
Dharmender Vs State of Haryana and Others

Civil Writ Petition No. 1868 of 2005

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 27, 2005

Acts Referred:

Constitution of India, 1950 – Article 14, 226, 227, 32#Haryana Compassionate Assistance to the Dependents of Deceased Government Employees Rules, 2003 – Rule 3

Citation: (2005) 141 PLR 409

Hon'ble Judges: S.S. Saron, J; S.S. Nijjar, J

Bench: Division Bench

Advocate: J.S. Manipur, for the Appellant; Anil Rathee, Additional A.G., for the Respondent

Final Decision: Dismissed

Judgement

S.S. Nijjar, J.

We have heard the learned counsel for the parties at length and perused the paper-book.

2. Father of the petitioner joined as a Beldar on 1.1.1986 on daily wages basis in the PWD (B&R) Department, Haryana, Civil Secretariat,

Chandigarh. He died while in service on 6.7.1998. Although he had rendered 12 years of service, his services had not been regularised under the

Regularisation Policy issued by the State of Haryana on 7.3.1996 and 18.3.1996. Mother of the petitioner, therefore, filed C.W.P. No. 720 of

2002 seeking regularisation of the services of the deceased with all consequential benefits. The aforesaid writ petition was allowed by a Division

Bench of this Court on 18.7.2002, with the following observations:-

We find from a reading of the pleadings that the petitioner's case is fully covered by the judgment of this Court dated 3.7.2000 passed in C.W.P.

No. 7189 of 1998 (copy appended as Annexure P-I). On facts, it is clear from Annexure P-2 filed with reply, that the petitioner's husband had

completed more than 240 days service in several years starting from the year 1988 to 1996. We accordingly allow this petition and direct that the

service of the petitioner's husband be regularised in accordance with the policy of 1996.

As the present petition has been filed by the widow of the employee, the arrears of salary as also the pensionary benefits etc. should be disbursed

to the petitioner within six months from today. The claim of the petitioner for appointment on compassionate grounds is, however, left open for

decision for the authorities at this stage.

3. Against the aforesaid order, the respondents filed Special Leave to Appeal No.(CC 85-60) of 2003. The aforesaid SLP was dismissed on

9.10.2003. Since the order of the High Court was still not complied, mother of the petitioner filed CO.C.P. No. 605 of 2003. Notice of the

Contempt Petition was issued to the respondents. It was only then that the respondents passed an order dated 14.1.2004 regularising the services

of the deceased w.e.f. 31.1.1996 with all consequential benefits. On regularisation of the services of the deceased by order dated 20.11.2004, a

sum of Rs. 33,406/- was paid to the mother of the petitioner as the arrears of salary for the period from 1.2.1996 to 6.7.1998. Family pension has

also been granted to the mother of the petitioner by order 9.3.2004. The matter with regard to the claim of the petitioner for appointment on

compassionate grounds had been left open for decision by the respondents in the order passed by the Division Bench of this Court on 18.7.2002

in C.W.P. No. 720 of 2002. On 26.4.2004, the case of the petitioner for appointment on compassionate grounds was recommended to the

Superintending Engineer of the National Highway Circle, Faridabad. He was requested to arrange sanction for one post of Beldar in the scale of

Rs. 2550-55-2605-60-3200 to avoid further contempt proceedings. CO.C.P. No. 605 of 2003 was disposed of by this Court as having become

infructuous on May 11, 2004. Thereafter no order was passed by the respondents. Not being satisfied, the petitioner again served a precontempt

notice dated 29.11.2004 on respondent No .3-the Resident Engineer A.D.B. Project Division No. 1, P.W.D. (B&R), Faridabad. In response to

the notice, the claim of the petitioner for compassionate appointment has been considered and rejected by the respondents by letter dated

21.12.2004. The petitioner has been informed that as the deceased had not completed three years of regular service, the petitioner would not be

eligible to be considered for appointment on compassionate grounds in terms of Rule 3(d)(ii) of the Haryana Compassionate Assistance to the

Dependents of the Deceased Government Employee Rules, 2003 (hereinafter referred to as ""the 2003 Rules""). The petitioner has challenged the

aforesaid decision by filing the present writ petition under Articles 226/227 of the Constitution of India.

