

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CWP No.23977 of 2013

Decided on :17.11.2017

Darshana Devi & another

...Petitioners

Versus

State of Haryana & others

...Respondents

CORAM: HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr.Rao Ajender Singh, Advocate, for the petitioner.

Ms.Shruti Jain Goyal, AAG, Haryana.

Mr.Mukesh Verma, Advocate, for respondents No.2 &3.

G.S. SANDHAWALIA, J. (Oral)

Petitioner No.2, who is a handicapped person, seeks appointment on compassionate grounds but inspite of the fact that his case had been recommended way-back on 29.05.2001 (Annexure P-4) by the respondent-Municipal Council but the said relief has been denied to him on totally untenable grounds by respondent No.4, vide order dated 02.12.2009 (Annexure P-9). It is, in such circumstances, this Court is of the opinion that the petition is liable to be allowed.

The facts of the case would go on to show that the husband of petitioner No.1-Kishan Lal was employed in the Municipal Council, Rewari and expired on 14.05.2001 while working as a Peon. The wife immediately applied for compassionate appointment for petitioner No.2, the son who is orthopedically handicapped to the extent of 70% and the medical certificate is annexed as Annexure P-2. Resultantly, the Municipal Council, Rewari, in its meeting dated 23.05.2001 (Annexure P-3), agreed to appoint him on the post of Peon and the Deputy Commissioner, being the appointing authority, the case was sent for the grant of its sanction. Paymnet of ex

gratia grant was also passed. On account of the inaction of the said respondent No.4 to grant necessary sanction, communication dated 04.01.2005 (Annexure P-4) was also addressed by the Municipal Council, which was followed up with the request of petitioner No.2 also on the same date (Annexure P-5).

The decision kept hanging fire with the said respondent inspite of another representation made on 16.12.2008 (Annexure P-6). Resultantly, the petitioners had approached this Court in CWP-13040-2009 wherein it was not brought to the notice of this Court that the matter in principle had been decided by the Municipal Council. Resultantly, directions had been issued on 25.08.2009 (Annexure P-7) to decide the representation dated 04.01.2005. Resultantly, the impugned order dated 02.12.2009 (Annexure P-9) came to be passed on the ground that as per the notification dated 01.08.2006, when the Haryana Compassionate Assistance to the Dependents of the Deceased Government Employees, 2006 Rules came into force, all appointment cases were to be decided under the said policy. Resultantly, only liberty was given to opt for the lump sum *ex gratia* amount as provided in the said notification.

At this stage, it is pertinent to notice that a period of more than 8 years had expired and at that point of time, the Deputy Commissioner failed to take into consideration the fact that on account of the delay in his office, the petitioner's case had been considered under the subsequent rules, which was against the settled position of law laid down at that point of time by the Apex Court in **Abhishek Kumar Vs. State of**

Haryana and others' 2007 (2) SCT 457. Forced by the said order, petitioner No.1 gave a representation dated 18.11.2010 (Annexure P-10) that the lump sum *ex gratia* amount provided under the Rule 2003-2005 may be provided in lieu of the monthly financial assistance provided under the Rules of 2006. Thereafter, on coming to know that other persons similarly situated had been employed, as per the list dated 29.03.2012 (Annexure P-11), a fresh representation dated 13.02.2013 (Annexure P-12) was made for decision of the case and resultantly, the present writ petition came to be filed.

The stand of the Municipal Council is that the petitioners have been taking vacillating position and have been requesting for appointment at one time and for *ex gratia* at another time. Since family pension had been paid to the wife of the deceased employee and as such, the petitioners could only be given benefit of financial assistance, as per clarification of the Chief Secretary dated 16.01.2009 (Annexure R-2). The Deputy Commissioner had passed a speaking order dated 21.02.2014 whereby a lump sum *ex gratia* amount had been ordered (Annexure R-3) and cheque of Rs.2,50,000/- was prepared but Darshana Devi had not appeared. The order dated 21.02.2014 would go on to show that on an earlier occasion, order dated 31.03.2010 had been passed which was rescinded by the said order and lump sum *ex gratia* was to be granted. Resultantly, the stand of the Municipal Council was that appointment cannot be granted as per Rules of 2006.

Vide order dated 01.06.2016, it was directed that in view of

the appointments made vide Annexure P-11, after the death of the father of petitioner No.2, better affidavit be filed explaining as to how appointment was given to those persons by ignoring the case of the petitioners. Resultantly, the affidavit of Municipal Council dated 22.07.2016 had been filed wherein the only defence taken is that from the table that the appointing authority of all posts was the Executive Officer, except for those at Sr.No.2, 5, 6, 20 & 26, whose appointing authority was the Deputy Commissioner. It is, thus, apparent that appointing authority of the petitioner No.2 is the Deputy Commissioner, who has made appointments of 4 persons whose father had died after the death of father of petitioner No.2. Thus petitioner No.2 had not be granted appointment whereas even thereafter, various persons have been given appointment by the Municipal Council at lower post as Safai Majdoor etc. but on account of the fact that the appointing authority was Deputy Commissioner, who had granted benefit to others but the petitioner No.1 could not be granted the benefit, even though the Municipal Council had resolved in principle to appoint him.

The Full Bench judgment in ***Krishna Kumari Vs. State of Haryana & others 2012 (4) SLR 481***, will be directly applicable to the facts and circumstances of the present case, wherein it has been held that once an application has been moved promptly, the employer has to consider it without delay and therefore, the date of death of the employee is an important factor as it is a scheme for compassionate appointment and beneficial in nature. Relevant portion of the judgment reads as under:

“In view of this clear enunciation of law we cannot but come to the conclusion that rules applicable on the date of death/incapacitation of an employee need to be followed. Needless to observe it is upto the authority to consider the application without inordinate delay and take a decision thereon. In the eventuality application remains pending for considerable period and some other policy comes into operation, no fault can be found on part of the employee. This appears to be the principle recognized by the apex court in its recent judgment in *Bhawani Prasad Sonkar's case*. As held therein, application for compassionate employment has to be preferred without undue delay and has to be considered within a reasonable period of time as compassionate appointment is to meet the sudden crisis on account of death or invalidation of the bread winner of the family. We, thus, come to the conclusion that in case an application is made by the dependent belatedly or is considered after inordinate delay, basic requirement of meeting the immediate crisis becomes redundant. Since the objective of the policy is to rescue the family from sudden event plunging it into penury, consideration of application after number of years would be beyond the principles accepted by the apex court in its various decisions. In such circumstances, it would be difficult to accept the exception to the general rule of employment as envisaged by Articles 14 and 16 of the Constitution of India. We answer the reference accordingly.”

As noticed above, for a period of 8 long years, the matter was kept pending with the Deputy Commissioner and it was only on the directions issued by the Court, the issue was decided against the petitioners and in principle on the ground that the new rules had come into force. Accordingly, in the opinion of this Court, the said reasoning is not tenable, in view of the law laid down by the Hon'ble Full Bench.

Accordingly, the present writ petition is allowed and the impugned order dated 02.12.2009 (Annexure P-9) is quashed. It is directed that respondent No.4 will act upon Agenda No.32 dated 23.05.2001 (Annexure P-3) and grant appointment to petitioner No.2 in the Municipal Council, Rewari. Needful be done within a period of 2 months from today.

17.11.2017
Sailesh

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned: Yes
Whether Reportable: Yes