

(1994) 05 P&H CK 0020

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 10492 of 1993

Som Nath

APPELLANT

Vs

State of Haryana and Another

RESPONDENT

Date of Decision: May 13, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226, 227

Citation: (1994) 107 PLR 590

Hon'ble Judges: G.S. Singhvi, J

Bench: Single Bench

Advocate: Gurcharan Dass, for the Appellant; Nipun Mittal and Ritu Bahri, A.A.G., for the Respondent

Final Decision: Allowed

Judgement

G.S. Singhvi, J.

Despite the fact that the Government of Haryana had issued circular letter No. 9054-4GS-70/32231 dated December 22, 1970 "(Annexure P-1) almost twenty-four years ago for giving employment on compassionate ground to one of the members of the family of a deceased Government servant and which circular, according to the learned counsel for the petitioner, has been adopted and made applicable to the service of the Haryana State Minor Irrigation and Tubewell Corporation (respondent No. 2). The petitioner has been denied appointment as a dependent of the deceased employee Munshi Ram and inaction on the part of respondent No. 2 to give employment to the petitioner as a dependent of the deceased employee has compelled him to seek redress from this Court by means of this writ petition filed under Article 226 of the Constitution of India.

2. Respondent No. 2 is public sector undertaking incorporated under the Companies Act. According to the petitioner, it is an instrumentality of the State of Haryana and this statement of the petitioner has not been controverted by the respondents.

Father of the petitioner, Shri Munshi Ram, was appointed as T.Mate in the service of the respondent-Corporation on 4.2.1974. He died on 27.12.1992, while in service. He is survived by his widow, three daughters and three sons (including the petitioner). Elder brother of the petitioner, namely Sham Lal is independently employed at Ambala and according to the petitioner, he is residing separately. Other members of the family were dependent on the deceased Munshi Ram.

3. After the death of Shri Munshi Ram, the petitioner made an application in the prescribed form for being appointed as a dependent of the deceased employee of respondent No. 2. He filed requisite affidavit and fulfilled all other required conditions. According to the petitioner, although he and his family had done every thing on their own part as early as in March, 1993, respondent No. 2 has not issued appointment order in favour of the petitioner in accordance with Ex-gratia Scheme (Annexure P-1). The petitioner has made reference to the fact that one member each from the family of Jai Singh and Bahadur Singh have been given appointment as dependents of deceased Government servants under the Ex gratia scheme and has pleaded that he has been subjected to discrimination by sheer inaction on the part of the respondents. He has placed reliance on an order dated November 9, 1992, passed in C.W.P. No. 6526 of 1992 (Raj Kumari v. State of Haryana and Anr.).

4. No return has been filed by either of the respondents and in the absence of a return, the averments made in the writ petition will have to be treated as correct.

5. I have heard Mr. Gurcharan Dass, Advocate, for the petitioner, Ms. Ritu Bahri, Assistant Advocate General, Haryana, for respondent No. 1, and Nipun Mittal, Advocate, for respondent No. 2.

6. On the basis of uncontroverted averments made in the writ petition, it can be said that the petitioner is a dependent of late Munshi Ram and as a dependent of the deceased employee of the Corporation he has a right to be appointed in the service of the respondent-Corporation. The Ex-gratia scheme, issued by the Government of Haryana, though administrative in character, confers a valuable right on the dependents of the deceased Government Servants. Since the respondent-Corporation has adopted this scheme, as contended by the learned counsel for the petitioner, similar right can be said to have been conferred in favour of the dependent of the deceased employees of the respondent-Corporation. Having accepted in principle that the dependent of the deceased employee of Corporation will be given employment, it is not open to the respondent-Corporation or for that reason to any other public authority to deny the benefit of appointment to the petitioner who is a dependent of the deceased employee. In Union of India (UOI) Vs. K.P. Joseph and Others, the Supreme Court had laid down that even administrative orders can confer valuable rights on the persons in whose favour such orders are issued. In Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, their Lordships of the Supreme Court have made reference to the decision of U.S. Supreme Court in *Vitarelli v. Seaton* (1959) 359 US 535 and have quoted the

following observations of Mr. Justice Frankfurter:

"An executive agency must be rigorously held to the standards by which it professes its action to be judged.....Accordingly, if dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed....This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

7. In view of these two decisions of the Supreme Court, it can legitimately be said that on the basis of Annexure P-1, a legal right has come to vest in the petitioner to be appointed as a dependent of the deceased employee.

8. It is indeed unfortunate that the respondent- Corporation has failed to take appropriate measures for giving appointment to the petitioner in pursuance of the policy Annexure P-1 even after the lapse of a period of more than one year. Their Lordships of the Supreme Court have expressed the necessity of taking expeditious action on the applications filed by the dependent of deceased Government servant for employment on compassionate ~~♦~~ground. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , as well as in Smt. Phoolwati v. Union of India and Ors. AIR 1991 SC 459, the Supreme Court lamented on the delays caused in giving employment on dependents of deceased employees and said:

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

9. A Division Bench of this Court in Raj Kumari's case (supra) gave direction to the respondent- Corporation to give appointment to the petitioner. In my considered view by not giving appointment to the petitioner on a suitable post commensurate with his qualification, respondent- Corporation has deprived him of his legal right and has discriminated against him without any legal justification.

10. In the result, the writ petition is allowed. The respondent- Corporation is directed to appoint the petitioner on a suitable post having regard to the qualification possessed by him. Appropriate order for appointment of the petitioner shall be issued within six weeks of the submission of certified copy of this order. Having regard to the fact that there has been abnormal delay on the part of respondent No. 2 in giving appointment to the petitioner, I direct that the appointment of the petitioner shall relate back to the date of this order. Costs made easy.