4. The respondents have filed a written statement and have stated that since the claim of the petitioner has been considered and rejected under the

2003 Rules, no further relief can be granted to him.

5. Mr. Manipur, learned counsel appearing for the petitioner, submits that had the claim of the father of the petitioner for regularisation been

considered at the proper time, his services would have been regularised before he passed away on 6.7.1998. In those circumstances, the claim of

the petitioner would have been considered under the earlier instructions and not under the 2003 Rules. Even otherwise, Rule 3(d)(i)(ii) is ultra vires

Article 14 of the Constitution of India. The object of the 2003 Rules is to give assistance to the family of a deceased employee to tide over the

emergent situation resulting from the loss of the bread earner. This objective cannot be frustrated merely on the basis of length of service of regular

employee. There can be no distinction between a regular employee and the employees working on daily wages, casual labourers, Apprentice,

Work Charged Employees, Ad hoc or contractual employee or those who are working on re-employment. There is no nexus with the object

sought to be achieved by excluding this category of employees from the deceased government employee. In support of this submission, learned

counsel has relied on a judgment of the Supreme Court in the case of D.S. Nakara and Ors. v. Union of India 1983(1) S.L.J. 131. Learned

counsel also cites Rule 4 of the Family Pension Scheme, 1964 contained in the Punjab Civil Services Rules, and submits that even for grant of

family pension, the minimum period of only one years continuous service is required. Therefore, a different yardstick cannot be adopted for the

definition of a deceased employee under the 2003 Rules.

6. We are unable to accept the submissions made by the learned counsel. The object of the Family Pension Scheme, 1964 cannot be made

applicable to the special provisions contained under the 2003 Rules. The principle of law laid down by the Supreme Court in the case of D.S.

Nakara (supra) would not be applicable in the facts and circumstances of the present case. Therein the Supreme Court was considering the

eligibility of the retired employees for the grant of liberalised pension. The employees who retired prior to 1st April, 1979 had been rendered

ineligible. The Supreme Court held the fixation of the date to be wholly irrational as it had resulted in dividing of the homogeneous class of retired

employees. In the present case, under Rule 3(d)(i)(ii), a distinction is made between regular employees and other employees. It is by now settled

proposition of law that regular employees are generally given security of tenure under the relevant statutory rules. When an employee is appointed

on a regular basis, his conditions of service are provided under the Statutory Service rules governing a particular service. On the other hand, daily

wagers, casual workers, work charged employees, ad hoc or contractual employees have different rights under different statutory provisions.

Therefore, a valid classification has been made under the 2003 Rules in defining ""a deceased government employee"" for the purpose of eligibility of

a dependent for appointment on compassionate grounds. Similarly, the provision of 3 years regular service cannot be said to be either irrational or

arbitrary. It is well known that on being appointed to government service, an employee is generally put on probation. In normal circumstances, the

period of probation may be for two years. There may also be provision for extension of the period of probation. Generally, the rules provide that

the maximum period of probation shall be three years i.e. the initial period of two years may be extended by one more year. On confirmation, the

employee acquires a status of regular employee. Keeping in view the aforesaid principle, the prescribed period of three years service cannot be

said to be either irrational or arbitrary. This view of ours will find support from the judgment of the Supreme Court in the case of E.P. Royappa Vs.

