
(2015) 07 P&H CK 0238
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 14398 of 2005

Sawroop Chand

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : (2015) 179 PLR 820

Hon'ble Judges : Amit Rawal, J

Bench : Single Bench

Advocate : Rao D.S. Nirban, for the Appellant; Keshav Gupta, A.A.G., Advocates for the Respondent

Final Decision : Disposed off

Judgement

Amit Rawal, J—By order dated 01.07.2015, I had reserved the matter pertaining to quashing of the order dated 14.03.2005, Annexure P-6, whereby, the case of the petitioner for employment under ex-gratia scheme has been rejected on the premise that there is no provision to provide employment/financial assistance to the dependent of invalid/disabled government employee as per the Haryana Compassionate Assistance. The petitioner is stated to have filed an affidavit dated 18.02.2003 exercising option for compassionate appointment in pursuance to the policy dated 23.11.1992, Annexure P-5 and in support of his contention relied upon the Full Bench judgment of this Court in Krishna Kumari v. State of Haryana and others (2012-3) 167 P.L.R. 383 (F.B.) to contend that the case of the petitioner would be covered under 1991 policy and not under 2000 policy as indicated in the impugned order.

2. The aforementioned contention has been contested by the State on the ground that as per the judgment of Hon''ble the Supreme Court in State Bank of India and Another Vs. Raj Kumar, (2010) 11 SCC 661 : (2011) 1 SCC(L&S) 150 , in case the earlier policy scheme has been abolished and new scheme has been promulgated, the claim under previous policy of the person ceases to exist.

3. While going through the facts of the case, I have come across the judgment of Hon''ble the Supreme Court in MGB Gramin Bank Vs. Chakrawarti Singh, (2013) 9 AD 253 : AIR 2013 SC 3365 : (2013) 139 FLR 469 : (2013) LabIC 3824 : (2013) 10 SCALE 223 : (2013) 4 SCT 541 : (2013) 114 SLJ 328 : (2013) AIRSCW 4801 . On going through the ratio decidendi culled out in paragraph Nos. 14 to 17 of the aforesaid judgment, it is apparent that the judgment rendered by the Full Bench of this Court in Krishna Kumari's case (supra) has been over ruled by "implication". For the sake Of brevity, the operative part of the judgment is extracted herein below:--

"15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends, on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post In State Bank of India and another (supra), this Court held that in such a situation, the case under the new Scheme has to be considered.

16. In view of the above position, the reasoning given by the learned Single Judge as well as by the Division Bench is not sustainable in the eyes of law. The appeal is allowed and the impugned judgments of the High Court are set aside.

17. The respondent may apply for consideration of his case under the new Scheme "and the appellant shall consider his case strictly in accordance with clause 14 of the said new Scheme within a period of three months from the date of receiving of application. With these observations, the appeal stands disposed of."

4. Owing to the judgment rendered by the Hon''ble Supreme Court in MGB Gramin Bank's case (supra), judgment of the Full Bench is deemed to have been over-ruled by implication. Thus, in my view, the matter requires to be re-considered by constituting a Larger Bench or by a Coordinate Bench of Krishna Kumari's case (supra) on the following question of law-

"Whether the Government employee who seeks compassionate appointment would be governed by rules/policy in operation at the time of death of an employee or the rules/policy applicable on the date when his case would be considered by the appropriate authority?"

Let the file be placed before Hon''ble the Acting Chief Justice for appropriate orders.