

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.

C.W.P. No.3320 of 2013 (O&M)
DATE OF DECISION : 10.2.2015

Gurdeep Kaur

PETITIONER

VERSUS

The State of Punjab and others

RESPONDENTS

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

1. Whether reporters of Local Newspapers 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 ?

Present:- Shri S.K.Arora, Advocate for the petitioner.

Shri Harkesh Manuja, Additional A.G. Punjab.

MAHESH GROVER, J.

The petitioner prays for appointment on compassionate basis in lieu of the service rendered by her husband who died in harness.

The husband of the petitioner was employed with the respondents on daily wages since 6.12.1990. In the year 2011, a policy was introduced by the State contemplating grant of the benefit of regularization to those employees who had completed 10 years service in December, 2006. Accordingly, the names of the

persons who fulfilled this criteria were sent for regularization and the name of the husband of the petitioner was forwarded on 1.4.2011 for the intended benefit of regularization. On 10.4.2011, the husband of the petitioner died.

Since the benefit of regularization had not been conferred upon the deceased husband of the petitioner, her name for compassionate appointment has also been declined solely for this reason.

Learned counsel for the petitioner contends that the husband of the petitioner had served for as long as 11 years and his case was being considered for regularization, but the benefit could not flow to him on account of his unfortunate demise, which fact could not be construed as an impediment in his way for consideration of her plea for employment on compassionate grounds.

On due consideration of the matter, I am of the view that stand of the respondents is unjust. The policy such as grant of compassionate appointment have to be viewed from the perspective of its intended beneficial object and cannot be restricted to technicalities. The husband of the petitioner was indeed entitled to regularization in terms of the regularisation policy and would have certainly been granted the benefit, had the will of providence not prevailed. Undisputedly, his name had been sent up for the benefit of regularization on 1.4.2011 and in normal course, such a benefit ordinarily would have flowed to the husband of the petitioner in which eventuality, the petitioner's case for grant of compassionate appointment in the event of the death of her husband would have also been considered appropriately.

This Court has also opined in its decision dated 16.12.2014 rendered in C.W.P. No.1169 of 2011 titled *Balwinder Kaur v. The State of Punjab and others* which although appearing under different circumstances, but would form a persuasive reasoning in the instant case as well. In the aforesaid judgment, it was observed as under :-

“There is no dispute on facts. The deceased having worked with the respondents for almost three decades and the policy of the Government entitling the employee to regularisation of his services after having completed three years of service is a crucial fact from which this Court would proceed to determine the issues raised before it. Considering the length of service rendered by the deceased employee without the benefit of regularisation can at best be termed to be an exploitative action on the part of the State and human resource whose service are so desired and utilized for such an inordinate long period, cannot be kept away from the fruits of a regular employment on the premise of non-availability of vacancies. The State which professes to be a Welfare State, bound by the dictates of the Constitution of India which mandates adherence to Articles 14 and 16 of the Constitution in terms of public employment, can ill afford to seek refuge in such hypocrisy. If the services of an incumbent are required for more than three decades and practically utilized for that purpose, then the plea of non-availability of regular posts is unacceptable.

It is because of the fortuitous circumstances that the deceased employees were kept away from regularisation firstly on account of the will of providence and secondly on account of laxity on the part of the State.

... ..

The Court is thus of the considered view that it is only on account of the fault of the State that the deceased employees

were kept away from the benefit of regularisation. There cannot be any quarrel with the judgments relied upon by the learned counsel for the respondents that a person who has not been regularized, would not be entitled to the benefits of family pension which have their origin in the rules and the schemes framed thereunder. All the employees who died in harness in the case relied upon by the learned counsel for the respondents in **State of Haryana and others v. Shakuntala Devi (supra)** pertain to employment of 2 to 4 years and were made on ad hoc/temporary basis. It did not deal with the situation where the State has chosen to extract work from an employee for as long as three decades and then denied the benefit of the policy of regularisation merely on the ground of indecisiveness or laxity in conferment of such a benefit. A person who has rendered this kind of service beyond 2 to 3 decades would be hopelessly beyond employment due to his age if his services are dispensed with. It is on this account that the period of service rendered by an employee assumes great significance to evaluate his right which he asserts against the State in terms which are acknowledged by the State when policies of regularization are introduced limiting the conferment of benefit of regularisation to merely 3 to 4 years of employment.

Therefore, it is a fit case where the State should be mandated to prescribe a notional date of regularisation to all deceased employees so as to enable them to the benefits of family pension as per the rules which undisputably would

have flowed to the petitioners herein if the benefit of regularisation had been granted to the deceased employees.”

For the aforesaid reasons, I would agree with the contention of the petitioner and while accepting the petition, would remit the matter back to the respondents for re-consideration of the claim of the petitioner for grant of benefit of compassionate appointment by treating her husband as a regular employee. Similarly, the petitioner would also be entitled to the benefit of family pension since this prayer is squarely covered by the ratio of the aforesaid judgment. The entire exercise be carried out as expeditiously as possible, preferably within a period of three months from the date of receipt of a copy of this order.

February 10, 2015
GD

(MAHESH GROVER)
JUDGE