
(1994) 05 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 1643 of 1993

Vasu Dev

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 23-05-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Limitation Act, 1963 — Section 14

Citation : (1994) 2 ShimLC 334

Hon'ble Judges : V. Ratnam, C.J.; A.L. Vaidya, J

Bench : Division Bench

Advocate : Dharam Vir Sharma, for the Appellant; Indar Singh, A.G. and K.D. Sood, for the Respondent

Final Decision : Dismissed

Judgement

V. Ratnam, C.J.—In this writ petition, the Petitioner has prayed for the issue of a writ of Mandamus directing the Respondents to pay a sum of rupees ten lacs by way of compensation in respect of the death of Shri Padamnabh, the son of the Petitioner, on 17-10-1978, and also for a direction for giving employment to Sh. Chhabinder Kumar, an Ors. son of the Petitioner, in Himachal Pradesh State Electricity Board. There is no dispute now that Sh. Padamnabh, who was an Ayurvedic Chaikitsa Adhikari, met with his death on 17-10-1978, at about 9 a.m. while he was cutting the branches of a tree. According to the case of the Petitioner, the death of Padamnabh resulted only on account of the negligence on the part of the Respondents in the maintenance and up-keep of the 11 KV High Tension Line, coming from 33 KV Sub-Station Sunder Nagar to Bhojpur. The claim so made is refuted by Respondent Nos. 2 and 3 on the ground that the deceased was electrocuted on account of his own fault as the line got broken with the cutting of the branches of the tree by the deceased which fell on the line resulting in his death and that there was no negligence on the part of Respondent Nos. 2 and 3. In regard to the claim for the employment of the Ors. son of the Petitioner, Respondent Nos. 2 and 3 stated that such an appointment

cannot be granted.

2. We have carefully considered the contents of the writ petition and also the reply of the Respondent Nos. 2 and 3 filed thereto. It is seen that while on the one hand the Petitioner has attributed the negligence to Respondent Nos. 2 and 3 in the maintenance and unkeep of 11 KV High Tension Line, the Respondent Nos. 2 and 3 have disputed the same and have attributed the accident, resulting in the death of Padamnabh, to his own negligence in cutting a branch of the tree and its falling on the high tension-line resulting in his death. The Ors. son of the Petitioner had given a statement as per Annexure PA, to the effect that he was present at the time when his brOrs. died in the accident and that Padamnabh was cutting a branch of the tree and after cutting one branch of the tree, he started anOrs. and the big branch fell on the High Tension Line and within two minutes of the fall of the branch, Padamnabh fell down and lost his life. At least, prima facie, the statement made by the Ors. son of the Petitioner, does not disclose any negligence on the part of the Respondent Nos. 2 and 3 in the maintenance and up-keep of 11 K.V.H.T. Line. In any event, in the reply, Respondent Nos. 2 and 3 have now denied that they had been negligent in the maintenance and up-keep of the High Tension Line and they had also stated that it was only the deceased, who by his negligence, had brought about his death. It is thus seen that there is a seriously disputed question with reference to negligence, arising for decision. In addition, there is absolutely no material whatever to decide and determine the amount of compensation awardable to the Petitioner, even on the footing that there had been some negligence on the part of Respondent Nos. 2 and 3. These are matters, which should be properly gone into in the course of a suit institute before the Civil Court and on letting in evidence, and cannot be satisfactorily resolved in the course of proceedings under Article 226 of the Constitution of India. The Petitioner is, therefore, directed to institute a suit within three months from today claiming compensation for the death of his son and if such a suit is instituted, the Court may also consider giving the benefit of Section 14 of the Limitation Act to the Petitioner.

3. Again with reference to the relief prayed for by the Petitioner regarding provisions of employment for his Ors. son, learned Counsel for Respondent Nos. 2 and 3 pointed out that there is no Scheme whatever in the Himachal Pradesh Electricity Board for appointment on compassionate grounds. In addition, Counsel also relied upon the decision of the Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, . There the Supreme Court pointed out that the Court has no jurisdiction to issue a Mandamus directing appointment on compassionate ground as at best, it may direct consideration of a claim for such appointment. In view of this, the Petitioner-cannot pray that t his Court should issue a writ of Mandamus directing the appointment of his Ors. son in the H.P. State Electricity Board on compassionate grounds. However, we direct the Respondent Nos. 2 and 3 to consider the claim for appointment of the Ors. son of the Petitioner, if an application in this record is made by him. Subject to this, the writ petition is

dismissed.