
(2010) 12 SHI CK 0424
In the High Court Of Himachal Pradesh
Case No : CWP (T) No. 6404 of 2008

Smt. Geeta Devi	Vs	APPELLANT
State of H.P. and Others		RESPONDENT

Date of Decision : 03-12-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) 12 SHI CK 0424

Hon'ble Judges : Kuldeep Singh, J

Bench : Single Bench

Judgement

Kuldeep Singh, J.—The Petitioner has prayed a direction to Respondents to consider the case of the Petitioner for compassionate appointment on any Class-IV post on regular basis. The prayer for family pension to the Petitioner w.e.f. 22.2.1996 being the widow of Lekh Raj who died on 22.1.1996, as per Rules alongwith arrears and interest at the rate of 18% per annum has also been made. The Petitioner has also prayed for payment of death gratuity to her as per Rules.

2. The case of the Petitioner is that her husband Lekh Raj was appointed as Physical Training Instructor against a temporary post of JBT teacher in G.P.S. Fanoutha(Tissa) in February, 1985. Lekh Raj was dis-Whether the reporters of the local papers may be allowed to see the Judgment? Yes engaged from service on 24.5.1985 being ad-hoc appointee. Lekh Raj and others had filed CWP No. 251/85 in the High Court and on 26.6.1985 the High Court had directed the Respondents to continue the ad-hoc appointment of the Petitioner till the appointment of regular appointee. After the decision of the High Court, Lekh Raj was again appointed vide office order dated 24.7.1985 against JBT post on ad-hoc basis in Primary School, Fanoutha (Tissa), Lekh Raj gave his joining on 28.7.1985 to Block Primary Education Officer, Tissa. Lekh Raj rendered continuous service to the department from February, 1985.

3. Lekh Raj was selected in the interview held on 23.2.1995 and was appointed

as Physical Education Teacher vide office order dated 10.11.1995 and was directed to join within 15 days at Middle School, Kumar (Pangi). Lekh Raj was ill. He proceeded on leave on 18.11.1995 and was admitted in Oswal Cancer Hospital, Ludhiana on 21.11.1995 for treatment. The office order dated 10.11.1995 was received by the Petitioner at her village on 27.11.1995 on behalf of her husband Lekh Raj. The Petitioner informed Lekh Raj of his regularization on 28.11.1995 at Ludhiana. The Medical Officer, Oswal Cancer Hospital, Ludhiana on 29.11.1995 had written to Respondent No. 3 that Lekh Raj was unwell and was undergoing treatment and he was not in a position to join his regular appointment. It was requested that appointment should not be cancelled till his recovery. Lekh Raj on 4.12.1995 had requested Respondent No. 3 vide Annexure A-5 to give him posting in some other school on regular basis. He also requested that his joining time may be extended. Lekh Raj died on 22.1.1996 while in service.

4. The Petitioner and her family were left in indigent circumstances after the death of Lekh Raj with no means of subsistence. It became difficult for the Petitioner to maintain herself and her four minor children. The Petitioner had no source of income except a meager income of Rs. 9000/-per annum from a piece of land.

5. The further case of the Petitioner is that Respondent No. 1 has framed a Scheme for compassionate appointment to the dependants of Govt. servants in case of death of Govt. servant while in service. The compassionate appointment is to be given in order of priority to a widow, son etc. of a Govt. servant. The compassionate appointment Scheme provides that appointment is to be made against lowest rung of Class-III/IV posts. A candidate for the purposes of seeking appointment should possess the minimum educational qualifications as per Recruitment and Promotion Rules. The educational qualification for widow against Class IV post is relaxable. The request for compassionate appointment should be made within three years from the death of the Govt. servant.

6. The Petitioner has qualification upto 5th standard and was dependant on Lekh Raj who died while in service. The Petitioner had submitted a representation dated 8.7.1996 to Respondent No. 2, requesting him to consider her case for compassionate appointment and also for grant of pension as per Rules in view of the indigent circumstances, of her family. The Respondent No. 2 on 20.7.1996 had directed District Education Officer (Primary), Una to take action on her representation, who was not competent authority for redressing the grievance of the Petitioner, hence he had written a letter on 1.8.1996 to Respondent No. 2- Director Primary Education that the District Primary Education Officer, Chamba-Respondent-3 may be directed to do the needful. The Petitioner in November, 1996 had applied on the format for the post of peon. The Petitioner even got a notice issued through her Advocate on 14.11.1998, but to no effect.

