

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 22.12.2016

CWP No.13818 of 2000 (O&M)

Roshni Devi

...Petitioner

Vs.

Haryana Vidut Prasaran Nigam & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mrs. Abha Rathore, Advocate, for the petitioner.

Mr. J.S.Bedi, Advocate, for the respondents.

RAJIV NARAIN RAINA, J. (ORAL)

Though it may be difficult for this Court to consider a case for compassionate appointment at this distance of time and that too by creating positive rights in favour of the petitioner, but at the same time both law and equity require that decreed award of the Labour Court upheld till the Supreme Court deserves to be implemented and for the petitioner's husband to be treated in approximation to the rights of 27 of his colleagues, who were taken back in service along with the petitioner's husband and their services regularized, limited for the purpose of regularization to bring monetary relief to the petitioner on reinstatement into service of her husband whose termination order was set aside by the labour court.

A few facts are necessary to notice. The petitioner's husband was appointed as a Sweeper on 15.06.1987 in the respondent department. His services along with his some of his colleagues were terminated on 20.08.1988. They raised a dispute which was referred to the labour court for adjudication, which was allowed in their favour. Award of reinstatement

were made on 07.04.1994 with continuity of service, but back wages were restricted to 10% of the arrears.

Interestingly, the difference is that in the case of all the 31 Sweepers whose fate was clubbed with the petitioner and who had been reinstated into service with 10% back wages the department did not prefer writ proceedings to challenge the award in three cases including the petitioner's husband which attained finality, but in remaining 28 cases writ petitions were filed. The awards were upheld, but were modified on the statement made by the learned counsel for the workmen that they give up claim for wages, in case their request for reinstatement to service is considered. The Court accepted the position and that is how the orders of reinstatement were passed on 24.01.1995 with continuity of service in their cases but without back wages.

The difficulty in this case arises on account of the death of the petitioner's husband on 26.02.2000 after he was issued an offer of appointment on regular basis on 09.02.2000. He could not join till 24.02.2000 i.e. the last date to join and unfortunately died two days thereafter.

Whether the petitioner's husband was unable to join because of illness or that he had a heart attack is not clear, but the fact of the matter is that he died suddenly and it was always open for the employer to extend the date by sufficient cause shown of not joining on time. Doubtless, the offer of appointment on regular basis by way of regularization had been made and the permanent employer – employee relationship had come into existence and was on the brink with only joining left. Had her husband not died all of a sudden he would have like the others become permanent. Therefore, the petitioner in my view should not be turned away without any relief. If

compassionate appointment to children is not possible, then at least she must have access to monetary relief. She must have access to 10% back wages being the awarded amount because the award had attained finality when not litigated against by the respondent Board. Besides, she will have a right to have her husband treated as an employee since 1987 by virtue of the award and deemed to be regularized and thus to be given monetary benefits due to her on this account, as permitted by the Rules of the Board and if not then on principles of natural justice and what is found just and fair to sub-serve the ends of justice. When her husband died, the petitioner was left alone to rear four children under the age of ten years.

Consequently, this petition is partially allowed. The petitioner is held entitled to 10% back wages as awarded, in case not already granted. In case, they have not been granted, then the amount will be determined with interest at the rate of 6% p.a. till payment to the petitioner if made within three months of the order failing which it will earn 12% per annum.

Besides, a mandamus is issued to the Board to pass a comprehensive order within three months from the date of receipt of certified copy of this order either from this Court or by the petitioner, whichever is earlier; addressing issues arising out of the death of the petitioner's husband for grant of financial benefits/terminal benefits/pensionary benefits including amounts which may be lying, if any, in the GPF/PPF/CPF/GIS/DCRG of the husband including family pension etc. by treating the petitioner as deemed regular to bring her case on par with the others who were more fortunate than the petitioner. The respondents would consider the case of the petitioner holistically and sympathetically with a spirit of humanism enshrined in Article 51A (h) of the Constitution of India.

Let the decision be taken in terms of this order by the respondents within the time allowed as above and thereafter the same conveyed to the petitioner immediately. If money is found due and payable, it should be handed over within the next one month. The respondents will be as in duty bound to provide an effective opportunity of hearing to the petitioner or her nominee well acquainted with law and the facts of the case. For this she will be given advance notice in writing fixing date, time and venue.

22.12.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>