

(2016) 07 SHI CK 0116
In the High Court Of Himachal Pradesh
Case No : CWP No. 7938 of 2010

Tej Singh

APPELLANT

Vs

Bhakra Beas Management Board

RESPONDENT

Date of Decision : 13-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 HimLR 1973

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. N.K. Sood, Senior Advocate with Mr. Hemant Sharma, Advocate, for the Respondent; M/s Tek Chand and K.C. Sankhyan, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Ajay Mohan Goel, J. - By way of present petition, the petitioner has prayed for following reliefs:-

"i) That the respondents may kindly be directed to relax its policy dated 21.10.2005 and offer compassionate appointment as a Class-III/IV to the petitioner as a special case being dependent of deceased employee who was electrocuted while on duty and died on the spot.

ii) That the respondents may very kindly be directed to produce the entire record pertaining to the case of the petitioner for the kind perusal of this Hon''ble Court.

iii) Any other order/direction which this Hon''ble Court deems just and proper in the facts and circumstances of the case may also kindly be passed/issued in favour of the petitioner."

2. The case of the petitioner is that his father, Sh. Sohan Singh, was serving under the respondent-Board as regular Chowkidar. He died in harness on 14.11.2007. The deceased was the sole bread earner of the family. The petitioner

being the son of the deceased applied for compassionate appointment on the prescribed proforma to the respondent-Board. However, the application was returned back with the observations that the compassionate appointment had been dis-continued in view of new policy dated 3.11.2005 having been brought in force in this regard.

In these circumstances, mother of the petitioner got a legal notice issued to the respondent Board on 4.5.2009. In response to said legal notice, the respondent-Board sent its reply stating therein that the petitioner's mother was not entitled for appointment on compassionate ground on account of death of her husband as per policy decision of the board dated 3.11.2005. Thereafter, the petitioner again submitted representation on 22.8.2009 seeking compassionate appointment as a special case.

3. As per the petitioner, being the dependent of the sole bread earner, he was wrongly denied the compassionate appointment on the pretext of policy dated 21.10.2005, whereas dependents of the employees of BBMB taken from other states/Electricity Board have been exempted from the existence of the policy and they are getting compassionate appointment under the respondent-Board. It is further the case of the petitioner that he being eligible and entitled for compassionate appointment as a "special case" on account of accidental death of his father has been discriminated since the other dependents of deceased employees of the respondent-Board similarly situated as him are being treated differently and have been given appointment. It is in these circumstances, the petitioner has filed the present petition praying for the reliefs already enumerated above.

4. The respondent-Board in its reply has denied the claim of the petitioner and has stated that the respondent-Board has discontinued its policy for grant of compassionate appointment and at the time of death of father of the petitioner, policy for compassionate appointment was not in existence in the Board, as such the petitioner was not entitled for appointment in the respondent-Board.

It is further case of the respondent-Board that in place of earlier policy of compassionate appointment, an alternative policy had been adopted by the respondent-Board to compensate the family of the deceased employees. As per the alternative policy, the mother of the petitioner was paid a sum of Rs. 3 lac vide cheque No.002169 dated 7.9.2009 as Solatium. In addition, as per terms of the alternative policy, mother of the petitioner was also being paid special pension regularly. It is further case of the respondent-Board that ex-gratia amount of Rs. 50,000/- also stood paid to the mother of the petitioner on 13.7.2009 and an amount of Rs. 89808/- was paid on account of death-cum-retirement gratuity. Thus, as per the respondent-Board, once earlier policy of compassionate appointment had been dis-continued and substituted by a new alternative policy, there cannot be any deviation from the same and the case of the petitioner cannot be considered for compassionate appointment under a policy, which is no more in vogue and has been discontinued.

On these grounds, the respondent-Board denied the case of the petitioner. It was also specifically denied that any person similarly situated as the petitioner was given appointment by the respondent-Board on compassionate basis.

5. In rejoinder, the petitioner has stated that he and his mother are ready and willing to refund Rs. 3 lac, received as Solatium, if he is offered compassionate appointment as a "special case" and the factum of having received the solatium cannot be made the ground to deny him compassionate appointment, because his mother in fact was coerced/directed to receive the solatium vide communication dated 4.3.2009 failing which, no other payment was to be released to her. Accordingly, the petitioner reiterated his prayer that the respondent-board be directed to offer appointment to him on compassionate basis as a special case.