7. It is also the case of the Petitioner that Respondents could not deny the right of consideration for the appointment as peon to Petitioner on the grounds that as

per Recruitment and Promotion Rules, the minimum qualification required to the post of peon is 8th pass whereas the Petitioner was only 5th class pass. The Clause 7 (c) of the Policy for appointment on compassionate ground provides that, if the appointment is to be given to a widow, who does not possess the minimum educational qualifications, required for the post, then the employer was duty bound to relax the minimum educational qualifications in case of a widow, in order to give effect to the policy and to mitigate the indigent circumstances in which the family of the deceased employee was left, after his death. The Petitioner has even stated that for any reason if minimum qualifications cannot be relaxed in the case of the Petitioner for appointing her as peon then the Respondents should consider the case of the Petitioner for the appointment as water carrier on regular basis for which minimum qualifications is 5th pass and Petitioner is eligible for that post. It has been stated that Respondents have given compassionate appointments to other similarly situated persons but they have discriminated the Petitioner by not giving her appointment and thus Respondents have violated Articles 14 and 16 of the Constitution of India.

8. The Respondents No. 1 to 3 have filed joint reply in which it has been stated that late Lekh Raj was appointed as ad-hoc teacher against the post of JBT in the year 1985 and in the year 1995 deceased Lekh Raj was appointed on regular basis as PET by the District Education Officer, Chamba but on account of treatment late Lekh Raj did not join and later on died on 22.1.1996. Lekh Raj never worked on regular basis in the establishment of the Respondents, but served only as ad-hoc employ. In these circumstances, the Petitioner is not entitled to the family pension under CCS Pension Rule, 1972 (for short 1972 Rules).

9. It has also been stated that Petitioner had submitted an application for appointment on compassionate ground but she is not entitled for compassionate appointment as her husband Lekh Raj joined JBT teacher on ad-hoc basis and his service was never regularised as PET. The husband of the Petitioner was selected in the interview and was appointed as PET on regular basis on 10.11.1995 but he could not join due to his illness.

10. Lekh Raj never informed District Education Officer (Primary) regarding leaving of station to undergo treatment. Lekh Raj had not submitted an application for leave nor sought any time for joining as PET on regular basis. The Petitioner and her husband Lekh Raj had never informed the District Education Primary Officer regarding the leaving of station to undergo treatment. It has been denied that Lekh Raj died while in service with Respondents. The Respondents No. 1 to 3 have prayed for dismissal of the petition.

11. The Respondent No. 4 has filed separate reply and has submitted that family pension case of the deceased in favour of the Petitioner was not forwarded by Respondent department. In case family pension case of the Petitioner is forwarded by the department then that will be considered in accordance with rules.

12. I have heard learned Counsel for the parties. On behalf of the Petitioner, it has been submitted that Petitioner is entitled to compassionate appointment, family pension, death gratuity on account of death of Lekh Raj who died while in service on 22.1.1996. The learned Counsel for the Petitioner for compassionate appointment has relied H.P. Govt. Department of Personnel O.M. dated 18.1.1990. It has been submitted that without conceding or admitting even if it is construed that deceased Lekh Raj was not regular Govt. servant at the time of his death and he was only an ad-hoc Govt. servant still in view of para 2(b) of O.M. dated 18.1.1990, the Petitioner is entitled to compassionate appointment inasmuch as para 2(b) of the policy provides that the employment assistance on compassionate grounds will be allowed in order of priority only to widow or son or unmarried daughter of a daily wage employee who dies while in service after having rendered at least 5 years service with not less than 240 days on daily wage basis in a year leaving his family in immediate need of assistance. In that case compassionate employment would be on daily wages only. It has been submitted that the Petitioner is entitled to compassionate appointment.

13. The learned Counsel for the Petitioner has relied Rule 50(1)(a) for death gratuity, Rule 54 for family pension of 1972 Rules, Rule 2(d), sub Rule 1(B) of Rule 10 of Central Civil Services (Temporary Services) Rules, 1965 (for short 1965 Rules), Rule 2(h) (ii) of Central Civil Services Classification Control and Appeal Rules, 1965 (for short CCS and CCA Rules). The learned Counsel for the Petitioner has submitted that Petitioner is entitled to reliefs prayed in the petition. On the contrary, the learned Addl. Advocate General has submitted that Petitioner is not entitled to any relief prayed in the petition.

