

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No.14398 of 2005 (O&M)

DATE OF DECISION: 21.01.2016

Shri Sawroop Chand

....Petitioner

versus

State of Haryana and others

.....Respondents

**CORAM:- HON'BLE MR.JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN PALLI**

Present: Mr. Rao DS Nirban, Advocate for the petitioner

Mr. Jasmeet Singh Bedi, Additional Advocate General,
Haryana

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S.J. VAZIFDAR, ACTING CHIEF JUSTICE:

This petition comes before us by way of a reference. The learned single Judge had heard the matter and reserved the judgment. Subsequently, as stated by the learned Judge in the reference order, he came across the judgment of the Supreme Court in *MGB Gramin Bank vs. Chakrawarti Singh*, (2014) 13 Supreme Court Cases 583. The learned Judge found that the judgment rendered by the Full Bench of this Court in *Krishna Kumari vs. State of Haryana and others*, 2012(2) SCT 736 has been overruled by implication. The learned Judge stated that the matter, therefore, required consideration by a larger Bench or by a Co-ordinate Bench of *Krishna Kumari's* case on the following question of law:-

"Whether the Government employee who seeks compassionate appointment would be governed by rules/policy in operation at the time of death of an employee or the rules/policy applicable on the date when his case would be considered by the appropriate authority?"

2. We must, at the outset, state that it was not necessary for the learned Judge to have referred the matter to a larger Bench. The matter could have been decided by the learned Judge by following the doctrine of precedents.

3. Further, it is not necessary in this matter to consider the question of law framed by the learned Judge. As the matter has been argued substantially before us, we do not deem it appropriate to return the reference. We have instead decided the matter ourselves. Returning the reference would have burdened the parties with costs which is not desirable especially in a matter such as this which involves compassionate appointment.

4. The petitioner's father, who was born on 15.05.1959, was employed as Beldar, which is a Class-IV post, on regular basis in the office of Executive Engineer, Mohindergarh Canal, up to 10.05.2001. The petitioner's father unfortunately took ill. A medical report dated 10.05.2001 of the Special Medical Board, Pt. B.D. Sharma, PGI, Rohtak, certified that the petitioner's father was "completely and permanently incapacitated for further service in the Department - M/Garh Canal W/S Division as Beldar on account of disability 75% (Seventy Five)". The certificate states that the petitioner's father was unfit for further service in the said post and in the said department. It is further certified that the incapacity was not caused due to any irregular or intemperate habits. Thus, with effect from 14.05.2001, the petitioner's father was declared to be unfit in respect of the said post. The petitioner submitted an application to the respondents for *ex-gratia* appointment on compassionate ground.

5. The respondents' General Manager (Project), Irrigation Department, called upon the petitioner to make an option for

compassionate appointment or for *ex-gratia* grant. The petitioner was called upon to exercise the option in the form of an affidavit. The letter erroneously refers to the *ex-gratia* appointment in the case of a deceased employee.

6. The petitioner accordingly filed an affidavit exercising his option to get employment under the Haryana Government *ex-gratia* scheme.

7. We will now refer to the documents/notices issued by the respondents from time to time regarding the *ex-gratia* facilities.

8. A circular dated 23.11.1992 insofar as it is relevant reads as under:-

"Subject: Facilities to the families of the employees rendered unfit during service with regard to providing appointment to the dependents of the employees who have been rendered blind or unfit.

Sir,

I have been directed on the aforesaid subject to draw your attention to the Haryana Government notification No. 16/1/91-6 G.S.II, dated 22.02.1991 and to say that the Government after re-consideration has taken this decision, that after the date of issuance of this letter that only one of the dependents out of the dependents of the family of regular employee, who has been rendered blind or unfit during service, will be given appointment.

2. It is clarified that the employees who are rendered unfit have to obtain the certificate from the Special Medical Board to be constituted by the Health Department. You are requested that these instructions should be strictly followed and in future proposals should be sent according to these instructions to the Government with complete information.

3. The cases prior to the issuance of this letter will not be re-opened."

This circular entitles one dependent of an employee who has been rendered blind or unfit during service to be appointed.

9. As we mentioned earlier the petitioner has complied with the requirements of paragraph-2 of the circular. We referred to the medical certificates issued by the Special Medical Board in respect of the petitioner's father.

10. Mr. Bedi, the learned counsel appearing on behalf of the respondents, however, relied upon a notification dated 28.02.2003 issued in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. By this notification, rules were made to regulate the compassionate assistance by way of ex-gratia financial assistance or ex-gratia appointment on compassionate grounds to members of the family of a deceased Government employee who die while in service".