6. I have heard learned counsel for the parties and have also gone through the record carefully.

7. It is not disputed by the petitioner that on the date when his father died in harness, there was no policy in vogue in the respondent-Board to offer compassionate appointment to the family members of its deceased employees. It is also not disputed by the petitioner that the policy, which was in vogue on the relevant date, is one which is appended with the writ petition as Annexure P-4 and all the benefits which are contemplated in the said alternative policy have been conferred upon the family of the petitioner by the respondent-Board. Incidentally, in the present case, what the petitioner has prayed for is that the respondent-Board be directed to treat his case as a "Special Case" for the purpose of grant of appointment on compassionate basis. However, besides, using the words "Special Case" learned counsel for the petitioner could not elaborate as to how the case of the petitioner was a special case. Not only this, learned counsel for the petitioner also failed to point out as to how this Court can direct the respondent-Board to offer appointment to the petitioner on compassionate basis on account of the death of his father in harness in the absence of any such policy in vogue at the relevant time in the respondent-Board.

8. It is a settled law that compassionate appointment is not a source of recruitment. Further it is not the case of the petitioner that there was a policy in vogue in the respondent-Board either at the time when his father died or at the time when his application was considered by the respondent-Board, which offered compassionate appointment to the kith and kin of the deceased employee of the respondent-Board. Further perusal of Annexure P-4 demonstrates that the respondent-Board in its meeting held on 21.10.2005 decided to dis-continue the BBMB policy of providing compassionate employment to the wards/dependents of the deceased BBMB employees. It further decided to adopt its new alternative policy in lieu of compassionate employment to help the family of the deceased BBMB employee to tide over the financial crises which the family had to face due to sudden demise of the bread earner. This policy also envisaged grant of lump sum compensation i.e. solatium to the dependents of the deceased employee

and a special pension equal to the last pay (basic) drawn along with dearness relief sanctioned from time to time till the date of superannuation of the deceased employees and thereafter pension as admissible in accordance with the normal family pension Rules.

Clause 8 of the policy provided as under:-

"Members of families of deceased State Governments/State Electricity Boards/Power Utilities allocated employees shall be governed by the policy, rules/instructions of their respective parent departments of State Governments/SEBs/Power Utilities."

9. These compensations have been duly paid to the family of the petitioner. The vires of the alternative policy of compensation brought into force by the respondent-Board has not been challenged by the petitioner. Further the petitioner has not demonstrated that any other similarly situated person has been offered compassionate appointment by the respondent-Board. Mr. Naresh Sood, learned Senior Counsel appearing for the respondent-Board has submitted that the contention of the petitioner that dependents of other persons who had died in harness were given compassionate appointment is totally baseless and incorrect as no such appointment in fact had been made by the respondent-Board.

10. The Hon''ble Supreme Court in MGB Gramin Bank v. Chakrawarti Singh (2014) Supreme Court Cases 583 has held that every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution of India and an exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread earner. It has been further held that mere death of Government employee in harness does not entitle the family to claim compassionate appointment and the Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian ground.

11. Incidentally, this law has been declared by the Hon''ble Supreme Court in those cases, where the policy for appointment on compassionate basis in lieu of the death of an employee in harness was existing. It is settled law that the appointment on compassionate ground cannot be claimed as a matter of right nor an applicant/claimant becomes entitled automatically for appointment, rather it depends on various other circumstances and the application has to be considered in accordance with the scheme.

12. The Hon''ble Supreme Court in Bhawani Prasad Sonkar v. Union of India and others, (2011) 4 Supreme Court Cases 209 has held that while considering the case for employment on compassionate ground, it has to be borne in mind that compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. This judgment has been followed by the Hon''ble Supreme Court in Canara Bank and another v. M.

Mahesh Kumar along with connected matters, 2015(7) Supreme Court Cases 412, and the relevant para of the same is quoted here-in-below:-

16. The same principle was reiterated by this Court in the case of Bhawani Prasad Sonkar v. Union of India & Ors., (2011) 4 SCC 209, wherein it was held as under :-

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employees family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

13. Therefore, it is apparent from the law laid down by the Hon'ble Supreme Court in Bhawani Prasad Sonkar's case (supra) that the compassionate appointment cannot be made in the absence of rules or regulations issued by the Government or public authority. In the present case, admittedly, there were no rules or regulations issued by the respondent-Board pertaining to the compassionate appointment as on the date when the father of the petitioner died in harness. That being the case, no right, leave aside legal right, accrued upon the petitioner to claim compassionate appointment on account of death of his father from the respondent Board.

In this view of the matter, in my considered view, the case of the petitioner is totally misconceived and there is no merit in the same. Accordingly, the same is dismissed so also the pending application(s), if any. No order as to costs.