

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

**CWP-23262-2017 (O&M)
Date of decision:05.12.2017**

Gulshan Sharma & another ... Petitioners

Vs.

Punjab State Power Corporation Limited & others ... Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA.

Present: Mr. Sameer Sachdeva, Advocate for the petitioners.

...

TEJINDER SINGH DHINDSA, J.(ORAL).

CM-17298-CWP-2017:

Application is allowed as prayed for. The Policy of the respondent/Punjab State Power Corporation Limited dated 23.11.2004 as also copy of order dated 04.02.2015 are taken on record at Annexures P-12 and P-13 respectively.

Application is disposed of.

Main case:

One Pardeep Kumar, who was serving on the post of Auxiliary Assistant Engineer on regular basis under the Punjab State Power Corporation Limited (hereinafter to be referred to as 'the Corporation') died in harness on 18.12.2009.

Petitioners herein are the widow and son of the deceased employee.

Claim in the instant petition is for issuance of directions to the Corporation to appoint petitioner No.2 on a suitable post on compassionate

basis.

Counsel representing the petitioners argues that the Corporation has acted arbitrarily in not considering the claim of petitioner No.2 i.e. son of the deceased employee for compassionate appointment and rather even a sum of Rs.4 lakhs towards solatium/one time compensatory allowance has been withheld and not released in favour of the widow. A plea of discrimination has also been raised by adverting to the order dated 04.12.2015 at Annexure P-13 and whereby son of late Sh. Jaswinder Singh has been offered appointment.

Counsel for the petitioners has been heard at length and pleadings on record have been perused.

It is by now well settled that compassionate appointment is neither a right nor a mode of recruitment. The objective of compassionate appointment is to mitigate the sudden financial hardship that has fallen upon the family on account of death of the bread winner in harness.

On a previous date of hearing i.e. on 11.10.2017, counsel for the petitioners was directed to place on record the relevant Policy/Instructions on the strength of which the prayer in the instant petition had been raised. It is towards purported compliance of the directions issued by this Court that Memo dated 23.11.2004 (Annexure P-12) has been placed on record. It is not the case made out by counsel that Memo dated 23.11.2004 (Annexure P-12) would not hold the field insofar as grant of relief is concerned upon the demise of a serving employee. A perusal of the entire policy would reveal that a conscious decision has been taken by the Corporation to offer solatium/one time compensatory allowance. Counsel has not been able to advert to any clause/provision under the Policy dated

23.11.2004 (Annexure P-12) and which would vest a right in petitioner No.2 to be considered for appointment on compassionate basis.

Insofar as grant of solatium is concerned, the document carrying endorsement No.349 dated 02.08.2014 at Annexure P-8 would be relevant. Perusal of the same reveals that office order No.3 dated 08.01.2014 was issued to grant the requisite amount of solatium to wife of the deceased employee i.e. petitioner No.1 herein. However, petitioner No.1 had submitted an application/communication declining to accept the solatium amount and raising a claim that her son be appointed on compassionate basis instead. The order at Annexure P-8 clearly indicates that such request for appointment on compassionate grounds did not find favour and the application submitted by the widow/petitioner No.1 was filed.

Under such circumstances, the prayer advanced in the instant petition for issuance of directions to the Corporation to consider the claim of petitioner No.2 for compassionate appointment cannot be accepted. Such a prayer is not founded on any Instructions/Policy issued by the Corporation and which would hold the field in relation to the date of demise of Sh. Pardeep Kumar.

The document placed on record at Annexure P-13 would also not advance the claim for compassionate appointment set up in the instant petition. In the first instance, the necessary pleadings/averments are completely lacking to demonstrate parity as regards claim of the present petitioner with that of son of late Sh. Jaswinder Singh. The relevant details as regards the date of demise of Sh. Jaswinder Singh and under what circumstances, the widow of such employee has been called upon to collect

appointment letter for her son are not forthcoming. Be that as it may, for a plea of discrimination to sustain, it was imperative for the petitioners herein to first establish a right in law. In such regard, no Policy/Instructions is being adverted to and under which petitioner No.2 could be considered for appointment on compassionate grounds. The relevant policy at Annexure P-12 rather admits to solatium/compensatory allowance only. Assuming that vide order dated 04.02.2015 (Annexure P-13), a compassionate appointment has been offered *de hors* the Policy/Instructions issued by the Corporation, the same would not vest a right in the present petitioners to claim appointment. Article 14 of the Constitution of India envisages a positive concept. A plea of discrimination and arbitrary action cannot be pressed for issuance of directions by the writ Court to perpetuate an illegality.

For the reasons recorded above, I find no merit in the instant petition and the same is dismissed.

Liberty, however, is granted to petitioner No.1 to submit an application for release of the requisite/admissible solatium amount and as covered under the relevant Policy, being the widow of an employee, who had died in harness. In the eventuality of any such application being filed, the admissible solatium amount would be released in favour of the widow without any further delay.

05.12.2017

harjeet

(TEJINDER SINGH DHINDSA)
JUDGE

Whether speaking/reasoned

Yes

Whether Reportable

No