

(2016) 12 P&H CK 0116
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19459 of 2009

Sonu

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 12-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Haryana Compassionate Assistance to Departments of Deceased Government
Employees Rules, 2005 — Rule 18(2)
Haryana Compassionate Assistance to the Dependents of Deceased Government
Employees Rul

Citation : (2017) 1 SCT 785

Hon'ble Judges : Rajiv Narain Raina, J.

Bench : Single Bench

Advocate : Manoj Chahal, Advocate, for the Petitioner; J.S. Bedi, Addl. AG, Haryana, for the Respondents

Final Decision : Allowed

Judgement

Rajiv Narain Raina, J. - The petitioner was rendered orphan at the age of 47 years. He was born on 03.03.1989. His mother died on 05.01.1993. His father, a Constable in Haryana Police died on 17.08.1993 while in service. The petitioner pursued his studies and passed his matriculation examination in 2004 and the secondary examination in 2007. At the age of 19 years, he requested for ex gratia appointment in the office of Director General of Police, Haryana. The request was not considered and he served a legal notice demanding justice by consideration of his case, which also bore no fruit. He approached this Court by filing CWP No.18455 of 2008, which was disposed of with a direction to decide the legal notice served by the petitioner. The Senior Superintendent of Police, Rohtak vide order dated 01.01.2009 has rejected the case of the petitioner for the following reasons:

(i) The petitioner did not apply for benefit under ex gratia scheme within statutory period of three years. Since the petitioner did not avail that opportunity

at that time, he cannot claim any benefit under the scheme, which was in force at that time;

(ii) The petitioner has never visited the office seeking compassionate appointment or grant him ex gratia financial assistance;

(iii) The Department has never given any assurance that when the petitioner became major he will be appointed compassionately in place of his father;

(iv) The Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2006, notified on 01.08.2006, leaves no accommodation for compassionate appointment; &

(v) The petitioner's family is getting family pension after the death of his father and all other dues have already been released/received by the family.

The claim has been rejected as devoid of merit.

2. The State has filed a reply to contest the same on the same lines as are assigned in the impugned order.

3. When this matter came up for hearing on 22.07.2010, Coordinate Bench passed the following interim order:

"It is unfortunate case of Orphan, who is made to face one hurdle after another. This prayer for compassionate appointment is being declined on the ground that he is delayed in making the approach. The counsel for the petitioner also contest the submission that he has already been granted pension. The person filing and signing the reply is making reference to the order passed by the Supreme Court that delay in seeking compassionate appointment is to be taken into consideration and loses significance after lapse of time. This stand is taken without considering the facts that the petitioner was an orphan and had no one to tell him or to guide to make an application. How could a young orphan be expected to act in this manner. Insensitivity of the person filling the reply is clearly apparent and seen. Let the person filing the reply i.e. Senior Superintendent of Police, Rohtak be present in the Court on the next date.

Adjourned to 28.07.2010. This requirement be communicated to him by the State counsel."

4. On the date fixed, the Officer was involved in a conference on 'Security Administrators of the Participating Common Wealth Games' and sought exemption from personal appearance. On 09.08.2010, in the presence of Anil Kumar Rao, IPS, Joint Commissioner of Police, Gurgaon the following order was passed:

"Mr. Anil Kumar Roa, IPS, Joint Commissioner of Police, Gurgaon is present in Court. The issue involved in this case is impressed upon the officer, who says that the case is not dealt with him, but it was expected from him to look into such like cases and to act to remedy the situation. Let Mr. Rathee have

instructions if some arrangement can now be made as an exceptional case to look after the interest of the petitioner, who has grown up as orphan.

Adjourned to 20.09.2010.

Copy of the order be given dasti. Mr. Anil Kumar Rao, need not to come present on the next date of hearing."

5. On 29.10.2010, the Court was assured that the matter has been taken up with the Government for passing appropriate orders. When the matter came up for hearing on 14.01.2011, the 2006 Rules were pressed into service and it was pointed out that the issue; whether the date of death is the relevant date to apply in cases of claims for compassionate appointment is pending before the Full Bench in CWP No.11291 of 2009. That is how this matter came to be tagged with the lead case decided by the Full Bench in Krishna Kumari v. State of Haryana & others. The Full Bench expressed the view that it is the date of death which is relevant to apply the policies of compassionate appointments. The Full Bench in reaching the conclusion noticed the decisions of the Supreme Court in Bhawani Prasad Sonkar v. Union of India & others, 2011 (4) SCC 209 and State Bank of India & another v. Raj Kumar, 2010 (11) SCC 661, which was pressed by the other side to claim that the policy on the date of consideration is applicable. The Full Bench thought that the purpose of providing compassionate appointment is to mitigate hardship at the time it arises. Thus, policy applicable on the date of death has to be invoked to provide immediate relief. The Full Bench also recorded that in the eventuality an application remains pending for considerable period and some other policy comes into operation, no fault can be found on the part of the dependents and it was this principle which was recognised in Bhawani Prasad Sonkar's case. An application has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. The SLP against the judgment has been dismissed, but the question of law has been kept open. It is in these premises that the matter has been listed before this Bench.

