

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

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CWP No. 25651 of 2013

Date of Decision: 07.09.2016

Jatinder Singh

.....Petitioner(s)

Versus

Union Of India and others

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: - Mr. D.S. Patwalia, Senior Advocate with
Mr. Kannan Malik, Advocate for the petitioner.

Mr. Lokesh Sinhal, Advocate for
respondents No. 2 and 3.

P.B. BAJANTHRI, J. (Oral)

In the instant writ petition, the petitioner has prayed for direction to the respondents to consider his name to appoint him on compassionate grounds with reference to the decision passed in Writ Petition No. 912 of 2004 by the Jammu & Kashmir High Court decided on 15.02.2011 read with judgment passed in LPA No. 100 of 2011 decided on 06.03.2013 vide Annexure P-4 and P-5 respectively. Further sought for quashing the communication dated 02.03.2010 vide Annexure

P-3.

2. The petitioner's father who was working as Senior Accountant (S.S.G.) in the respondent-organization died on 04.01.2010, while he was at his residence. In the month of February 2010, the petitioner is stated to have submitted application seeking for compassionate appointment. The same was rejected on 02.03.2010 vide Annexure P-3 stating as under:-

“With reference to your application on the above referred subject, we regret to inform that there is no provision in the Company's rules to offer you employment in Power Grid. However whenever vacancies are notified by Power Grid, you may apply against the same.”

3. The petitioner kept quiet after receipt of Annexure P-3 dated 02.03.2010 till passing of a judgment by the Jammu & Kashmir High Court vide Annexure P-4 dated 15.02.2011. Thereafter he submitted application for compassionate appointment on 16.03.2013 on the score that in identical circumstances Jammu & Kashmir High Court has referred to the policy relating to compassionate appointment and granted relief to the petitioner therein. Whereas in the Annexure P-3 it was stated by the respondents that there is no provision in the company's rules to offer employment to the petitioner in Power Grid.

4. Learned counsel for the petitioner contended that with reference to the policy 8 persons were appointed on compassionate

grounds by the respondents. Thus, they have discriminated giving an endorsement stating that there is no policy to offer the petitioner compassionate appointment. It was further contended that in not considering the grievance of the petitioner amounts to discrimination. Though, the petitioner's application is pending for consideration from 16.03.2013, the respondents have not passed any order thereon. Therefore the petitioner has sought for Writ of Mandamus also.

5. Per contra learned counsel for the respondents submitted that compassionate appointment would be considered under the Memorandum of Agreement-Power Grid National Bipartite Committee. As per the Memorandum of Agreement insofar as giving compassionate appointment to the dependent of the deceased employee, who dies as a result of accident while on duty. An extract of provision 0.5.4 which reads as under:-

“Employment to one dependent of each workman who is permanently disabled or dies as a result of accident while on duty, will continue to be provided as at present. Dependent for this purpose will mean spouse of the employee, his/her son or daughter or legally adopted son/daughter.”

6. Learned counsel for the respondents submitted that the petitioner's father case as well as the petitioner's grievance will not fall under the above Clause 0.5.4 so as to consider his name for

compassionate appointment. Therefore the respondents have issued endorsement that his case cannot be considered, vide Annexure P-3 dated 02.03.2010.

7. Learned counsel for the respondents relied on Supreme Court decision reported in **“Steel Authority of India Limited Vs. Madhusudan Das and others (2008) 15 SCC 560”**, wherein the Supreme Court while interpreting identical clause has held that what is the meaning of the accident and under what circumstances dependent of a deceased employee is entitled to employment on account of employee's death. He relies on Para 9, 13, 20 and 21.

8. In view of the decision of the Supreme Court, it was submitted that the petitioner is not entitled for the relief sought in the present petition.

9. Heard learned counsel for the parties.

10. Respondents have issued communication on 02.03.2010 stating that, there is no provision in the company's rules to offer petitioner employment in Power Grid. In fact, it is not happily worded for the reasons that respondents should have elaborately stated that the petitioner's case would be governed under the Memorandum of Agreement-Power Grid National Bipartite Committee in particularly 0.5.4 clause and he is not entitled to compassionate appointment. Therefore, there is no error in the communication dated 02.03.2010. The petitioner, if at all aggrieved he should have approached appropriate forum in the year 2010 itself. Thereafter, the petitioner came to know of the judgment

of the Jammu & Kashmir High Court and then moved on application after 3 years, even though the judgment was decided in the year 2011 whereas present writ was filed in the year 2013. The object of offering appointment on compassionate ground is to meet immediate harness in the family due to death of a bread earner.

11. The petitioner is not entitled to compassionate appointment having regard to the language employed in provision namely 0.5.4, that defendant is entitled for employment if “dies as a result of accident while on duty.” In the present case, father of the petitioner admittedly died at his residence. Residing at residence does not appears to be he is on duty for the reasons that he was working on the clerical side. Therefore, the case of the petitioner do not fall under Clause 0.5.4.

12. The Supreme Court in the case of **Steel Authority of India Limited's case (supra)**, while interpreting identical clause relating to compassionate appointment held as under:-

9. *“Indisputably, the settlement was arrived at by and between the management and the workmen on 08.08.1995 in terms of Section 12(3) of the Industrial Disputes Act, 1947, Para 9.2 (f) which read as under:-*

“9.2 The employees covered by this settlement shall continue to be entitled to the benefits, admissible under the Workmen's Compensation Act, 1923 and the previous settlement as below:

“(f) In case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of his/her direct dependants will be provided.”

The above provision is identical to that of 0.5.4 of the Memorandum of Agreement-Power Grid National Bipartite Committee. Therefore the petitioner has not made out a case so as to interfere with the Annexure P-3 dated 02.03.2010. No right has been made out under the Memorandum of Agreement-Power Grid National Bipartite Committee so as to issue Writ of Mandamus to the respondents.

Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

07.09.2016
sahil soni

Whether speaking/reasons: Yes/No

Whether Reportable: Yes/No