14. Lekh Raj was appointed as Physical Training Instructor against a temporary post of JBT teacher in February, 1985. He was disengaged on 24.5.1985 being ad-hoc appointee. He was again appointed on 24.7.1995 against JBT post on ad-hoc basis and he joined on 28.7.1985. Lekh Raj was selected in the interview and was appointed Physical Education Teacher on 10.11.1995. He was given 15 days time to join at Middle School, Kumar (Pangi). Lekh Raj was ill. The Petitioner has contended that Lekh Raj had proceeded on leave on 18.11.1995 for treatment. It has also been contended that on 29.11.1995 Lekh Raj had written to Respondent No. 3 that he was not well and was undergoing treatment and was not in a position to join his regular appointment. It is also the contention of the Petitioner that Lekh Raj requested that his joining time may be extended.

15. It has not been denied by Respondents No. 1 to 3 that Lekh Raj was appointed as regular teacher on 10.11.1995. However, Respondents No. 1 to 3 have contended that Lekh Raj in pursuance of his regular appointment on 10.11.1995 could not join on account of his illness. Lekh Raj had died on 22.1.1996. It is the contention of Respondents No. 1 to 3 that Lekh Raj having failed to join in pursuance of regular appointment order dated 10.11.1995, therefore, it cannot be said that Lekh Raj had died after completion of one year of continuous service and therefore, Petitioner is not entitled to death gratuity

and family pension on account of death of Lekh Raj.

16. The Rule 2(d) of 1965 Rules defines "temporary service" means the service of a temporary Government Servant in a temporary post or officiating service in a permanent post, under the Government of India. The relevant part of sub rule (1-B) of Rule 10 of 1965 Rules provides that in the event of death of a temporary Government Servant while in service, his family shall be eligible for family pension and death gratuity at the same scale and under the same provisions as are applicable to permanent Central Civilian Government Servants under the Central Civil Services (Pension Rules, 1972). The Rule 2(h)(ii) of CCS and CCA Rules defines "Government Servant" means a person who is a member of a service or holds a civil post under the State Government and whose services are temporarily placed at the disposal of Central Government.

17. Rule 54 (2) (a) of 1972 Rules provides that without prejudice to the provisions contained in Sub-rule (3), where a Government servant dies after completion of one year of continuous service the family of the deceased shall be entitled to family pension, 1964. The explanation to sub Rule 2 further provides that the expression "continuous one year of service" wherever it occurs in this rule shall be construed to include "less than one year of continuous service" as defined in Clause (aa). The Rule 50 (1)(b) of 1972 Rules provides, if a Government servant dies while in service, the death gratuity shall be paid to his family in the manner indicated in Sub-rule (1) of Rule 51 at the rates given in the table.

18. The perusal of above provisions of CCS and CCA Rules, 1965 Rules, 1972 Rules makes it clear that for entitlement of death gratuity, family pension what is necessary is continuous service for certain period. The office order dated 24.7.1985 indicates that the persons mention in the said office order including Lekh Raj were appointed on ad-hoc basis. The office order dated 10.11.1995 provides that Lekh Raj was appointed as PET on regular basis and he was given 15 days time to join at Middle School, Kumar (Pangi). The endorsement No. 3 on office order dated 10.11.1995 directed the candidates concerned for compliance. It also provides that if terms and conditions of appointments were acceptable, they should report for duty to the concerned Head (sic) alongwith their certificates, failing which appointment shall stand cancelled. In terms of office order dated 10.11.1995 it was incumbent upon the appointee to join within 15 days in token of acceptance of terms and conditions, failing which the appointment shall stand, cancelled. This clearly indicates that appointment shall come to an end in case appointee would fail to join in terms of office order dated 10.11.1995.

19. The case of the Petitioner is that the office order dated 10.11.1995 was received by Petitioner on 27.11.1995. The Medical Officer, Oswal Cancer Hospital on 29.11.1995 had written to Respondent No. 3 that Lekh Raj was not well and was not in a position to join regular appointment. It was requested that his appointment should not be cancelled. It has also been stated that Lekh Raj on

