

(2023) 10 SHI CK 0072
In the High Court Of Himachal Pradesh
Case No : CWPOA No. 5698 Of 2020

Sanjay Kumar

APPELLANT

Vs

State Of H.P. And Others

RESPONDENT

Date of Decision : 30-10-2023

Acts Referred:

Employee's Compensation Act, 1923 — Section 22

Citation : (2023) 10 SHI CK 0072

Hon'ble Judges : M.S. Ramachandra Rao, CJ; Jyotsna Rewal Dua, J

Bench : Division Bench

Advocate : Vijay Chaudhary, Anup Rattan, Rakesh Dhaulta, Pranay Pratap Singh, Sidharth Jalta, Arsh Rattan, Sunita Sharma, Lalita Sharma

Final Decision : Disposed Of

Judgement

Jyotsna Rewal Dua, J

1. Amro, father of the petitioner, was working as a T-mate with the respondent-Board. Amro died on 07.01.2017. Petitioner applied for employment under the Employment Assistance Scheme. The respondents examined and on 20.04.2018 rejected his case on the grounds that :- Under the Employment Assistance Policy dated 24.02.2016, the compassionate employment in case of natural death is permissible to the eligible dependant of only those deceased government employees who die in harness on or before attaining the age of 50 years, whereas Amro, with 31.12.1957 as his date of birth had died on 07.01.2017 ; Amro had crossed the age of 50 years at the time of his death. Hence, case of the petitioner was not covered under the policy dated 24.02.2016. The petitioner has assailed this decision of the respondents in the instant petition with the prayer to direct the respondents to provide employment to him on compassionate ground.

2. Learned counsel for the petitioner submitted that petitioner's father Amro alongwith one another, was deputed on 07.01.2017 by the respondent-Board to

visit village Bheet for resolving an electricity complaint. After attending the complaint and restoring the electricity supply, petitioner's father started his return journey on foot. At a place called 'Gadna', petitioner's father slipped from the hill top and fell down into a 'nallah'. He died on the spot. Learned counsel for the petitioner contended that father of the petitioner was on duty. His death was accidental & during the course of employment. Hence, the reasons given by the respondents for rejecting petitioner's case were not valid.

Learned Senior Counsel for the respondents-Board reiterated the reasons assigned in the impugned order for rejecting petitioner's case for employment under Compassionate Employment Scheme.

3. We have heard learned counsel on both sides and gone through the case file.

3(i) It is not in dispute that at the time of death of petitioner's father, the scheme for compassionate employment provided as under in relation to dependants of those employees who died in harness on or before attaining the age of 50 years :-

"(f) : The compassionate employment in case of natural death shall be permissible to the eligible dependants of only those deceased Government employees who died in harness on or before attaining the age of 50 years :

However, in relation to dependents of those employees who died in job related accidents or were killed in action during the course of employment, this age limit will not be applicable."

The proviso to above clause stipulates that cut off age of 50 years will not be applicable in relation to dependants of those employees who had died in job related accidents or were killed in action during the course of employment.

3(ii) Petitioner's father had admittedly crossed the age of 50 years at the time of his death on 07.01.2017. However, the fact is writ large from the documents on record that he did not die a natural death. His death was result of an accident in discharge of his official duties. This is evident from the fact that while claiming compensation under Section 22 of Employees Compensation Act, the petitioner had, inter-alia pleaded following in the claim petition :-

"(i) That in the course of his employment, Sh. Amaro expired. At the relevant time on 07.01.2017, the deceased was at work of respondents at village "Bheet", Tehsil Bhatiyat, District Chamba, here he was deputed by the respondents to restore the electricity supply.

(ii) That after restoring the electric supply when the deceased was returning back and reached at place Gadana, he slipped from the hill and fell down into "Nalah" and died on the spot."

The respondents-employer responded as under to the above two paragraphs :-

(i) That the contents of this para are matter of record call for no reply.

(ii) That the contents of this para are admitted.

It was thus not disputed by the respondents that petitioner's father had died in an accident during the course of his employment. 3(iii) The Commissioner under Employees Compensation Act, in his award dated 24.09.2019 has given a factual finding that "It is not in dispute that Amro had died during the course of his employment". It is not in dispute before us that the award has attained finality.

3(iv) The petitioner's father, no doubt, had crossed the age of 50 years at the time of his death, but his death was not natural. It was result of an accident that occurred during the course of discharge of official duties. The outer age limit of 50 years set out in the policy as it existed at the relevant time, could not be applied to the case of petitioner in view of the proviso to Clause (f) of that policy. The reasons given by the respondents for rejecting the case of the petitioner are thus factually incorrect.

4. For the aforesaid reasons, impugned decision of the respondents in rejecting the case of the petitioner for providing him employment on compassionate grounds contained in Annexure A-2 dated 24.02.2018 is quashed and set aside. The respondents are directed to consider the case of the petitioner afresh in light of the policy as was applicable at the relevant time, within a period of three weeks from today. A copy of the order so passed be also communicated to the petitioner.

The writ petition stands disposed of in the aforesaid terms.

Pending applications, if any, also stand disposed of.