

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No.1849 of 2014

Date of Decision: 14.09.2015

Mrs. Surjit

....Petitioner

Vs.

Food Corporation of India and others

....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH.

Present: Mr. S.P. Soi, Advocate
for the petitioner.

Mr. Rajesh Garg, Senior Advocate with
Mr. Virender Soni, Advocate
for the respondents.

Amol Rattan Singh, J (Oral)

1. The petitioners' husband was working as a Handling Labourer in the respondent-Food Corporation of India (in short “the Corporation”), at Storage Depot, Nakodar, when he died on 23.04.2007.

As per the petition, the petitioner applied for appointment on compassionate grounds, to the Regional Manager of the FCI. At that stage an objection is stated to have been raised that as per the pension proforma filled in by Late Sh. Narinder Kumar, the name of his wife was given as Mamta, whereas the petitioner is Surjit. Further, as per the petition, the petitioner was asked to furnish an affidavit that, in fact, Surjit and Mamta are one and the same person. The affidavit is stated to have been duly submitted, a copy of which is annexed as Annexure P-2 with the petition.

2. Thereafter, it is stated that the representation was acted upon immediately and a letter was written by the respondents to the Deputy Commissioner, Jalandhar, on 01.06.2007, seeking verification of the natural heirs of deceased Narinder Kumar.

In response to the same, the Deputy Commissioner, Jalandhar, wrote back to respondent No.3, that as per the enquiry conducted by the Sub-Divisional Magistrate, Nakodar, the deceased had left behind his parents, two children and the petitioner, whose name is given as Surjit in the said communication, along with the names and details of other family members of the deceased, including two children then aged 5 years and 1 ½ years respectively.

3. After that the petitioner was asked to furnish an income certificate, which was applied for by the petitioner to the Tehsildar, Nakodar, who certified to her lack of significant income, on the application itself, on 31.03.2008. A copy of the application and the verification by the Tehsildar is annexed as Annexure P-4.

After that, an application dated 02.04.2008 was addressed by the petitioner, seeking appointment on compassionate grounds, to the Regional Manager of the FCI, and was forwarded to the Deputy Manager of the FCI at Nakodar, i.e. respondent No.3, with a copy to the Senior Secretary, FCI Handling Workers Union, New Delhi.

On 22.09.2009, a Committee of three officers, consisting of the Manager (Depot), Manager (Accounts) and Manager (G.C.), visited the

village of the petitioner and certified to the effect that the late Shri Narinder had, in fact, left behind the petitioner, one daughter aged 5 years (the daughter actually being 7 years by that time, as per the date of birth given), and one son aged 3 years. The Committee, as per its report (Annexure P-6), recommended appointment of the petitioner in place of her husband, on top priority 'and sympathetically'.

On 14.01.2010, the Manager (DCRG) of the respondent-Corporation, further forwarded the application to the Assistant General Manager (IRN), FCI, at Chandigarh, stating in the said letter (Annexure P-7), that approval of the Area Manager had been obtained.

The petitioner is also stated to have submitted her birth certificate, showing her date of birth to be 09.08.1967.

No action having been taken at the higher level, the petitioner is again stated to have made a representation on 14.01.2011 and yet another one on 24.12.2012. Finding no response thereto, a legal notice was issued on her behalf on 19.08.2013 and thereafter, with still no response having been received, she filed CWP No.20293 of 2013 before this Court, which was disposed of on 13.09.2013 by a coordinate Bench, directing the competent authority amongst the respondents to consider the claim of the petitioner and to take a decision on the said legal notice, within a specified period.

Consequent upon the above directions, the letter impugned in the present petition, dated 31.12.2013/02.01.2014 (Annexure P-15) written

by the Assistant General Manager (IRN), for the General Manager (R), was communicated to the petitioner, informing her that the time limit for submission of the application seeking appointment on compassionate grounds, was 6 months from the date of death of the employee and the said time limit could in no case be extended. Hence, with the petitioners' application having been made only on 02.04.2008 (i.e. almost more than 11 months after the date of death of her husband on 23.04.2007), her claim for appointment "had not been considered" by the competent authority.

4. In the reply filed by the respondents, though the rest of the facts have been admitted, however, the factum of a representation having been made in May 2007, has been denied, stating that no such application was made.

On query to the learned Senior counsel appearing for the respondents, as to why then had the Corporation sought verification from the Deputy Commissioner, Jalandhar, Mr. Garg has pointed to the written statement, to submit that such verification was sought not in response to any application seeking appointment on compassionate grounds, but for release of the service benefits of the late Narinder Kumar, in favour of his nominee.

He further submitted that the petitioner having not come with clean hands, to the extent of wrongly stating in the petition that she had made an application in the month of May 2007, she did not deserve sympathy in any case, other than the fact that as per the policy dated 02.02.1977, of the Corporation, governing appointment on compassionate

grounds, the time limit for making such an application was only 6 months, and the petitioner could not be given the benefit, as her application came more than 11 months after the death of her husband.

5. Mr. Soi, learned counsel appearing for the petitioner, on the other hand, submitted that the petitioner has specifically re-asserted in the replication filed, that she had, as a matter of fact, made a simple application in the month of May 2007, but being almost an illiterate lady belonging to the poorest section of the society, had not retained a copy of the same. Thereafter, her application having been made again, admittedly on 02.04.2008, and her case having been duly verified by a Committee of the Corporation itself and recommendations made in her favour, the respondent-Corporation kept sitting on the matter for 5 years, forcing the petitioner to go from pillar to post, including by way of filing of a writ petition earlier also, after which only, the respondents decided to reject her claim.

