, Deputy Advocate General, Haryana submits that the order Annexure P-4 has rightly been passed as the petitioner No. 2 is not entitled to

employment as more than 9 years has elapsed from the date of death of the deceased.

4. I have heard learned counsel for the parties and perused the paper book.

5. The applicability of the policy for granting benefit under ex-gratia scheme is no longer res integra in view of law laid down by Full bench of this Court in Krishan Kumari Vs. State of Haryana and others 2012 (2) RSJ Page 473. The operative part of the order of Full Bench reads thus:-

"In view of above judgment of the apex court and principles laid down therein, it is clear that the employer is within its power to lay down a policy for compassionate employment. It has to strictly adhere to the such policy. Though compassionate employment is in an exception to the general rule, power of the government or public authority to frame policy to offer compassionate employment has accepted by the courts in the interest of justice and to meet sudden crisis which befalls the family when an employee dies in harness or is incapacitated. The question whether the policy in operation at the time of death of the employee would be applicable or that at the time of consideration of application would operate, arises for consideration. In Raj Kumar's case (supra) decided by the apex court it was held that there being no vested right for compassionate employment scheme in force at the time application is actually considered would apply, not the scheme in force earlier to said date. Subsequent policy would impliedly abolish the earlier policy. In this case, scheme which was in operation at the time of consideration of the application specifically provided that all pending applications would be considered under the new scheme. In a later judgment in Bhawani Prasad Sonkar's case (supra) the apex court took the view that the scheme in operation at the time of incapacitation of the employee would be applicable and not the scheme framed subsequently. In our considered view date of death of an employee is an important factor to be taken into consideration as schemes for compassionate appointment are floated with a view to provide immediate relief to families of deceased employees to met the financial crisis they face on death of sole bread winner. Travails of the family begin immediately thereafter. In that context, date of death assumes significance. Purpose of providing compassionate appointment is to mitigate the hardship at that time. Thus policy applicable on the date of death needs to be invoked to provide immediate relief. Application seeking compassionate appointment should be moved promptly thereafter by his dependent and considered by the employer without undue delay. In case an application is considered by the authority after lapse of time, objective of scheme is defeated. Such schemes which are in the nature of social welfare measure and have been recognized as an exception to the general rule for offering public employment would necessarily be applicable strictly in the parameters laid down therein and accepted by the apex court in its various decisions. Particular reference may be made here to Umesh Kumar Nagpal Vs. State of Haryana and Others, (1994) 68 FLR 1191 : (1994) 3 JT 525 : (1994) 2 SCALE 834 : (1994) 4 SCC 138 : (1994)

3 SCR 893 : (1995) 1 SLJ 229 : (1994) 2 UJ 322 , wherein it was held that whole object of granting compassionate employment is to enable the family of deceased employee to tide over sudden crisis and to save the family from financial destitution. This favourable treatment given to dependent of the deceased employee was accepted as it bore a rationale nexus to the object sought to be achieved viz. Relief destitution. The Supreme Court held:-

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned. The employment cannot be offered by an individual functionary on an ad hoc basis.

13. 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 upto 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 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 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 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."

6. Even the Hon"ble Supreme Court in Abhishek Kumar Vs. State of Haryana and Others, (2007) 112 FLR 700 : (2006) 13 SCALE 658 : (2007) 2 SCC(L&S) 308 : (2006) 10 SCR 37 Supp had an occasion to ponder upon the implementation upon the policy by granting compassionate appointment, has held that only those rules would be applicable when the rules which were in vogue at the time when the employee died. The impugned orders Annexures P4 and P7 thus are not sustainable in the eyes of law as the respondent-authorities have failed to

taken into consideration the fact that the deceased -petitioner No. 2 had attained the majority in the year 1997 and therefore, within 3 years he was entitled to compassionate appointment and it is a matter of record that the application was submitted immediately after attaining the majority thus the stand of the respondent in declining the relief on the premise that policy of 1995 was applicable to the petitioner No. 2 is thus wholly erroneous and not sustainable.

7. Accordingly, annexures P-4 and P-7 are quashed. The respondents are directed to give compassionate employment/ex-gratia to petitioner No. 2 as per 1997 policy and in view of the dictum laid down by Full Bench of this Court, within a period of 3 months from the date of receipt of the certified copy of the order.

8. The writ petition stands allowed.