

(1995) 09 SHI CK 0019

In the High Court Of Himachal Pradesh

Case No : C.W.P. No"s. 563, 568 and 1271 of 1993

Sita Devi

APPELLANT

Vs

The Chairman, N.H.P.C. Ltd. and Others
 Krishna Devi
Vs Union of India (UOI) and Others
 Jobanu Vs
National Hydroelectric Project/Power Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 27-09-1995

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1996) 1 ShimLC 407

Hon'ble Judges : S.N. Phukan, C.J;Bhawani Singh, J

Bench : Division Bench

Advocate : Bandana Rana, in C.W.P. No. 563 of 1993 and Shrawan Dogra, in C.W.P. No. 568 and 1271 of 1993, for the Appellant; K.D. Shreedhar in C.W.P. No. 563 and 1271 of 1993 and for Respondent No. 2 in C.W.P. No. 568 of 1993 and Abhilasha Kumari, Additional Central Government Standing Counsel for Respondents No. 1 and 3 in C.W.P. No. 568 of 1993, for the Respondent

Final Decision : Dismissed

Judgement

S.N. Phukan, C.J.—By this common judgment and order, we dispose of three writ petitions registered as Civil Writ Petitions No. 563, 568 and 1271 of 1993. It may be stated that in writ petitions No. 563 and 568 of 1993, the Court took suo motu action on the petitions received from the Petitioners.

2. The facts of C.W.P. No. 563 of 1993 are as follows:

The Petitioner is a widow and her husband late Mr. Bal Bahadur was working under the Respondent-Corporation and he died on 5-3-1489 in a jeep accident and thereafter she applied to the Corporation for appointment on compassionate ground, which was refused. Hence, the present petition According to the Petitioner, family pension has not been granted.

3. The writ petition registered as C.W.P. No. 568/93 has been filed by Smt.

Krishana Devi, widow of late Hari Singh. According to the Petitioner, her husband died on 1-5-1989 while on service and, therefore, she applied for employment under the Respondent-Corporation on compassionate ground, but no appointment was made. It has also been stated in the petition that though she filed an application for grant of family pension, it has not been allowed.

4. The writ Petitioner in C.W.P. No. 1271 of 1993, is the widow of late Shri Hoshiar Singh, who was working as a Fitter under the Respondent Corporation. Her husband died on 29-4-1989 and she also applied for employment on compassionate ground under the Respondent- Corporation, which was denied. Hence, the present writ petition.

5. It may be stated that in all the three petitions, reference has been made regarding appointment on compassionate grounds to other persons.

6. In the reply-affidavit filed on behalf of the Corporation, it has been stated that by letter dated 15-7-1986, the Respondent-Corporation after considering the question of appointment on compassionate ground of the next of kin of the deceased employee, it was decided that all cases where the Project Head recommends compassionate employment of a dependent of a deceased employee, who has died while on duty by an accident arising out and in the course of employment, detailed proposal should be forwarded to the Corporation for approval. In the said letter, guidelines were given that only one dependent of the deceased employee may be given employment subject to suitability of the candidate and availability of an appropriate vacancy and such appointments may be allowed only at the induction level of the concerned group/discipline and the appointment should be subject to fulfilment of job specifications by the incumbent concerned. From the letter, we find that this policy decision was taken keeping in view the surplus manpower, which most of the Projects have been carrying in excess of their requirements. Subsequently, there was a Memorandum of Settlement under the Industrial Disputes Act, 1947, which was signed between the Respondent-Corporation, registered trade Unions and the apex level Unions and according to the said Memorandum, it was decided that the above scheme for appointment on compassionate grounds shall continue. A new policy decision was also taken regarding appointment on compassionate grounds and according to the said decision all other cases where a workman dies while in service, but not due to accident arising out of and in the course of employment, the request for compassionate appointment by the next of the kin of the deceased workman shall be examined by a Committee to be constituted for this purpose. This Committee through their quarterly periodic meetings shall go into the merits of each case and subject to its recommendations and specific approval of CMD, next of the kin will be provided employment. It was also decided that next of the kin shall mean any one dependent out of the wife or sons including legally adopted or unmarried daughters of the deceased workman. According to the said Memorandum of Settlement, this new policy decision would be effective in case of death on or after 1-1-1991.

