

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

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RSA No. 1036 of 2011

Date of decision : April 08, 2015

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State of Punjab and others

.....Appellants

Versus

Gurjant Singh

.....Respondent

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CORAM: HON'BLE MS. JUSTICE RITU BAHRI

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Present: Mr. Vaibhav Sharma, DAG, Punjab for the appellants.

Mr. Vikas Singh, Advocate for the respondent.

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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?*

RITU BAHRI, J

State of Punjab has come up in this regular second appeal against the judgment dated 30.7.2010 passed by the Additional District Judge, Patiala, whereby the appeal against the judgment and decree dated 1.10.2009 passed by the Civil Judge (Jr. Division), Patiala was dismissed and judgment and decree of the trial Court was modified to the extent that the plaintiff is entitled to be considered for compassionate appointment. Vide the trial Court judgment suit of the plaintiff-respondent (hereinafter referred to as 'the plaintiff') has been decreed for appointment on compassionate grounds.

Father of plaintiff Gurjant Singh, Late Shri Hans Raj was working as a Constable in Govt. Railway Police, Patiala. He died on 20.6.2003 during the course of his employment. Thereafter mother of the plaintiff expired on 5.6.2007. On attaining majority, the plaintiff applied for appointment on compassionate grounds on the post of Clerk. Vide letter dated 16.6.2007, plaintiff was informed by defendant no.3 (appellant no.3) that defendant no.2 (appellant no.2) vide letter dated 9.5.2007 has rejected the case of the plaintiff for appointment on compassionate grounds on the post of Clerk. The reason for rejection was that Government had appointed Hans Raj on the post of Constable after the death of Constable Raj Kumar (who was previously the father of the plaintiff). Smt. Palwinder Kaur, mother of the plaintiff now deceased was previously married to Constable Raj Kumar and plaintiff was born out of the wedlock. After the death of Constable Raj Kumar, his younger brother Hans Raj was provided job on compassionate grounds. Smt. Palwinder Kaur mother of the plaintiff remarried to Hans Raj and the plaintiff became the son of Constable Hans Raj. After the death of Hans Raj on 20.6.2003, defendant no.2 issued letter on 4.8.2005 for appointing mother of the plaintiff Smt. Palwinder Kaur on compassionate grounds. Palwinder Kaur categorically gave an affidavit with an application stating that his son Mr. Gurjant Singh, the plaintiff may be given job and she has no objection to the appointment of the plaintiff. Defendant no.2 vide letter dated 27.12.2006 had informed the plaintiff that his case for appointment on compassionate grounds on

the post of clerk is under consideration and he was directed to be ready to appear for the test. Palwinder Kaur died on 5.6.2007. Thereafter, vide order dated 9.5.2007 of defendant no.2, case of the plaintiff for appointment on compassionate grounds was rejected. It was claimed by the plaintiff that this order was contrary to the instruction of the Govt. which provide that kith or kin of the deceased employee shall be given appointment on compassionate grounds immediately so that the family of the deceased employees shall not left in penury and shall not face starvation due to the death in harness. The object of giving compassionate appointment to the kith and kin of deceased employee was to mitigate their hardships suffered due to death of the government employee. Without giving any opportunity of hearing, his case was rejected.

Before the trial Court, the defendants admitted the facts with regard to the appointment of Hans Raj on compassionate grounds on the death of father of the plaintiff i.e. Raj Kumar. Thereafter on the death of Hans Raj, consent of mother of the plaintiff Palwinder Kaur was asked for consideration of her name for appointment as contingent paid post (safaiwala/cook). She gave an affidavit that she has no objection if the job is given to her son Gurjant Singh. Palwinder Kaur died on 5.6.2007. The plaintiff was advised to prepare for test for the post of clerk vide letter dated 27.12.2006. But, after consideration of his case, the same was rejected by the Director General of Police, Punjab Chandigarh vide order dated 9.5.2007 on the ground that benefit of compassionate

appointment had already been given to Hans Raj after the death of his brother Raj Kumar and the same benefit could not be extended for the second time.

