
(1994) 09 P&H CK 0097

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Writ Petition No. 5099 of 1994

Sohna Devi

APPELLANT

Vs

The Haryana State
Electricity Board

RESPONDENT

Date of Decision: Sept. 20, 1994

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (1995) 110 PLR 34

Hon'ble Judges: S.S. Grewal, J; A.S. Nehra, J

Bench: Division Bench

Advocate: Kali Ram, for the Appellant; Kamal Sharma and Naresh Katyal, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

A.S. Nehra, J.

Sohna Devi has filed this petition under Articles 226/227 of the Constitution of India for the issuance of writ of mandamus or any other direction to the respondents to give employment to the petitioner's son under the Ex. gratia Scheme.

2. Briefly slated the facts of the case as mentioned in the petition are as follows:-

Ram Pat husband of the petitioner joined service as work-charge. T.mate in regular scale on February 1, 1968 and he was promoted as regular Asstt. Lineman in April, 1973. Ram Pat Assistant Lineman died on 16.3.1975 due to electric shock while working on duty. At the time of death of Ram Pat, her two sons, namely, Ramesh Kumar and Pardeep Kumar were minors. Executive Engineer and Sub Divisional Officer under whom the deceased was working, assured the petitioner that small children would be given appointment as Assistant Lineman when they attain majority. Petitioner was paid only Rs. 8000/- by way

of compensation in the end of year 1975 and no other financial help by way of family pension etc. was given to the petitioner and as such she had to sustain her family comprising small children by doing labour work. Ramesh Kumar dis-continued his study after 6th class and Pardeep Kumar another son of the petitioner had to be admitted in Bal Niketan in Sector 2, Panchkula where he is still studying. On the assurance of the Executive Engineer, Operation Division, Yamuna Nagar and Sub Divisional Officer, Operation Division No. 2, Yamunanagar, petitioner submitted an application to the authorities stating that her son had attained majority and he may be given employment under the Ex. gratia scheme of the Board. Executive Engineer, Jagadhri wrote a letter to the petitioner on 24.5.1975 asking her to give detailed particulars of her family members at the earliest. The request of the petitioner to give employment to her son was declined by the Executive Engineer vide his order dated 23.4.1990 which is reproduced as under:-

"Your application dated 5.10.1989 for employment of your son in Haryana State Electricity Board under Ex. gratia Scheme which was sent by you to the Secretary, Haryana, State Electricity Board, Panchkula is hereby returned to you. As per instructions, this facility cannot be given at this later stage under Ex. gratia scheme."

Petitioner again made a detailed representation to the Secretary of the Board. Request of the petitioner was again declined vide order (Annexure P-10) dated 7.5.1990. In the instruction of the Board for providing Ex. gratia facility to the family of the deceased employee who died while in service are contained in Board's Memo. No. 166455/555 dated 26.11.1971 and copy of the Circular is Annexure P-15. The relevant clause of Ex. gratia employment to be provided to one of the family members of the deceased is contained in clause V which is reproduced as under:-

"One or more members of the family of the deceased may be considered for employment in the Board's service, relevant rules being relaxed, if necessary and if feasible."

The other instructions of the Board relevant to the case are contained in memo. No. 15/2/88/6 CS-11 dated 3.11.1988. It is mentioned in the petition that according to the above instructions of the Board, the case of Ramesh Kumar son of the petitioner has to be considered for employment in the Board since at the time of the death of his father, there was no adult member in the family of the deceased who could be given employment under the Ex.gratia Scheme.

3. Written statement on behalf of the Board has been filed by the under Secretary of the Board. In the written statement, respondent has raised preliminary objection stating that the husband of the petitioner died on 16.3.1975; that the employment to the dependent of the deceased under Ex. gratia Scheme could be given only if the request for providing employment is made within one year from the date of the demise and that since the petitioner had made request in December, 1988, therefore, petitioner was not entitled to get employment for her son. It has been stated in para 3 of the written statement that in order to get employment on Ex. gratia basis, the dependent of the deceased has to apply

to the Board within the stipulated time and the Board has fixed the time limit of one year under the Ex-gratia Scheme in view of the circular dated 26.9.1985 (Annexure R-I). It has further been stated in para 3 that it was decided vide circular dated 1.10.1986 that in case of widow with minor children, the period of one year can be extended to three years provided the request for providing employment on Ex. gratia Scheme is made to the Board within a period of one year of the death of the employee. In para 4 of the written statement, it has been admitted that the husband of the petitioner was working as Assistant Lineman and he expired on 16.3.1975. It has further been stated that the officers of the answering respondents never gave assurance to the petitioner that her son would be provided employment on attaining majority. In para 11 of the written statement, it has been stated that the son of the petitioner is not entitled for employment under Ex.gratia Scheme as a matter of right; that ignorance of the instructions of the Board on this subject on account of illiteracy is of no help to the petitioner and that the orders dated 23.4.1990 and 7.5.1990 are legal.

