

(2010) 05 P&H CK 0134

High Court Of Punjab And Haryana At Chandigarh

Case No: None

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APPELLANT

Vs

Municipal Council

RESPONDENT

Date of Decision: May 6, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14

Hon'ble Judges: K. Kannan, J

Bench: Single Bench

Final Decision: Allowed

Judgement

K. Kannan, J.

The petitioner challenges an order of termination of service made on 13.11.2009, after the petitioner had been earlier favoured with an order of appointment on 01.08.2006 as a Safai Karamchari in the Municipal Council on compassionate grounds after his father on whom he was dependent, died-in-harness.

2. The relevant rules relating to compassionate appointment at that time in the year 2005 had provided for appointment or a financial assistance to the tune of Rs. 5 lakhs. The State had provided to him instead of financial recompense an appointment itself.

3. There had been a change in the policy of compassionate appointment subsequently in the year 2006 where no dependent could claim compassionate appointment but his relief would stay restricted only to a financial assistance. This change in policy was taken as the basis to serve the petitioner a show cause notice on 06.11.2009 as to why the petitioner's service shall not be terminated. The petitioner had replied stating that since the appointment was made subsequent to his father's death on 13.09.2005, the compassionate appointment policy that was extant namely, the 2005 policy alone would be applicable. As per the said policy, the petitioner had contended that he was entitled to Rs. 5 lakhs for financial assistance.

The State rejected his reply and terminated him from service. It is this order of termination which is put in challenge before this Court.

4. The learned Counsel appearing on behalf of the petitioner points out that a subsequent change in policy which was introduced on 1st August, 2006, will govern only cases of deaths occurring after that date when a dependent could be considered for appointment. In the instant case, death of the petitioner's father had resulted on 13.09.2005 and the governing consideration shall be only on the policy of the year 2005. The learned Counsel refers to a decision of the Hon'ble Supreme Court in *Abhishek Kumar v. State of Haryana and Ors.* 2007 (2) SCT 457 that dealt with the case of an appointment when 2001 rules were in existence. The offer of appointment was however denied by applying the rules which were introduced subsequently in 2003. The Hon'ble Supreme Court intervened to observe that a denial of employment on a subsequent policy was not proper and had directed the State to issue an appointment letter as per the terms of the 2001 policy. This statement of law is mirrored in pronouncements of this Court as well. The learned Counsel refers to a decision in *Neeraj Malik v. State of Haryana and Ors.* 2007 (1) RSJ 235 and a still later ruling in *Rambati v. State of Haryana and Ors.* 2009 (1) RSJ 201 that held that the instructions relating to compassionate appointment that would be applicable shall be taken in the context of the time of death of the employee who died-in-harness and any subsequent change in policy that may have come about after the date of appointment shall not be relevant.

5. The learned Counsel appearing for the respondent would submit that even in the reply to the show cause notice to the petitioner, he had asked only for financial assistance as per 2005 Rules and, therefore, he shall be estopped from contending that he is entitled to compassionate appointment. It is his further contention that the statement of law expounded through the Division Bench ruling of this Court have been the subject of reference to a Full Bench, having regard to a conflicting view expressed by the Bench held by Justice Hemant Gupta and another. However, I have not the benefit of the text of yet another judgment which is reported to have been made and I proceed to pass this order only on the basis of first principle that could be applied and in the light of the decision of the Hon'ble Supreme Court in *Abhishek Kumar's* case.

6. The contention that the petitioner is entitled only to financial assistance in terms of his reply to the show cause notice, as advanced by the learned Counsel appearing on behalf of the State, is neither here nor there. If the reply were to have been accepted on his plea that it was only 2005 policy which was applicable, then the question of termination of service even without affording to him the financial assistance did not arise. The termination order was made on the application of 2006 policy and compensation had not been offered at that time. The contention of the State now could be understood only in the context of what the 2005 provided for. If that were to be so, the appointment order which was issued, was in conformity with

the policy and a termination order just could not have been passed. If instead of an appointment only compensation had been offered even at that time, perhaps the petitioner could have no grievance now. If the appointment had been granted initially in the year 2006 and for the State to turn around and say that the policy itself provided for financial compensation also and, therefore, compensation could be given now, shall be grossly unjust. If the petitioner had been granted appointment by application of a policy, to deny to him such a relief after merely 3 years and offering him compensation and that too not in the order but through a submission through a counsel, it shall not be permitted.

7. The policy of compassionate appointment itself is a deviation from Article 14 and the scheme shall always be strictly complied with. It has a basis in a State policy to give relief to the family in distress by death of its bread winner. The immediacy of relief is invariably an instance of any scheme of compassionate appointment. If the petitioner had been granted 5 lakhs at that time, the issue of indigency or a lofty policy of compassionate appointment would have completely satisfied the scheme requirements. Hypothetically speaking, if the petitioner had not been provided with the employment and had the benefit of financial assistance, it would have allowed to him time and resources to devise his ways with the assistance given by the State. If, on the other hand, financial assistance had not been rendered and only an employment was given and such employment was possible under the existing rules, to deny to him now makes a mockery of the scheme of compassionate appointment itself. The impugned order is not merely incorrect; it is wholly unjust and untenable. The order is quashed and the petitioner is entitled to be reinstated with all the monetary benefits attendant thereto and continuity of service. The amount that was denied to him when he lost the employment, shall be paid within a period of 8 weeks from the date of the receipt of the copy of this order with interest at 9% per annum.

8. The writ petition is allowed on the above terms.