It does not purport to make the rules in respect of a Government employee who is disabled while in service. Mr. Bedi relied upon rule 19 of the notification which reads as under:-

"Rule 19. *Repeal and Savings*:- The existing instructions issued by the Haryana Government from time to time regarding providing of financial assistance and appointment under ex-gratia scheme are hereby repealed.

Provided that an action taken under these rules and instructions so repealed shall be deemed to have been taken under the corresponding provisions of these rules."

The reliance upon 2003 Rules is not well founded.

11. The contention that rule 19 withdrew the benefit of the policy dated 23.11.1992 is not well founded. Rule 19 does not answer the question by itself. What is repealed by rule 19 can be determined only by reading the notification as a whole. As we mentioned earlier the object of the notification itself is clearly

stated to be the provision of ex-gratia appointment on compassionate ground to the members of the family of a deceased government employee who dies while in service and not to the members of the family of a government employee who is disabled while in service. Every rule in the notification expressly refers to the family of the deceased employee. For instance rule 2 states that the object of the rule is to assist the family of a deceased employee in tiding over the emergency situation, resulting from the loss of the bread-earner. The notification gives the members of the family of the deceased government employee who die while in service an option of financial assistance to the extent stipulated or appointment on compassionate ground. Rule-5 stipulates that applications to be made by the members of the deceased employee on forms for ex-gratia appointment on compassionate grounds or ex-gratia compassionate financial assistance. This rule also relates only to the dependents of the deceased/missing government employee. Rule-6 permits the Head of the concerned department, where the deceased person was employed, power to give appointment/provide compassionate financial assistance.

12. Rule-19, therefore, repealed only the ex-gratia schemes in respect of a deceased government employee. It did not repeal the policy dated 23.11.1992 which provided compassionate appointment to the dependents of the employees who have been rendered blind/unfit such as the petitioner's father. The policy dated 23.11.1992, therefore, subsists even after the 2003 rules.

13. The doubt in this regard is set at rest by the fact that the respondents by a further notification/circular dated 20.03.2006 withdrew the instructions/policy dated 23.11.1992. The circular insofar as it is relevant reads as under:-

" Dated Chandigarh the 20th March, 2006.

Sub: Ex-gratia employment to the dependents of those government employees who became disabled during service.

Sir,

I am directed to invite your kind attention to the subject cited above and to inform you that on reconsideration it has been decided to withdraw the instructions issued vide State Government letter No. 16/1/91-6GSII dated 23.11.1992."

14. If as contended by Mr. Bedi, the 2003 notification withdrew the instructions/policy dated 23.11.1992, it would not have been necessary for the respondents to issue the communication/circular dated 20.03.2006. Significantly the circular dated 20.03.2006 states that "it has been decided to withdraw the instructions.....23.11.1992". It does not state that instructions dated 23.11.1992 stood withdrawn or were repealed by virtue of the 2003 rules.

15. As we mentioned earlier the petitioner had made an application for compassionate appointment on 12.02.2003. As the same was not considered, the petitioner filed Civil Writ Petition No. 19038 of 2004 which was disposed of by an order and judgment dated 09.12.2004 by directing the respondents to take a final decision on

the legal notice issued on behalf of the petitioner dated 08.12.2003. The respondents by the impugned order dated 14.03.2005 rejected the application on the ground that there is no provision in 2003 Rules to provide employment/financial assistance to the dependents of invalid/disabled government employees. The order, therefore, proceeds on the erroneous basis that the 2003 Rules dealt with invalid/disabled government employees. The order proceeds on erroneous basis that Rule 19 repealed the 23.11.1992 policy. The 2003 Rules did not deal with invalid/disabled government employees. Consequently, the 23.11.1992 policy/instructions continued to be valid and subsisting not only on the date on which the petitioner's father suffered disability but also on the date on which the petitioner's application was taken up for consideration and disposed of by the impugned order dated 14.03.2005. The instructions/policy dated 23.11.1992 were withdrawn only thereafter on 20.03.2006.

16. In the circumstances, the question of law framed by the order of reference does not arise in this matter. We, therefore, do not consider it either necessary or proper to decide the same.

17. The writ petition is, therefore, disposed of by quashing and setting-aside the impugned order dated 14.03.2005 and directing the respondents to confer upon the petitioner's benefits of the instructions/policy dated 23.11.1992 in accordance with law and subject to the petitioner's fulfilling all other requirements. The same shall be done latest by 31.03.2016.

There was no reference in the connected matters placed on board with this petition. The same will, therefore, be decided by

the learned Single Judge as per roster. It would be for the learned Judge to decide whether to hear them independently or jointly.

(S. J. VAZIFDAR)
ACTING CHIEF JUSTICE

21.01.2016
Parkash/ravinder

(ARUN PALLI)
JUDGE

To be referred to the reporter	☒ Yes	No.
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