4. Learned counsel for the petitioner has contended that Shingari Devi filed C.W.P. No. 14688 of 1992 against the Board which was allowed by this Court on 1.2.1993. He further submitted that the facts of that case are similar to the facts of the case in hand. Shingari Devi in the writ petition stated that her husband Bhale Ram expired on 18.9.1977 when he was serving in Sub Urban Sub Division, Haryana, State Electricity Board, Panipat and that at that time he was Assistant Lineman and had got 4 children and his eldest son was Karamvir Singh. It is further stated in that writ petition that the authorities of the Board wanted to be satisfied that Karamvir Singh was the only son of Bhale Ram; that accordingly, affidavits were sent alongwith the application to the Chairman of the Board on 18.8.1992; that the petitioner had been making representation and every time hope was given that her son would be employed under the Ex.gratia scheme and that the request of the petitioner was allowed by the Division Bench on 1.2.1993 and the order reads as under:-

"Petitioner Smt. Shingari Devi has approached this Court for directing the Haryana State Electricity Board to give employment to her son who is dependent of deceased Bhale Ram, a former employee of the respondent-Board. On the date of his death, Bhale Ram was serving as work-charge T-Mate. According to the policy instructions of the Board, employment on priority basis under the Ex.gratia Scheme should have been provided to the petitioner's son, but the respondent-Board has declined the request of the petitioner on the ground that the case of the petitioner was not covered by the Ex-gratia Scheme. However, the petitioner in her replication has placed on record a copy of the order dated 19th February 1992 (Memo No.-Ch-NGE/P-3083), copy Annexure P. 11 with the replication, by virtue of which under the Ex-gratia Scheme, in relaxation of Standing Rules, one Smt. Savitri Devi had been given appointment. The relevant portion of the aforesaid order is reproduced below: -

Subject: Offer of appointment to Smt.Savitri Devi w/o late Shri Hawa Singh, W/C Chowkidar, under Ex-Gratia Scheme.

The appointment of Smt. Savitiri Devi W/o late Shri Hawa Singh W/C Chowkidar for the post of regular Peon (Field) under Ex-Gratia Scheme in relaxation of standing Rules has been approved. Accordingly, she may be given offer of appointment against the vacancy of Peon existing under the Administrative control of your office after observing usual formalities. This issues with the approval of Chairman, H.S.E.B.

Sd/-

Dy. Secretary Establishment,
for Addl. Secy. HSEB, Panchkula.

After hearing the learned counsel for the parties and having gone through the record. We are satisfied that the case of the petitioner is squarely covered by the policy decision of the Haryana State Electricity Board.

Accordingly, we allow this petition and direct the Haryana State Electricity Board to provide employment to the petitioner"s son on priority basis immediately. There shall be no order as to costs."

5. Learned counsel for the petitioner has further contended that the facts of the case of Civil Writ Petition No. 14638 of 1992 filed by Shingari Devi are similar to the facts in hand. He has submitted that Bhale Ram husband of Shingari Devi expired on 8.9.1977 when he was serving the Board at Panipat and at that time, he had got 4 children and his eldest son Karamvir Singh who Was minor and was studying could not be employed in the service of the Board. He further submitted that Karamvir Singh passed his matriculation examination in 1992; that Shingari Devi made a representation on 24.3.1992 to the Chairman of the Board vide Annexure P- 2 stating that her son who had passed matriculation examination may be employed in place of her husband.

6. He has further contended that in view of the D.B. decision of this Court Shingari Devi"s son has been given employment by the Board.

7. Learned counsel for the petitioner has further contented that Shingari Devi filed replication in Civil Writ Petition No. 14638 of 1992 and alongwith the replication, she filed a copy of the order dated 19.2.1992 passed by the Board by virtue of which under the Ex.gratia Scheme, in relaxation of Standing Rules, one Smt. Savitri Devi whose husband Hawa Singh had died in 1978 after having put in service of only 3 years and 11 months had been given appointment. He has further contended that since Smt. Savitir Devi wife of Hawa Singh and Smt. Shingari Devi"s son had been given employment by the Board under the Ex.gratia Scheme, therefore, petitionen"s son is also entitled to get employment under the Ex.gratia Scheme of the Board and the son of the petitioner cannot be discriminated.

8. Learned counsel for the petitiner has further contended that the instructions of the Board dated 26.9.1985 Annexure R-I providing limitation of one year which has been extended upto 3 years is ultra vires of the provisions of Article 14 of the Constitution of

India. In support of his argument, he has relied upon a judgment of this Court reported as *Santosh Kumar v. The Haryana State Electricity Board and Anr.* 1993(1) RSJ 563. The relevant passage from the judgment, with which we fully agree is reproduced below: -

"It is no doubt correct that the appointment on compassionate grounds is in the nature of a concession. It may also be true that the instructions issued by the Govt. or the Board are only intended to provide immediate relief to the family of the deceased employee, so that it has some means to survive after the death of the bread-earner. However, in the case of a person, who leaves behind minor children, the condition of the widow is far worse than in a case where the children are grown up. While grown up and educated children can seek employment forthwith, the widow had to bear the burden in a case where the children still minor. To deny relief to such a widow only on the ground that the application has not been submitted within a period of three years causes acute hardship to the entire family. It will even result in discrimination, against the members of such a family inasmuch their right to be considered for employment on compassionate grounds would be completely defeated by a reason entirely beyond their control. The instructions contained in the Govt. letter dated May 19, 1989 and the decision of the Board not to entertain an application after the expiry of three years as contained in its letter dated November 9, 1989 would cause acute hardship in a case where the deceased employee leaves behind minor children. The instructions in so far as the minor children are concerned, would suffer from the vice of arbitrariness and be thus violative of Article 14 of the Constitution."

