

206 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23906 of 2011(O&M)

Date of decision : 05.05.2015

Vikas Sharma

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR. JUSTICE AJAY TEWARI

Present: Mr.Saurabh Bajaj, Advocate for the petitioner.
Ms.Shruti Goyal, AAG, Haryana.
Mr.Abhishek Sethi, Advocate for respondent No.3.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

AJAY TEWARI, J. (Oral)

By this petition the petitioner claims regularisation on the post of peon.

The admitted facts are that the father of the petitioner was working on a sanctioned aided post of Lab Attendant with respondent No.3- College and died on 24.6.2003. The petitioner who was otherwise eligible for Class IV post was appointed on ad hoc basis as a peon. Thereafter by resolution dated 6.8.2004 (Annexure P-2) the management of respondent No.2 passed the following resolution:-

“Resolved that Sh.Shakti Singh peon be promoted on

sanctioned vacant post as Lab Attendant and Sh. Vikas Sharma be appointed as peon on sanctioned vacant post on the basis of ex gratia appointment, both promotion and appointment subject to approval of H.E.C., Haryana, Chandigarh.”

and subsequently the matter was sent to respondent No.2/Higher Education Commissioner for approval. Respondent No.2/Higher Education Commissioner approved the promotion of Shakti Singh to the post of Lab Attendant. However, with regard to the approval of the petitioner, letter dated 31.5.2006 Annexure P-4 was written by respondent No.2 which is as follows:-

“From

Director Higher Education,
Haryana Chandigarh.

To

The Principal,
Sanatan Dharam College,
Panipat.
Memo NO.13/13/-3/C-II(4)
Dated, Chandigarh 31.05.2006

Sub: Regarding granting of employment under the Ex-gratia Scheme – in the matter of Sh. Vikas Sharma son of late Sh. Prem Singh.”

In reference to your letter bearing No. SDGP/PF/18635, dated 17.3.2006 on the above-stated subject.

It is to inform you in the matter of cited-subject that there is no post available out of 5% of the total sanctioned posts under the Class-IV category. Therefore, no employment can be granted to the applicant under the Ex-gratia scheme.

Sd/-

Director High School-II
for Higher Education Commissioner,
Haryana Chandigarh”

Learned AAG has accepted that this rejection was done on the ground that under the extant Haryana Compassionate Assistance to the Dependent of the Deceased Haryana Govt. Employee Rules, 2003 only 5%

of the vacant posts could be diverted to compassionate appointment and this post which was so diverted did not fall within the proportion of 5%. In the very next breath, however, learned AAG has relied upon the decision of **Asha Chawla v. State of Haryana, CWP No.15605 of 2007** decided on 29.09.2008. In that case the petitioner had claimed a mandamus that her husband who was a JBT teacher in an aided school had died and she had the right to claim the benefit of Haryana Compassionate Assistance to the dependents of the Deceased Govt. Employees Rules 2003. In that case a Division Bench of this Court had held that rules or the policies made by the Haryana Government for granting benefits to dependents of deceased employees would not be applicable to employees of aided institutions and on that score rejected the claim of the petitioner therein. In the circumstances the rejection Annexure P-4 which is on the basis of the policy of the Government is meaningless since that policy was not at all applicable to the employees of the aided institutions.

Coming back to the chronology of the facts of the present case, the management respondent No.3 continued requesting respondent No.2 for permission for approval of appointment of the petitioner to the vacant aided post of peon (despite the order Annexure P-4) but no order was passed thereon. It was in these circumstances that he filed the present writ petition. He has relied upon a decision of another Division Bench of this Court in **CWP No. 20078 of 2002, Indrawati v. State of Haryana**, decided on 20.01.2004. In that case also the husband of the petitioner was working on an aided post in the C.R.Kisan College, Jind. On his death the petitioner was given appointment as a Clerk by the College and approval was sought from the Director Higher Education. Since no approval was being granted,

the petition was filed. This Court, however, directed the respondents to regularise the appointment of the petitioner therein.

The issue is whether respondent No.2 can refuse to grant approval to the appointment of the petitioner. The argument is that this appointment was not made in a regular manner, no advertisement was issued, no selection committee was formed, no representatives of the Government or the University were present and, therefore, the appointment was per se illegal. In normal circumstances this argument would be irresistible. Although appointment in public services should be made strictly on the basis of open invitation of application and comparative merit, having regard to Article 14 and 16 of the Constitution yet there are well recognised exceptions to the general rule, carved out in the interest of justice to meet certain contingencies; for example an appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service (or medical invalidation) or where land holders lose their land for a public project, there may be provisions for compassionate appointment to the members of the families of project affected persons.

It cannot be lost sight of that the Government itself has recognised these circumstances where a post can be filled up without any advertisement, without considering the other eligible persons etc. and the most stark example is that of making compassionate appointment to dependents of deceased employees. The Courts have also recognised this right of an employee and have accepted it as a permissible exception to Article 14 and 16 of the Constitution of India while upholding various such policies in a catena of judgments including **Umesh Kumar Nagpal v. State of Haryana**

reported as [1994] 3 SCR 893, **Haryana State Electricity Board v. Hakim Singh** reported as AIR 1997 SC 3887, **State of Haryana v. Ankur Gupta** reported as AIR 2003 SC 3797 and **Food Corporation of India v. Ram Kesh Yadav and others** reported as AIR 2007 SC 1421.

Of course, the misuse of such a right; for instance where a non-dependant family member is granted appointment or a distant relation is granted appointment may be illegal but where the breadwinner has died and an appointment has been granted to his dependant who is otherwise eligible and, more importantly that employee has now continued to work for 12 years, it is very hard to hold that the appointment is vitiated or that the approval can be refused.

In the circumstances I hold that the decision of the Division Bench of this Court in Indrawati's case(supra) would be applicable to the facts of the present case and direct respondent No.2 to approve the appointment of the petitioner as a peon against a sanctioned vacant post on regular basis w.e.f. 6.8.2004 with all consequential benefits. The necessary action be taken within a period of three months from the date of receipt of a certified copy of this order.

Petition stands disposed of in the above terms.

Since the main case has been decided, the Civil Misc. Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

May 05 , 2015
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