
(2009) 06 CHH CK 0033
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 4480 of-2006

Puna Bai (Smt.)	Vs	APPELLANT
State of Chhattisgarh and Others		RESPONDENT

Date of Decision : 19-06-2009

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2009) 4 MPJR 79

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—The husband of the petitioner, who was working as permanent Gangman, as is evident from the service book (Annexure P/2) died in harness on 20.10.2005. The petitioner, being the widow, made an application on 14.03.2006 for appointment on compassionate basis as Labour (Reja) in place her husband. The respondent-authorities, by order dated 27.4.2006 (Annexure R/1) rejected the application of the petitioner on the ground that the husband of the petitioner namely Shri Ram Lal Yadav, was not a permanent Gangman in work-charged establishment.

2. Shri Anthony, learned counsel appearing for the petitioner submits that the rejection of the application of the petitioner is not based on factual matrix. Admittedly, the husband of the petitioner, after completing 15 years of service as Gangman, was made permanent Gangman, as is evident form Annexure P/2, i.e. the service book. Shri Anthony relies on the decision of this Court in Govind and Others Vs. State of C.G. and Others, in order to support his contention and prays for quashing of the impugned order dated 29.05.2006 (Annexure P/4) and further prays for direction to the respondents to consider the petitioner for appointment on compassionate basis as there is no other reason for rejecting the application of the petitioner.

3. Per contra, Shri Thakur, learned Panel Lawyer appearing for the state/respondents relies on its return dated 13th November, 2006 and submits that the application of the petitioner was rejected not on any other ground but on the ground that the deceased employee was not regular (permanent) as is clear from Annexure R/1. Thus, the petitioner was not entitled to be considered for appointment on compassionate basis.

4. Having heard learned counsel appearing for the parties, perused the pleadings and documents appended thereto, it is evident from the service record (Annexure P/2) that the husband of the petitioner was permanent Gangman in the work charged establishment and as such, the impugned order dated 29.05.2006 (Annexure P/4) passed by the respondent-authority is without any basis and without verification of the facts involved in the present case.

5. There is no quarrel on the point that if a permanent gangman in the work charged establishment dies in harness, as per policy, one of the dependent of the deceased employee would be entitled to consideration for compassionate appointment. Admittedly, the application of the petitioner has not been rejected on any other ground except the ground that he was not a permanent Gangman in the work charged establishment.

6. The question with regard to definition of permanent Gangman came into consideration before this Court in the matter of Govind (supra). This Court, after having considered all the aspects observed as under:

15 Thereafter, in the Madhya Pradesh Workcharged and Contingency Paid Employees Revision of Pay Rules, 1977, framed under the proviso to Article 309 of the Constitution of India, the post of gangmen was shown at serial No. (xxvii) in Annexure-1, (under Rule 3), under the column "name of the post held by workcharged or contingency paid employee". The definition of the "contingency paid employee" and "workcharged employee" are the same under the provisions of the Rules, 1976 and that of the Rules, 1979. In Rules, 1979, the "permanent employee" was defined in Rule 2(c) as workcharged employee who has completed 15 years of service on after 1.1.1974. Reading the circulars dated 14.6.1974 and 29.9.1975, Rule 2(h) of the Rules, 1976, Rule 8 of the Rules, 1976 Annexure 1 to Rules 1977 and the definition enshrined in Rule 2(b) and in Rule 2(c) i.e. "permanent employees" under Rules, 1979 together, it clearly follows that the permanent gagmen are governed by the same policy for superannuation, as is applicable to the Class IV government employees, It is not in dispute that the amendment to F.R. 56 under the Act, 1967, as amended by the Madhya Pradesh Shashkiya Sevak (Adhivarishiki-Ayu) Sanshodhan Adhiniyam, 1999, (M.P. Act No. 13 of 1999), published in the Gazette (Extraordinary) on 29th April, 1999, provides for age of retirement to the Class IV government servants on attaining the age of 62 years.

7. Applying the well-settled principles of law to the facts of the case, and further that the husband of the petitioner was a permanent Gangman in the work

charged establishment, the petitioner is entitled to be considered for appointment on compassionate basis.

8. In view of the foregoing, the petition is allowed. The impugned letter/ order dated 29.05.2006 (Annexure P/4) based on letter dated 27.4.2006 (Annexure R/1) is quashed. The respondent-authorities shall consider the case of the petitioner afresh for appointment on compassionate basis in accordance with law and in light of the observations made hereinabove. No order as to costs.