

(2015) 07 RAJ CK 0190
In the Rajasthan High Court
Case No : Civil Special Appeal (W) No. 382 of 2014

Yash Choudhary	Vs	APPELLANT
State of Rajasthan and Others		RESPONDENT

Date of Decision : 16-07-2015

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2015) 07 RAJ CK 0190

Hon'ble Judges : Ajay Rastogi, J;J.K. Ranka, J

Bench : Division Bench

Advocate : Manish Lawaniya and Jagmohan Bhardwaj, for the Appellant; A.S. Khangarot, Advocates for the Respondent

Final Decision : Dismissed

Judgement

1. Instant appeal is directed against order of learned Single Judge dated 7.11.2013. The dependant of the deceased employee, who served on daily wage basis in the Department from 1.1.1987, and his services were terminated with effect from 1.4.1990. The alleged illegal termination came to be challenged by the deceased employee by raising a dispute through the appropriate government vide its Notification dated 11.11.1993, and by an award dated 12.9.2007 the learned Labour Court cum Industrial Tribunal, Alwar, recorded a finding that the termination was not valid and the employer has failed to comply with the mandate of Section 25F of the Industrial Disputes Act, 1947, and accordingly his alleged termination with effect from 1.4.1990 was declared to be invalid, and accordingly directed that the legal representatives of the deceased employee shall be entitled for consequential benefits including the salary to the extent of 25% from his date of death, and other benefits, if admissible under the law. It may be noticed that the employee died while the proceedings were pending before the Tribunal, and his legal representatives came on record which is very much evident from the cause title of the award dated 12.9.2007.

2. Since the termination came to be set aside by the Tribunal under award dated

12.9.2007, and the respondents were directed to grant consequential benefits which the family of deceased was entitled for, taking note thereof one of the dependant of the deceased employee moved an application seeking compassionate appointment under the Rajasthan Compassionate Appointment of Dependants of Deceased Government Servant Rules, 1996 (for short "the Rules of 1996"), but that came to be rejected by the State Government on the premise that the Labour Court has not granted any relief in respect of employment to the dependant of the deceased employee. That came to be challenged by filing a writ petition. During the course of arguments, apart from what was awarded by the Labour Court under its award dated 12.9.2007, the respondents took an additional plea of limitation in filing of application seeking compassionate appointment provided under Rule 11 of the Rules of 1996, which postulates that application is to be furnished within a period of ninety days from the date of death of the government servant, and the learned Single Judge, after the matter being heard, was of the view that since the deceased employee died way back in 2002 and the award was passed by the Labour Court in September 2007, and after such a long time there appears no reason and justification in now extending the benefit of public employment to one of the members of the family of the deceased employee under the scheme of the Rules of 1996.

3. Counsel for the appellant submits that once the termination order has been set aside by the Labour Court in its award dated 12.9.2007, it will be deemed and presumed that the employee was in service, and since the right has accrued in favour of the members of the family of the deceased employee in terms of the award dated 12.9.2007, there could not be a cause of delay, and immediately thereafter the application was filed and still if there was any delay in filing the application, there is a provision under Rule 11 to condone the delay in the exigency, if arises, and in the given facts and circumstances, certainly the appellant was entitled to be given indulgence of condonation. And that being so, the learned Single Judge has committed an error in denying the claim of the dependant of the deceased employee seeking compassionate appointment under the Rules of 1996.

4. Counsel for the respondents while supporting the order of the learned Single Judge submits that submissions of the petitioner were considered by the learned Single, and it does not call for any interference at least in the intra court appeal.

5. Apart from what has been considered and examined by the learned Single Judge, we find that under the scheme of the Rules of 1996 Rule 2(b), defines the "deceased government servant", whose family members or dependants become entitled to invoke the scheme of the Rules of 1996 for compassionate appointment, and it postulates the status of government employees who are permanent or such holding a post temporarily after appointment on regular basis and has completed three years of continuous service including period of probation-training. Indisputably in the instant case the deceased employee had worked as daily wager and employee who were daily wagers and died even while

in service, their dependants are not entitled to seek compassionate appointment under the Rules of 1996. It would be useful to quote Rule 2(b) of the Rules of 1996, which reads thus:--

"Deceased Government Servant means a person who was employed in connection with the affairs of the State including a member of All India Services of Rajasthan State Cadre and whose pay was debitable to the consolidated fund of the State and who died while in service and, who was, -

(i) permanent, or

(ii) holding a post temporarily after appointment on regular basis and had put in at least one year continuous service as probationer-trainee."

6. Apart from it, the deceased employee died in the year 2002 and thirteen years had gone thereafter. As already observed, compassionate appointment are exception to the rule of public employment which is always to be offered by open advertisement and fair and transparent selection process is to be adopted. Under these facts and circumstances, in our considered view, this question might not have been considered, but we find that in the light of the scheme of the Rules of 1996, dependant of a deceased employee is not entitled to seek compassionate appointment.

7. Consequently, in our considered view the order of the learned Single Judge does not call for interference, and the appeal being devoid of merit is accordingly dismissed.