The trial Court examined the scheme of compassionate appointment and held that the plaintiff came within the definition of dependent family members as he was wholly and solely dependent on the employee at the time of his death and he was entitled to be appointed on compassionate grounds. The plaintiff was eligible and qualified for the post of Clerk in the Office of GRP, Patiala. He was unemployed and had no source of income after the death of his father Hans Raj. After the marriage of the mother of the plaintiff to Hans Raj, he became the son of Hans Raj and his claim for appointment on compassionate grounds on the death of Hans Raj could not be denied.

The lower appellate Court dismissed the appeal filed by the State and upheld the judgment and decree of the trial Court. However, the judgment and decree of the trial Court was modified to the extent that the plaintiff is entitled to be considered for compassionate appointment. The appellate Court examined the Govt. Instructions dated 21.11.2002 in para 12 of its judgment:

12. The awarding of the appointment on compassionate grounds is covered under the Govt. instructions No11/105/98/4PP/II/14420 dated 21 November,2002. It is specifically stated that the authorities concerned are to consider whether the

family of the deceased employee is unable to meet the financial crises resulting from the employee's death. As per these instruction the compassionate appointments are to be made to the dependent member of the family of the deceased Govt. employee who dies in harness. The dependent family means a) (Spouse) or b) son (including adopted son); or c) unmarried daughter (including adopted daughter) d) unmarried brother or unmarried sister who was wholly dependent on the Govt. servant. As per Rules dependent son is entitled to be considered for compassionate appointment. As regard the dependency is concerned, the same is even admitted by DW1 in her cross-examination. It is admitted that the plaintiff was dependent on Hans Raj and was his heir. It is also admitted that the plaintiff was entitled and qualified for the post of clerk. It is also admitted that the office has firstly recommended for the granting of job on compassionate grounds. It is also admitted that the plaintiff was unemployed and he has no source of income. It is also admitted that mother of the plaintiff had given no objection that job on compassionate grounds be given to him only. Furthermore, much stress was laid by the

appellants that the plaintiff was not the real son of the Hans Raj and so he was not entitled to the job. As per Rules the dependent adopted son is entitled to be considered for compassionate appointment. The case of the plaintiff is virtually of an adopted son who was totally dependent on Hans Raj. It is an admitted fact that the plaintiff was born out of the loins of Raj Kumar and from the wombs of Palwinder Kaur. The plaintiff was not granted appointment on compassionate grounds after the death of his father Raj Kumar, as the same was given to Hans Raj, who happens to be his father's brother. The right of the plaintiff was prejudiced at that juncture because his mother contracted second marriage with Hans Raj (Father's brother) who adopted the plaintiff and his brother and chose to bring up the family. It was on this ground only that he was given appointment on compassionate grounds on the death of his brother Raj Kumar in preference to the plaintiff and his brother who was the real minor son of Raj Kumar. The adopted cannot be unnecessarily by written document. It may be by conduct. As the plaintiff was adopted by the deceased Hans Raj after contracting marriage with mother of the plaintiff, his case is now of

adopted / dependent son. This fact is also supported by the affidavit of the wife of deceased Hans Raj who happens to be the real mother of the plaintiff . She has stated that employment, if any , be given to the plaintiff rather than to her on the death of her husband namely Hans Raj. There is no other person claiming appointment on behalf of Hans Raj and this was the reason that the plaintiff was adopted / dependent son of Hans Raj. As per rules the adopted /dependent son is certainly entitled for compassionate appointment on the death of his adopted father. Furthermore, in case of the plaintiff he was totally dependent on the deceased Hans Raj and his wife right from his childhood, as his father has expired and his mother has contracted second marriage with Hans Raj and he has been adopted for all intents and purpose and has been reared since childhood. It was for this reason that his appointment on the death of Constable Raj Kumar was given to Hans Raj, as he had taken the responsibility of the the entire family of constable Raj Kumar by adopting them and also by contracting second marriage with mother of the plaintiff , who was earlier the wife of Constable Raj Kumar. As regard the financial status of the plaintiff

is concerned, he is unemployed and he has no source of income and this fact was admitted by none else but by the defendants. Moreover, the mother of the plaintiff who was also the source of his livelihood has also expired in the year 2007. Thus keeping in view his financial status certainly he is entitled to be considered for compassionate appointment by the defendants as per his qualifications and eligibility conditions.”