9. Learned counsel for the petitioner has further contended that the petitioner has been pursuing the case since 24.5.1975 when the Executive Engineer, Jagadhri Division wrote a letter vide Annexure P-3 asking the petitioner to give the details/particulars of her family members and, therefore, appointment to the petitioner's son cannot be declined on the ground that the petitioner had made a request for the first time in the year 1988 for the employment of her son. In support of his argument, counsel for the petitioner has relied upon a D.B. decision of this Court, reported as *Rampat v. Haryana State Electricity Board* through its Secretary and Anr. 1994(1) R.S.J. 96.

10. Mr. Kamal Sharma, Additional Advocate General, Haryana and Mr. Naresh Katyal, Advocate have contended that the consideration for employment on compassionate grounds is not a vested right which can be exercised at any time in future and therefore, the petitioner's son is not entitled to be appointed on compassionate grounds after a lapse of time. In support of their contention they have relied upon a judgment of the Apex Court reported as *Umesh Kumar Nagpal v. State of Haryana others* 1994(3) R.S.J. 317. It has been held by the Apex Court that the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules that the constitution for such employment is not a vested right which can be exercised at any time in future and that 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 breadwinner. The compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis

is over.

11. After hearing the learned counsel for the parties, we find force in the contentions raised on behalf of the petitioner. Hawa Singh died in 1978 after he had put in service of 3 years and 11 months. His wife Smt. Savitri Devi was given employment by the Board on 19.2.1992. The writ petition filed by Shingari Devi was allowed by a Division Bench of this Court. Husband of Smt. Shingari Devi died on 18.9.1977 and she filed an application to the Chairman of the Board on 24.3.1992 stating that at the time of the death of her husband, her son was minor and was studying and therefore, he was unable to do service. She further stated in her application to the Chairman that her son had passed his matriculation examination therefore, her son may be given employment in place of her husband. The writ petition filed by Smt. Shingari Devi was allowed by this Court on 1.2.1993 and her son had been given employment in view of the decision of this Court. In case the writ petition filed by the petitioner is not allowed, then injustice will be done to the petitioner and she will be discriminated because Smt. Savitri Devi wife of Hawa Singh has been given employment under the Ex. gratia Scheme of the Board by relaxing the rules son of Shingari Devi has also been given employment by the Board in view of the decision of this Court. There is no dispute with the proposition of law laid down by the Apex Court that the employment on compassionate grounds cannot be granted as a matter of right after a lapse of time. In the written statement, respondents have raised a preliminary objection that the employment to the dependent of the deceased under Ex. gratia Scheme can be given only if the request for providing employment is made within one year from the date of the demise. It has been further stated in the written statement that the Board has fixed a time limit of one year under the Ex. gratia scheme in view of the circular dated 26.9.1985 Annexure R-I and that since the petitioner had made a request to get employment for her son in December, 1986, therefore, the petitioner is not entitled to get employment for her son. The instructions dated 26.9.1985 Annexure R-I and instructions dated 1.10.1986 by which the Board has taken a decision not to entertain an application after the expiry of three years would cause acute hardship in a case where the deceased employee leaves behind minor children. The above instructions in so far as the minor children are concerned would suffer from the vice of arbitrariness and thus violative of Article 14 of the Constitution of India.

12. At the time of the death of Rampat husband of the petitioner on 16.3.1975, the Executive Engineer and the Sub Divisional Officer under whom the deceased was working had assured the petitioner that one of the small children of the petitioner will be given employment as Assistant Lineman when one member of the family attains majority. The Executive Engineer and the Sub-Divisional Officer who were posted in the Operation Division, Yamuna Nagar and who had given assurance to the petitioner have not filed written statement stating that they had not given any assurance to the petitioner. Petitioner has been pursuing her case after the death of her husband and she was given assurance by the Executive Engineer and the Sub-Divisional, Officer who were posted in the Operation Division, Yamuna Nagar where Rampat, Assistant Lineman died on

16.3.1975 due to electric shock while working on duty on the electric pole.

13. In view of the above discussion, the action of the Board in not giving employment to the petitioner"s son on the basis of policy instructions is palpably, arbitrary and cannot be sustained. Resultantly, we allow this writ petition and direct the respondents to give employment to the petitioner"s son as per his entitlement forthwith.