6. However, there is an exception carved out by the State of Haryana itself in the case of `Orphans" which was not before the Full Bench. A Division Bench of this Court in Kumari Bandana Sharma v. State of Haryana & others, 2006(3) SCT 619, dealt with Rule 18 read with Rule 3(k) of the Compassionate Rules, which defined an `orphan" for grant of relief of appointment. The Bench held that Rules used the word `shall" which made the Rule mandatory in nature and accordingly the offer must be kept alive till the child attains majority/age of entry into service and thereby the claim of an orphan, like the petitioner in boyhood, is required to be considered by relaxing the Rule as allowed by the exception. Rules 3(k) and 18 of the 2003 Rules are an isolated exception and read as follows:-

"3(k) "orphan" means a child who has previously lost one parent and has become an orphan upon the demise of the Government employee;"

"18. There shall be no relaxation of any provision of these rules. However, as a special case, these rules shall be relaxed only in the cases of children who have become orphans upon the demise of the Government employee. The claim of appointment of such orphans, shall remain alive till one child has attained majority/minimum eligible age for entry into Government service."

7. No departure from these principles governing 'orphans' is made in the 2005 rules and even on first principles in a case where justice may require to be done, then Court can act ex aequo et bono to do what is fair and just within the law. Mr. Bedi confirms from 2005 Rules repealing 2003 Rules that both bear identical provision as to rights of orphans since it has been retained therein, which fortifies the case of the petitioner that he had a right of consideration in terms of sub Rule (2) of Rule 18 of the 2005 rules, which is similarly worded as the corresponding previous Rule. Sub Rule (2) of Rule 18 of the 2005 Rules is as follows:

"18. Relaxation: - (1) xx xx

(2) As a special case, rules shall be relaxed in the case of the children who have become orphan upon the demise of the Government employee in regard to minimum age only. The claim of appointment of such orphans shall remain alive till one child has attained majority/minimum eligible age for entry into Government service."

8. The case of the petitioner falls within the benign molar of the policy instructions on 'orphan' and to my mind this is a fit case in which the callousness of the Police Department deserves to be put balm on to heal the petitioner's wound suffered by foreclosure of his case on the specious reasons recorded in the impugned order. This petition has been pending since 2009 and the intervening period should not be read against the petitioner. The provision that an application should be made within three years does not apply in the case of a child rendered orphan at the age of 4= years with no one to help or guide him. In my view, it was the responsibility of the Department itself to have kept a post vacant for him and kept his rights open because he was too small even to understand his rights. The relief ought to have been given by the Police Department itself, which work has fallen on the shoulders of the Court.

9. In CWP No. 14689 of 2008 titled 'Deepak Kumar v. State of Haryana & others' decided on 06.12.2016, I had an occasion to examine the case of an 'orphan'. I have no reason to apply different standards in the case of orphans by applying the instructions and holding down the respondents to the same standards, as in the aforesaid case, and therefore I am inclined to allow this petition by giving effect to the power of relaxation in Sub Rule (2) of Rule 18 of the 2005 Rules.

10. Accordingly, the instant petition is allowed. The impugned order dated 01.01.2009 is quashed since the reasons assigned in rejecting the case are irrelevant. Besides, the Senior Superintendent of Police, Rohtak has not

acquainted himself with the applicable instructions on rights of orphans, which he was duty bound to adhere to and that is a serious omission in the order, on which ground alone, it deserves to be invalidated. Accordingly, a writ of mandamus is issued to the respondents to consider the case of the petitioner for appointment as per his qualifications on any post in the Police Department or elsewhere by treating his case sympathetically as an orphan. The exercise is directed to be completed within 8 weeks from the date of receipt of certified copy of this order either from the court or from the petitioner, whichever is earlier and decide the case in the light of the observations made above.