7. In the reply-affidavit filed in Civil Writ Petition No. 563 of 1993, it has been stated that the husband of the Petitioner died due to accident which did not occur out of and in the course of employment, but he died in a jeep accident on 5-3-1989. Therefore, the case of the Petitioner is not covered by the policy decision taken by the Corporation. It has also been stated that after death of her husband, the Petitioner was paid Rs. 74,264.40 paise in respect of Provident Fund, death relief Scheme, Gratuity payment, leave encashment and others, and in addition, she has also been paid compensation by the Motor Accident Claims Tribunal, Chamba in MAC case No. 20 of 1989 amounting to Rs. 89,212. Regarding the allegation of the writ Petitioner that next of the kin of late Chimnu Ram was given employment on compassionate ground, it has been stated that his death occurred during 1991, therefore, the case of his son, who was given appointment on compassionate ground is covered by the Memorandum of Settlement.

8. In the reply-affidavit in C.W.P. No. 568 of 1993, it has been stated that the policy of the Corporation, which was in vogue during 1989 when the death of Hari Singh, the husband of the present Petitioner occurred on 1-5-1989, does not cover the case of the present Petitioner. Regarding the claim of the family pension, it has been stated that her petition has been forwarded to the Head Office of the Respondent- Corporation, i.e. Regional Provident Fund Commissioner (Central). Regarding allegation of the Petitioner that one Devi Singh was given appointment on compassionate ground, it has been stated that death of his father Ghimanu Ram took place in the year 1991, therefore, this case is covered under the Memorandum of Settlement.

9. In the reply-affidavit filed in Civil Writ Petition No. 1271/93, it has been stated that the husband of the writ Petitioner died on 29-4-1989 while he was on casual leave and the death took place while he was proceeding to his home town. Therefore, it has been denied that he died in harness and his death took place as a result of accident arising out of and in the course of employment. According to the Respondent-Corporation, his case does not come under the policy decision of the Corporation, which was in force during 1989. In reply to the allegation of the writ Petitioner that Smt. Bimla Devi wife of late Kehar Singh was given employment though he died while in service during September 1985, it has been stated in the reply-affidavit that late Kehar Singh died on 23-9-1988 due to accident arising out of and in the course of employment, hence this case is covered under the policy decision of the Corporation, which was in existence at that time.

10. Heard learned Counsel for the parties.

The main thrust of the arguments on behalf of the Petitioners is that fixing the date for appointment on compassionate ground when a workman dies while in service not due to accident arising out of and in the course of employment as on 1-1-1991 is arbitrary, discriminatory and artificial and, as such, liable to be set aside and further for all such cases no date should be fixed.

11. Appointment on compassionate ground cannot be claimed as a matter of right unless there is a policy decision of the State or any instrumentality of the State. This is purely a matter of policy decision for the executive. The wisdom in a policy decision is not justiciable unless such policy decision is wholly capricious, arbitrary and whimsical thereby offending the Rule of law as enshrined in Article 14 of the Constitution or such policy decision offends any statutory provisions or the provisions of the Constitution. This Court need not embark on uncharted ocean of public policy; (See *State of Rajasthan Vs. Sevanivatra Karamchari Hitkari Samiti*,

12. In the cases in hand, admittedly there was no provision for appointment on compassionate grounds prior to 15-7-1986. Only by letter dated 15-7-1986 vide Annexure R-2 to the reply-affidavit filed in C.W.P. No. 1271/93, the Corporation for the first time took the decision to give employment on compassionate ground where an employee has died as a result of accident arising out of and in the course of employment. Therefore, the right for compassionate appointment of such cases prior to 15-7-1986 was not at all available to the employees of the Corporation. Subsequently, as stated above, by the Memorandum of Settlement, it was decided to give compassionate appointment in other cases also where a workman dies while in service, but w.e.f. 1-1-1991. Now the question is whether this policy decision, which was taken after due deliberations by the Corporation with the Unions of the employees is arbitrary or not.

13. Learned Counsel for the Petitioners have mainly relied on the decision of the apex Court in *D.S. Nakara and Others Vs. Union of India (UOI)*. In this case, it was decided that the pensioners form a class as a whole and cannot be micro-classified by an arbitrary, unprincipled and unreasonable eligibility criterion for the purpose of grant of revised pension.

14. *Nakara's case (supra)*, came up for consideration before the apex Court in *Krishena Kumar and Others Vs. Union of India and others*, Petitioners in that case were retired railway employees, who were covered by or had opted for the Railway Contributory Provident Fund Scheme, which was replaced in the year 1957 by the Pension Scheme. In this case, it was held by the apex Court that in *Nakara's case*, the Court treated the pension retirees only as a homogeneous class and it was not held that pension retirees and the PF retirees formed a homogeneous class and that any further classification would be violative of Article 14. It was also held that it would not be reasonable to hold that what is applicable to the pension retirees must also equally be applicable to PF retirees.