State of Tamil Nadu and Another, . In this case, the Supreme Court has clearly held that reasonable classification of persons based on an

intelligible differentia is" permissible classification under Article 14 of the Constitution of India. In the case of In Re, Special Courts Bill 1978 AIR

1978 SC 478 the Supreme Court has held that the classification must not be arbitrary, artificial or evasive and must be based on some rule and

substantial distinction bearing a just and reasonable relation to the object sought to be achieved. In other words, the classification has to be

founded on an intelligible differentia which distinguishes those which are grouped together from others who are left out and the said differentia has a

rational relation with the object sought to be achieved by the statute or the proviso. In our opinion, Rule 3(d)(i)(ii) cannot be struck down on the

ground that it does not apply to all employees of the State of Haryana irrespective of the nature of their appointment. May be, a better formula

could be evolved, but the Court cannot substitute its wisdom for the Government, in the absence of unreasonableness or perversity. Policy matters

have to be left to the Government. The Supreme Court considered similar arguments in the case of Tamil Nadu Education Department Ministerial

and General Subordinate Services Association and Others Vs. State of Tamil Nadu and Others, . The relevant observations made by the Supreme

Court in the aforesaid judgment are as follows:-

In service Jurisprudence integration is a complicated administrative problem where in doing broad justice to many, some bruise to a few cannot be

ruled out. Some play in the joints, even some wobbling, must be left to Government without fussy forensic monitoring, since the administration has

been entrusted by the Constitution to the Executive, not to the Court. All life, including administrative life involves experiment, trial and error, but

within the leading strings of fundamental rights, and absent unconstitutional ""excesses"", judicial correction is not right. Under Article 32, this Court is

the constitutional sentinel, not the national ombudsman. We need an ombudsman, but the Court cannot make do.

7. It is also well settled that whilst considering the constitutional validity of a statute or a provision thereof, said to be violative of Article 14 of the

Constitution of India, there is always a presumption in favour of the constitutionality of the statute or the provision. This presumption has to be

rebutted by the party claiming the provision to be violative of Article 14 of the Constitution of India. This view of ours finds support from the

judgment of the Supreme Court in the case of R.K. Garg and Ors. v. Union of India and Ors. AIR 1981 SC 2138. In our opinion, the aforesaid

enunciation of law in all the judgments quoted above would make it clear that Rule 3(d)(i)(ii) cannot be held to be violative of Article 14 of the

Constitution of India.

8. In this case seven years have elapsed since the father of the petitioner passed away. It is accepted by the petitioner himself that the appointment

on compassionate grounds is only to be given to a family who has lost the only bread-earner and has no other means of livelihood. It is to be given

to help the family tide over an emergent situation. It is not a right given to a dependent of a deceased employee to occupy a post in place of the

deceased employee. The Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana 1994(4) SCT 138 has deprecated the practice

of granting appointment on compassionate grounds, as a matter of right. Various policies of the State of Haryana which have culminated into the

2003 Rules are based on the directions issued by the Supreme Court in the aforesaid case. By misinterpreting the observations made by the

Supreme Court in an earlier judgment in the case of Sushma Gosain and Ors. v. Union of India and Ors. (1989)4 S.L.R. 327 appointment on

compassionate grounds was liberally granted by some government and public authorities. The Supreme Court, therefore, considered the question

relating to the considerations which should guide while giving appointments in public service on compassionate grounds, in the case of Umesh

Kumar Nagpal (supra). In the aforesaid judgment, it was emphasized as under:-

2...As a rule, appointment in public services should be made strictly on the basis of open invitation of applications and merit. No other mode of

appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other

procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case,

there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in harness and leaving his

family in penury and without any means of livelihood. In such cases out of pure humanitarian consideration taking into consideration the fact that

unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide

gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting

compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post

much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of

livelihood....

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter

of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Class III and IV. That is legally

impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even

directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the

decision of this Court in *Sushma Gosain and Ors. v. Union of India and Ors.* (1989) 4 S.L.R. 327 has been misinterpreted to the point of

distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and

IV.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the

rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the

family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be

claimed and offered whatever the lapse of time and after the crisis is over.

In our opinion, the aforesaid observations of the Supreme Court leave no manner of doubt that no injustice has been done to the petitioner. We

find no merit in the writ petition.

Dismissed.