4.12. 1995 had written letter to Respondent No. 3 requesting him to give him a posting in some other school on regular basis. The Respondents No. 1 to 3 have denied that Lekh Raj had submitted any application for leave or sought any time for joining as PET on regular basis. There is nothing on record that competent authority granted leave to Lekh Raj and extended the joining time of Lekh Raj provided in the office order dated 10.11.1995. This being the position, the appointment of Lekh Raj vide office order dated 10.11.1995 would stand cancelled after 15 days. The Petitioner has pleaded that she had received the office order dated 10.11.1995 on 27.11.1995 and she informed Lekh Raj of his regularization on 28.11.1995, hence even if, it is assumed that time would start from receipt of office order dated 10.11.1995 on 28.11.1995 still the joining was to be given upto 13.12.1995. There is no reason to disbelieve the stand of Respondents No. 1 to 3 that Lekh Raj till 13.12.1995 neither accepted the office order dated 10.11.1995 nor gave his joining in pursuance to office order dated 10.11.1995 upto 13.12.1995, nor submitted any application for leave. Thus, it cannot be said that Lekh Raj had accepted office order dated 10.11.1995 of his regular appointment as PET and joined the service in pursuance to office order dated 13.12.1995.

20. It has been contended on behalf of the Petitioner that since Lekh Raj had been working on ad-hoc basis since February, 1985, he was disengaged on 24.5.1985 but was again re-engaged on 24.7.1985 and he rejoined after re-engagement on 28.7.1985. The ad-hoc service of Lekh Raj is liable to be counted for family pension, death gratuity. In Rudra Kumar Sain and Others Vs. Union of India and Others, it has been held that if an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made.

21. In Rudra Kumar Sain, It has also been held that in service jurisprudence, a person who possesses the requisite qualification for being appointed to a particular post and then he is appointed with the approval and consultation of the appropriate authority and continues in the post for a fairly long period, then such an appointment cannot be held to be "stopgap or fortuitous or purely ad hoc".

22. In the present case, it is not the case of the Petitioner that initially in February, 1985, Lekh Raj was appointed by following procedure prescribed in the Recruitment and Promotion Rules nor it is the case of the Petitioner that for all intents and purposes the appointment of Lekh Raj in February, 1985 or in July 1985 was regular appointment but it was given nomenclature only of ad-hoc appointment. In fact the subsequent regular appointment of Lekh Raj on 10.11.1995, excludes every possible argument that Lekh Raj in February, 1985

and July, 1985 was appointed on regular basis. Once the appointment of Lekh Raj prior to 10.11.1995 was only ad-hoc appointment, therefore, it cannot be said that in terms of above provisions of CCS CCA Rules, 1965 Rules and 1972 Rules Lekh Raj died while in service on 22.1.1996. Lekh Raj in pursuance to office order dated 10.11.1995 had not accepted the appointment nor joined the service; therefore, Petitioner is not entitled to take any benefit of office order dated 10.11.1995 for the purpose of family pension, death gratuity on account of death of Lekh Raj on 22.1.1996.

23. The case of Petitioner for compassionate appointment is altogether different. The O.M. dated 18.1.1990 provides compassionate appointment in case of a daily wage employee who dies while in service after having rendered at least 5 years service with not less than 240 days on daily wage basis in a year leaving his family in immediate need of assistance. In such cases compassionate employment would be on daily wages only. Lekh Raj was an ad-hoc employee and he served the department from February, 1985 to May, 1985 and then from July 1985 till he died on 22.1.1996. An ad-hoc employment is certainly better than "daily wage" employment.

24. The policy of compassionate appointment is to give immediate help to needy family. It has come on record that Petitioner had applied for compassionate appointment as peon which is Class-IV post, her case was rejected only on the ground that Lekh Raj was an adhoc employee and was not in regular service. The Respondents No. 1 to 3 have not shown any other cause for rejecting the case of the Petitioner for compassionate appointment. The case of the Petitioner for compassionate appointment was not considered properly and was wrongly rejected by the competent authority. The Petitioner was entitled to compassionate appointment against appropriate post in the department after the death of her husband Lekh Raj. The Petitioner had applied in November, 1996 for compassionate appointment. The date of birth of Petitioner as per Annexure 9 School leaving Certificate is 7.4.1958. Now Petitioner is about 52 1/2 years old. In these circumstances no purpose will be effectively served even if Petitioner is given appointment on compassionate grounds. It will be in the interest of the family if instead of Petitioner one son of the deceased is considered for compassionate appointment.

25. In view of above discussion, the petition is partly allowed. The Respondents No. 1 to 3 are directed to consider the case of one son of deceased Lekh Raj for compassionate appointment in accordance with policy of compassionate appointment in case such son applies to Respondents No. 1to3/competent authority for compassionate appointment in six weeks from today alongwith a copy of this judgment, the Respondents No. 1to3/competent authority shall take decision on the application of such son in further three months and implement the decision in further one month thereafter. The remaining claims of the Petitioner are rejected. No costs. .