The plaintiff Gurjant Singh was covered under the definition of dependent family members being son of Hans Raj. The dependency of the plaintiff was admitted by DW-1. In the cross-examination she stated that the plaintiff was wholly dependent upon his father and he is fully eligible and qualified for the post of clerk. Hence as per the Govt. instructions dated 21.11.2002, the plaintiff was the adopted/dependent son of Hans Raj and he was entitled for the appointment on the death of his father.

Counsel for the appellant Mr. Vaibhav Sharma has vehemently argued that initially the State had given compassionate appointment to Hans Raj brother of Raj Kumar. Thereafter he married Palwinder Kaur wife of Raj Kumar. The object of giving compassionate appointment to Hans Raj was to overcome the imminent difficult situation which fell upon the family of Raj Kumar. His younger brother Hans Raj got the job and married Palwinder Kaur. Thereafter on his death, the same benefit could not be

extended on the basis of Government Instructions dated 21.11.2002. This argument of the learned counsel for the appellant has to be examined in view of the undisputed fact in the present case that initially Hans Raj was appointed on compassionate grounds on the death of his elder brother Raj Kumar, husband of Palwinder Kaur as she had refused to accept the appointment on compassionate grounds. Later on Hans Raj married Palwinder Kaur and thereafter he died on 20.6.2003. After his death defendant no.2 issued letter dated 4.8.2005 for appointing Palwinder Kaur, mother of the plaintiff on compassionate grounds. Palwinder Kaur, at that time, gave an affidavit that his son Gurjant Singh may be given the job and she had no objection for the appointment of the plaintiff. The Department after issuing the aforesaid letter cannot take a stand that once Hans Raj was given appointment on compassionate grounds after the death of his elder brother Raj Kumar, no case for appointment of his son Gurjant Singh on compassionate ground is made out on the death of Hans Raj. Issuance of letter dated 4.8.2005 by defendant no.2 by all intents and purposes accepts the right of Palwinder Kaur for appointment on compassionate grounds on the death of Hans Raj. Once the right of Palwinder Kaur exists to be taken as dependent of Hans Raj for appointment on compassionate grounds on the same analogy right of the plaintiff Gurjant Singh adopted son of Hans Raj is also covered. As per the Instructions dated 21.11.2002, the definition of dependent family members is as under

The dependent family means:

- a) Spouse, or
- b) Son (including adopted son); or
- c) unmarried daughter (including adopted daughter); or
- d) unmarried brother or unmarried sister who was wholly dependent on the Govt. Servant.

Moreover as per the above said definition, after the death of Hans Raj, mother of the plaintiff, Palwinder Kaur and the plaintiff being son/adopted son of Hans Raj was also eligible. The father of the plaintiff, Raj Kumar had expired on 21.8.1990. At that time only his mother Palwinder Kaur was eligible to be appointed on government service. On her request, Hans Raj was given appointment and he had remarried Palwinder Kaur. In this process, the benefit of compassionate appointment on the death of Raj Kumar had been consumed by Hans Raj. When Hans Raj died on 20.6.2003, the previous appointment given on the death of Raj Kumar cannot be used to deprive the benefit of compassionate appointment to the dependent family members of Hans Raj. His family consisted of Palwinder Kaur and his children who were dependent upon him. On his death, a fresh cause of action arose to the family of Hans Raj who were wholly dependent upon him to seek appointment on compassionate grounds. Right of his wife Palwinder Kaur was accepted and extended vide order dated 4.8.2005. At that time in 2005, the present plaintiff had become eligible for the appointment to the post of Clerk and Palwinder Kaur gave her affidavit to that effect that she had no objection to the appointment of

the plaintiff after the death of Hans Raj. The present plaintiff being the adopted son of Hans Raj had a rightful claim to be appointed on compassionate grounds as he was unemployed and dependent upon his father Hans Raj. The suit of the plaintiff after losing his father Hans Raj and mother Palwinder Kaur had been decreed by both the Courts as this case was squarely covered by Instructions dated 21.11.2002. As per the deposition of DW-1 Sarabjit Kaur, Senior Assistant also, the plaintiff was wholly dependent upon his father and eligible and qualified for the post of Clerk and he had no source of income.

In view of the concurrent findings of fact, no substantial question of law arises for consideration in this regular second appeal. Hence the same is dismissed.

April 08, 2015
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(**RITU BAHRI**)
JUDGE