
(1993) 09 P&H CK 0059

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 13358 of 1991

Smt. Chandro Devi and Others

APPELLANT

Vs

The State of Haryana and Others

RESPONDENT

Date of Decision : 01-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (1993) 105 PLR 32

Hon'ble Judges : V.K. Bali, J

Bench : Single Bench

Advocate : Suryan Kant and Ranjeet Saini, for the Appellant; Jagdev Sharma, Addl. A.G. and Suresh Monga, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

V.K. Bali, J.—Smt. Chandro Devi alongwith her son Ghan Shyam Dass who happen to be widow and son of Shri Dharam Singh have come to this Court under Articles 226/227 of the Constitution of India so as to seek a writ in the nature of mandamus directing the respondents to give appointment to petitioner No. 2 on any Class III post on compassionate ground in pursuance of policy decision of the Government to accommodate one or two dependents of the deceased who died while he was in service of the Government.

2. The brief facts of the case reveal that deceased-husband of petitioner No. 1 and father of petitioner No. 2 Shri Dharam Singh was working as a J.B.T. Teacher in the Education Department, Government of Haryana. He Joined the service of the respondent State on 27.4.1954 and while in service, he died on 27.7.1984. It is pleaded that the Government of Haryana has laid down a policy decision dated 22.12.1970 so as to give ex-gratia benefits to the dependents of those Government employees who died in service. One such benefit is to employ one or two dependents of the deceased Government employee even if the Service Rules have to be relaxed. At the time of death of Dharam Singh petitioner No. 2 was minor and, therefore, petitioner No. 1 moved an application on 11.10.1985

for appointment of her elder son namely Krishan Kumar on the post of Draftsman on compassionate ground. The elder son of petitioner No. 1 was First Class Matriculate with diploma in Draftsmanship. The application was sent through proper channel and the same was recommended by the Headmistress, Government Girls High School, Julana District Jind to the Sub Divisional Education Officer on 11.10.1985. It is pleaded that the application was further recommended by the Sub Divisional Education Officer Jind to the District Education Officer Jind on 18.11.1985. Despite the recommendations, as referred to above, the prayer of petitioner No. 1 was not accepted and her elder son was not appointed on any post. Meanwhile it is stated that petitioner No. 2 also passed 10 + 1 examination and became major and eligible for appointment to the Government service. Petitioner No. 1, therefore, made another application for appointment of her son to any Class III post. It is stated that petitioner No. 2 was born on 18.4.1974 and attained minimum age required for Government service on 18.4.1991. This application was made three years prior to the date when petitioner No. 2 attained majority. When the application aforesaid was not attended to, a detailed representation was made and when that also brought no tangible result, the present petition was filed in this Court.

3. The cause of petitioner has been opposed and in the written statement filed by respondents No. 1 and 2, preliminary objection has been taken that the petitioner No. 1 applied for employment for her elder son in view of death of his father. During the pendency of the case, the son of petitioner No. 1 got employment in Indian Air Force. Petitioner No. 1 therefore, moved a second application for reservation of service to her another son i.e. petitioner No. 2 and the same has been rejected by the State Government in view of policy letter No. 16/21/88-6 CS. S-II dated 19.5.1989 whereby it has been enjoined that the application for employment has to be made within three years from the date of death of employee. It is pleaded that the writ petition is barred by time. It is further stated that the writ is not maintainable in the present form as elder son of Petitioner No. 1 has already been employed in Indian Air Force. On merits, the case of the respondents is that policy decision dated 22.12.1970 Annexure P1 stood superseded by another policy decision dated 19.5.1989. As per policy decision dated 19.5.1989, Annexure Rule 1, the petitioner was to apply within three years of the death of the employee. Her first application was moved in October, 1985 which, it is stated, was taken back by her because her son for whom the application was moved got employment in the Indian Air Force. Thereafter second application was moved which was sent by respondent No. 2 for consideration. Inasmuch as petitioner No. 1 had applied after three years from the date of death of her husband, her case was rejected. It has also been pleaded in para No. 9 of the written statement that the family of the deceased was not suffering any financial hardship.

4. After hearing the learned counsel for the parties and going through the records of the case, I am of the considered view that the cause of the petitioners is meritorious and, therefore, this petition must succeed. It is not disputed that

elder son of petitioner No. 1 had not got employment on compassionate grounds. By dint of his own merit, he was settled in India Air Force. A Division Bench of this Court in "Ratna Devi v. The Secretary Haryana State Electricity Board, Chandigarh (1987) 92 P.L.R. 374 held" that the object is that where the employee has died in harness, one of his dependents or family members should be provided a suitable employment, keeping in view his qualifications etc. under the Board itself. It is wholly irrelevant for the purpose of these instructions that some other member of the family of the deceased employee has also been able to seek employment somewhere else, that is, not with the Board, Therefore, the fact that the elder son of the deceased happens to be in employment of some Bank cannot deprive the petitioner of her claim to secure employment to her son under the Board in whose service her husband was employed before his death."

5. In so far as the plea of limitation is concerned, the same in the facts of the case has necessarily to be rejected. There may be cases where an employee would die leaving infants behind him. In such cases, there cannot be any occasion for making any application on compassionate grounds within three years. It is natural that such people would acquire qualification and age for employment after doing some education which will obviously take long years from the time when their bread winner died. The limitation of three years is to be construed in that light and cannot be made applicable in every case. In other words, such a policy can be made applicable only where in the family of the deceased there are persons who can be employed. In so far as the policy decision of the Government to give employment to one dependent of the deceased is concerned, the same has not been denied.

6. In view of what has been said above, this writ petition is allowed. A direction is issued to the respondents to give employment to petitioner No. 2 commensurate to his educational qualifications within a period of three months from today. There shall, however, be no order as to costs.