15. In *State Government Pensioners' Association and Others Vs. State of Andhra Pradesh*, the question that came up before the apex Court is whether payment of larger amount of gratuity with prospective effect from the specified date does offend Article 14 of the Constitution and whether gratuity must be paid at a higher rate to all those who had retired before the date of the upward revision. It was held that it cannot be said that no upward revision of gratuity amount can be made in harmony with Article 14 unless it provides for payment on the

revised basis to all those who had already retired between the date of commencement of the Constitution and the date of upward revision.

16. In *All India Reserve Bank Retired Officers Association and Ors. v. Union of India* and *Anr.* 1992 Suppl (1) SCC 664, the apex Court considered fixation of cut off date for introducing - the Pension Scheme by the Reserve Bank of India for the first time in substitution of Contributory Provident Fund Scheme in the said Bank. New entrants retiring on or after 1st November, 1990 i.e. the date of coming into force of the Pension Regulations automatically becoming entitled to the benefit of the Scheme those in the service prior to 1st November, 1990 and those retiring on or after 1st January, 1986 but before 1st November, 1990 who had given option. This benefit of Pension Scheme was not extended to the persons who retired before 1st January, 1986. It was held that fixation of cut-off date is valid and not arbitrary. The Court farther held that in fixing the cut off date, the Union of India and Reserve Bank had not acted mala fide with a view to deprive those persons who retired on or before 31st December, 1985.

17. In *Indian Ex-Services League and others Vs. Union of India*, the apex Court considered whether the Office Memorandum of the Government of India whereby the formula for computation of pension was liberalised, but made applicable only to civil servants who were in service on 31st March, 1979 and retired from service on or after that date. It was held that the ratio laid down in *Nakara's* case (supra), has to be read as one of limited application and its ambit cannot be enlarged to cover all claims made by the pension retirees or a demand for an identical amount of pension to every retiree from the same rank irrespective of the date of retirement.

18. In *All India Reserve Bank Retired Officers Association's* case (supra), for the first time the Pension Scheme was introduced and cut-off date was fixed. This was held to be valid by the apex Court.

As stated above, similar view was also taken in *Indian Ex-services League and Ors.* (supra), by the apex Court.

19. Thus, it appears that *Nakara's* case, was confined only to pension retirees, who form homogeneous class. But this ratio was distinguished in the subsequent decision of the apex Court, as mentioned above Therefore, the ratio laid down in *Nakara's* case cannot be made applicable to each and every case and it will depend on the facts of each case The Court has only to see whether any new Scheme introduced for appointment on compassionate ground fixing the cut off date violates Article 14 of the Constitution. In other words, whether fixing of such a date is arbitrary or not.

20. From the facts of all the cases, it is clear that initially the Respondent-Corporation had no Scheme for employment on compassionate ground. Though the Corporation had surplus workers, it decided to give in the year 1986 the benefit of appointment on compassionate ground for the family of an employee on his death due to accident arising out of and in the course of employment. On

the demand of the Unions, a new Scheme was introduced for giving employment on compassionate ground to the members of the family of an employee on his death while in service and cut-off date was fixed as on 1-1-1991. This date was fixed after due deliberations between the Respondent-Corporation and the Unions and it cannot be said that there was any arbitrariness. This being a matter of policy, this Court should not interfere unless it is arbitrary, whimsical and capricious. This policy cannot be said to be whimsical and capricious as it was decided, as stated above, after due deliberations between the Management and the Unions. The Unions are supposed to look after the welfare of an employee working in the Respondent-Corporation and, therefore, while fixing the above date for giving benefit to the new policy decision not only the Respondent-Corporation but the Unions also duly took care of the interest of the employees.

21. For the reasons stated above, the above date fixed for giving benefit to the workmen is reasonable and does not offend Article 14 of the Constitution.

22. Though, frankly speaking the present Petitioners are not entitled to get any direction for giving them employment on compassionate ground, but we find that these three Petitioners who are widows have been fighting the battle for getting employment for their survival, therefore, the Corporation may re-consider their cases for employment on compassionate ground and if such employment is given, it will not create any precedent for other employees to approach this Court to get the benefit.

With the above observations, the writ petitions are dismissed. Costs on the parties.