Hence, Mr. Soi submitted, that the petitioner being a wholly indigent person, even though a long period has now elapsed after her husband has died, she having no source of income except working in people houses etc., could not be denied her rightful claim in terms of even the policy of the respondent-Corporation, only because the respondents themselves did not decide her claim between 2007-2014.

He further pointed to the reply of the respondents, to submit that even her reminders in January 2011 and thereafter in 2012, the first immediately after her case was recommended in January, 2010, by the

Manager, (DCRG), Jalandhar, has been admitted by the respondents. He, therefore, submits that the petitioners' financial condition at the time of death of her husband, only a Handling Labourer, can be imagined when she had two very small children and the old parents of her husband to look after.

6. Having considered the rival arguments, I am of the opinion that this petition deserves to be allowed.

It is not denied that the petitioner is actually almost an illiterate lady who barely signs her name in Punjabi and admittedly, both by verification of the Deputy Commissioner/Sub-Divisional Magistrate, as also the three Member Committee of the respondent-Corporation that visited the petitioners' village, her financial condition is not in doubt.

It is not unbelievable that a lady in that condition may have made a representation soon after her husbands' death, but either had not retained, or had lost a copy, of that representation. Even taking, though in the circumstances not wholly believing, that no such representation in May 2007 was made, without a doubt, the petitioner, even in her penurious condition, admittedly made another/first representation even slightly over 11 months of her husband death.

Therefore, given her illiteracy and her poor condition, even an application made 5 months late, in the opinion of this Court, cannot be held against her; that is presuming that the application in May 2007 had not been made.

Thereafter, there is no denial whatsoever, by the respondents,

that the case was duly verified by physical inspection and otherwise, and recommended by the local authorities of the respondent-Corporation, but no decision conveyed to her for a long period, even though the recommendation process itself continued up till January 2010. Eventually, after making a representation and having a legal notice issued on her behalf, she finally filed CWP No.20293 of 2013, after which her application was rejected vide the impugned letter dated 31.12.2013/02.01.2014, leading to the filing of the present petition in 2014.

As a matter of fact, being a large Public Sector Undertaking with a huge number of employees across the country, the respondent-Corporation, should have been diligent and more responsible to inform the widow of a deceased labourer, of her rights, immediately after his death. Instead, they chose, at least at the higher level of the Corporation, to not even bother communicating anything to her, after her case was duly recommended by the local level Management.

In the opinion of this Court, the attitude at the higher level of the respondent-Corporation, is highly irresponsible, towards the family of a lowest-rung deceased employee.

7. No doubt, in **Umesh Kumar Nagpal Vs. State of Haryana**, (1994) 4 SCC 138, it has been held that appointment on compassionate grounds to the next of kin of a deceased employee, is essentially to tide over the immediate situation of financial difficulties that the family of the deceased employee might face. That view has been reiterated time and again

by the Apex Court; however, the present case is one where the petitioner is the widow of an employee at the lowest-rung of the respondent-Corporation and otherwise also, is obviously from the lower strata of the society. In such a case, the problem faced by the family, obviously would not end immediately and can continue over a period of time, as is also borne out by the report (Annexure P-6) submitted by the three member Committee constituted by the respondent-Corporation itself. That report, as already noticed, is dated 22.09.2009, i.e. more than 2 years after the expiry of the late Shri Narinder and as per the said report, all sources of income to the family had stopped and the family was facing a financial crisis.

Consequently, a recommendation was made for giving an appointment to the petitioner in place of her husband, on top priority.

Just because the respondents took their own time to decide the matter thereafter, in the opinion of this court, that cannot be held to be a ground to deny a person in the condition of the petitioner, an appointment on compassionate grounds, when the facts of her financial condition are not in doubt.

If that were to be the case, then despite any instruction/policy for grant of her appointment on compassionate grounds, the right to such an appointment to the next of kin, would stand defeated every time the organisation/institution concerned, delayed the matter for one reason or the other.

Hence, though that is not the ground taken by the respondents

to deny the petitioner appointment, and the denial is only on the ground of alleged late submission of the application at the initial stage, this 'compulsory delay' also was required to be looked into, by this Court.

Thus, after having considered the issue, this Court is of the opinion that the delay in considering the case of the petitioner would also not come in the way of her appointment, in her admitted condition.

8. Consequently, in view of the entire discussion held herein above, this writ petition is allowed and the respondents are directed to give the petitioner regular appointment as a Handling Labourer/Labourer in place of her husband, on compassionate grounds, in terms of their policy/circular dated 02.02.1977, ignoring the 6 months time limit given in the said circular, both, in view of the fact that the possibility of the petitioner having actually made her application in May 2007 cannot be ruled out, and further, even if it is taken that the application was made on 02.04.2008, in her condition of penury and her illiteracy, such a rigid time frame in any case needs to be ignored, especially as the delay, if any, in making the application is only a few months, after which she constantly followed it up.

The above directions be complied with within 3 months from the date of receipt of a certified copy of this order.

September 14, 2015
vcgarg

(Amol Rattan Singh)
Judge