

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

**CWP No.4723 of 2007 (O&M)
Date of Decision : 08.03.2017**

Surender Singh

..... Petitioner

versus

State of Haryana and another

..... Respondents

CORAM : HON'BLE MR.JUSTICE AJAY TEWARI

Present : Mr. S.N.Gaur, Advocate for the petitioner.

Mr. J.S.Bedi, Addl. A.G., Haryana.

AJAY TEWARI, J. (Oral)

The father of the petitioner was working as a Sweeper in the Department of Animal Husbandry. He was afflicted with the disease of *Spinocerebellar Ataxia* and was consequently rendered unfit for service and to this effect medical certificate (Annexure P-8) was issued by the Pt. B.D.Sharma, PGIMS, Rohtak on 21.05.2003. Pursuant to that he was retired on medical grounds. During that period he applied for a job for his son on the ground that he was medically unfit. Since no action was taken on that request and the petitioner ultimately filed CWP No.3953 of 2006 claiming that he should be granted the benefit of compassionate appointment since his father had been retired on medical grounds. At that stage that petition was disposed of with a direction to the respondents to decide his representation. Upon representation, the Chief Secretary to the Govt. of Haryana on 15.02.2006 on a consideration of the provisions of The

Participation) Act, 1995 (in short 'the Act') came to the conclusion that in fact under the provisions of Section 47 the services of the father of the petitioner could not have been terminated and he could not have been retired and consequently also directed that he should be immediately reinstated in service. However, one day before this direction was given the father of the petitioner unfortunately died on 14.02.2006. Consequently neither the father of the petitioner got the benefit of reinstatement nor was the petitioner granted the benefit of compassionate appointment.

It is in these circumstances that the petitioner has filed the present petition claiming compassionate appointment.

Learned Additional Advocate General has fairly accepted that these factual assertions are correct. He has, however, referred to the latest judgment of the Supreme Court in ***Union of India and others vs. Sima Banerjee, passed in Civil Appeal No.251 of 2017, decided on 10.01.2017.*** to contend that whatever other relief the petitioner may be entitled to he can not now get the benefit of compassionate appointment.

In this case the father of the petitioner died without getting the benefit of the order of re-instatement but for the purpose of this petition it would have to be considered that he was in service on the date of his death. In the circumstances the petitioner could have to be given the benefit of compassionate assistance atleast, even if he can not be granted the benefit of compassionate appointment. As per the relevant policy the petitioner would have to exercise the option.

The legal effect of the order of the Chief Secretary to the Govt. of Haryana would be that he would be deemed to be in service till the date of his death with all consequential benefits. The respondents would have to

re-determine the amounts payable to him till the date of his death after deducting the pension. The respondents would also have to re-determine if and to what amount of death-cum-retiral benefits would have to be paid to the account of the deceased after considering him to be in service uptill the date of his death. Simultaneously the petitioner and/or other dependents of the deceased would have to give their option for monthly assistance or lumpsum payment. In case they opt for monthly assistance then the amount of family pension which may have been disbursed to them after 2006 would also have to be set off against this.

Petition stands disposed of.

Since the main case has been decided, the pending Civil Miscellaneous Application, if any, also stands disposed of.

(AJAY TEWARI)
JUDGE

08.03.2017
pooja sharma-I

Whether speaking/reasoned - Yes/No

Whether reportable - Yes/No