

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

Date of decision: 08.11.2016

CWP No.826 of 1995

Rati Pal Singh

...Petitioner

Vs.

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Ram Avtar Sheoran, Advocate, for the petitioners.

Mr. Jasmeet Singh Bedi, Addl. AG, Haryana.

RAJIV NARAIN RAINA, J. (ORAL)

The petitioner claims compassionate appointment arising out of disability of his father during the course of employment with the respondent department declaring him unfit for future service as a driver of public transport buses. As a consequential fall out of the medical report submitted to the department after examining the father, he was retired from service on 09.06.1994 on payment of service pension and pensionary entitlements. The petitioner then approached this Court 21 years ago basing his claim on Haryana Government instructions dated 02.12.1975 and 23.11.1992 for grant of ex-gratia employment. The latter instructions were by way of a conceding to claims for incentives to Government servants, who become unfit during service, in which case, their dependents could be offered appointments on compassionate basis. These instructions catered to dependents of Government employees who become blind or unfit during service. Unfit officials would have to obtain a certificate of unfitness from the Special Medical Board constituted for the purpose by the Health

Department, Haryana. The petitioner's father possessed a medical certificate from the Medical Board, Bhiwani which found him 'unfit' for Government job assigned to him due to defect of right eye @ 6/60 and left eye found "Ec
tive close to eye". The claim is based on the decision rendered by the Supreme Court in Anand Bihari & others Vs. Rajasthan State Road Transport, AIR 1991 SC 1003; 1990 SCR Suppl. (3) 622, which does not deal with issue of compassionate appointment to the dependent, but of right of continuation in service of employees, who become 'Nakara' for other jobs in the same organization, which require lighter duties.

Mr. J.S.Bedi, Addl. AG, Haryana, points out that the instructions dated 23.11.1992 placed on record as Annex P-4 in translation from Hindi is an incorrect translation which twists the meaning. In the original Hindi version, Para.2 of the instructions read as follows:

"2. Yeh sapasht kiya jata hai ki nakara hone wale karamchariyon ko swasthaya vibhag dwara gadhit kiye jaane waale vishesh medical board se nakara hone baare parmaan pattar praapt karna hoga. Aapse anurodh hai ki in hidayaton ki dridta se paalna ki jaaye or bhavishya mein prastav in hidayaton ke anusaar hi sarkaar ko puran suchna सहित bheja जाये."

Mr. Bedi is right when he points out that there is a fine distinction between 'unfit during service' and 'Nakara'. The word 'Nakara' in Hindi, employed in the original instructions means not 'totally incapacitated' but 'incapacitated'. He harps on the degree of handicap. Therefore, the case of the petitioner does not appear to fall under the executive instructions dated 23.11.1992 relied upon by the petitioner in the body of the petition and in the prayer clause from where relief can spring.

Still further, the learned counsel for the petitioner to dispel doubt points out to the instructions dated 31.08.1995 which deals with the subject of 'employment to a dependent of a deceased Government servant employee under the ex-gratia scheme'. These instructions came into existence after the filing of the petition. He would accordingly refer to Para.5 of the instructions which read as follows:

“5. The facility of compassionate employment to a dependent of a government servant shall be available, if the latter is declared medically unfit / blind incapacitated by the Special medical Board and retired on or before attaining the age of 55 years in the case of Class - I, II, III officers/officials and 57 years in the case of Class-IV employees. A government employee who is declared incapacitated / blind after 55 years of age in the case of Group A, B, C and after 57 years in the case of Group D employees, will not be entitled to this facility. Subject to this, terms and conditions and procedure applicable in the case of compassionate employment to a dependent of a deceased employee would be applicable in these cases as well.”

Can the case of the petitioner be considered under Para.5 of the 1995 instructions, as reproduced above, is the question which falls for consideration and further still whether relief should be granted at all at this distance of time even though the time is amply covered and explained by the sheer pendency of this petition after admission for regular hearing.

Mr. Bedi argues for the department that the word 'medically unfit' used in Para.5 would not help the petitioner; firstly, in the face of the previous instructions dated 23.11.1992 where the word 'Nakara' has been used specifically and the 1995 instructions which do not touch upon or mention the earlier instructions which still continue to hold the field and because they hold the field, they cannot be seen as overlapping. The

petitioner's father's medical certificate declaring him unfit to do the job of a driver is because of waning eye-sight, not sharp enough to risk the lives of passengers. Hence, the case of the petitioner's father could not be said to fall in the category of 'blind' or 'incapacitated' and his medical unfitness will not debar him from doing other jobs or for him to have sought well in time for himself, a right to retention in employment till superannuation on some other less demanding post in terms of the law laid down in *Anand Bihari case*. Therefore, it would not be fair to confer on the dependent of the Government employee, a huge benefit, whose father was, in any case, almost at the fag-end of his career. It would then not be proper to pass on the baton of government job to an able bodied son for the next three decades public employment and that too by a direction of the Court. Even though the petitioner's case may have remained pending, and if no action was taken on the application for the last 21 years, it would serve no useful or prudent purpose for this Court to direct the respondents to consider and decide a pending representation by a fiat.

Relief to the petitioner resulting from eyesight impairment of his father at an advanced age is not strong enough anchor to provide a job to the petitioner since it is not inter alia a death case. The petitioner's father was retired on medical grounds and became a pensioner and I find no valid reason to issue mandamus to the State to offer appointment to his son. After a passage of 21 years, it would neither be prudent nor practical or wise use of discretion to consider issuing a direction by way of a command to the Government to offer appointment to the petitioner on a Class IV post.

Besides all the above, Mr. Bedi has pointed out to a judgment passed by the Supreme Court in State of Haryana & others Vs. Surjeet Singh, (1996) 5 SCC 478, wherein the Court held that disability in eyesight

would not mean that the person was totally blind or invalid, his son would not be entitled for appointment on compassionate grounds. However, the challenge to the order passed by this Court in *Surjit Singh* failed only on account of the fact that in the meanwhile the directions issued by the High Court had been complied with by the department and the petitioner therein had already been granted the appointment and, therefore, the Supreme Court declined to interfere. However, we are concerned with the principle laid down which is attracted to the facts of this case in the ratio and not in its relief part.

Consequently, I find no merit in this petition and would hereby dismiss it.

08.11.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE

Whether speaking/reasoned: *Yes*

Whether Reportable: *No*