

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

LPA-184-2017 (O&M)

Date of decision: 04.05.2017

Roshan Lal

..... Appellant

Versus

Uttar Haryana Bijli Vitran Nigam and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE RAMENDRA JAIN**

PRESENT: Mr. Sushil Jain, Advocate for the appellant.

RAMENDRA JAIN, J.

1. The instant Letters Patent Appeal has been filed by the appellant under Clause X of the Letters Patent, against the order dated 01.12.2016 passed by the learned Single Judge, whereby the writ petition bearing CWP-15786-2006 filed by the appellant was dismissed rejecting the claim of the appellant for appointment on compassionate ground.

2. Put pithily, Ramji Lal, father of the appellant working as Assistant Lineman with the respondents, unfortunately died on 11.04.2001 during the service. The appellant had applied for his appointment on compassionate basis and gave consent for his appointment on Class-IV post. However, the respondents rejected the claim of the appellant vide letter/order dated 27.11.2003 (Annexure P-3) on the ground that at the time of death of his father, the appellant was 27 years and 11 days of age i.e. beyond that prescribed age of 25 years as per the provisions of Haryana

Employees Rules, 2003, (for short 'the 2003 Rules'). Thereafter, the State of Haryana amended the 2003 Rules, vide notification dated 17.12.2004 (Annexure P-4) whereby the age limit of 25 years was increased to 30 years for compassionate appointments. Hence, the appellant made a fresh representation to the respondents with a prayer to appoint him on compassionate appointment on account of increase in the age vide notification Annexure P-4. The State of Haryana framed new Rules for Compassionate Appointment, according to which, the maximum age for a dependent to be appointed on compassionate grounds was increased to 30 years. When the claim of the appellant was not considered, he filed CWP-3017-2006 which was dismissed as withdrawn vide order dated 28.02.2006, with liberty to the appellant to approach the respondents by way of making detailed representation setting out the grievance as projected in the writ petition. Consequently, the appellant made a detailed representation dated 10.03.2006 (Annexure P-5) before respondent No. 1 which again was rejected by respondent No. 1 vide order dated 09.05.2006 (Annexure P-6). Being aggrieved, the appellant had filed CWP-15786-2006 which was also dismissed by the learned Single Judge, vide impugned judgment dated 01.12.2016.

3. Learned counsel for the appellant contended that the claim of the appellant has been rejected by the respondents arbitrarily and illegally without considering the Policy/Instructions dated 08.05.1995 (Annexure P-2) which were in existence at the time of application of the appellant for appointment on compassionate ground, mandatorily, it was to be considered within 3 months from the date of filing the same. The learned Single Judge, has also failed to consider the fact that the instructions

Annexure P-2, regarding the appointment on compassionate grounds was in existence at the time of death of father of the appellant i.e. on 11.04.2001, under which he was eligible for appointment on compassionate ground.

4. We have given our thoughtful consideration to the above submissions made by learned counsel for the appellant and find no merit in the instant appeal.

5. Undisputedly, the age of the appellant at the time of death of his father was 27 years and 11 days. Though according to the appellant he had immediately applied for his appointment on compassionate ground, but perusal of the record shows that the respondents in their written statement had taken a categorical stand that the appellant had taken sufficient time to complete the paper work/procedure of completing his case for ex-gratia appointment and therefore, when the case of the appellant was taken up, rules/instructions of the year 2003 had come into force, according to which the age was limited to 25 years for appointment on compassionate ground. The stand of the petitioner is that thereafter, the 2003 Rules were again amended vide notification Annexure P-4 for appointment on compassionate ground in which the age limit was enhanced from 25 years to 30 years and the said Rules were again amended in the year 2006 and the age limit was enhanced from 30 years to 35 years and, therefore, he had become eligible for appointment. This argument has no force as the case of the appellant had already been rejected in the year 2003, therefore, his case could not be considered afresh on coming into force of new instructions. Even otherwise, the notification Annexure P-4 was made applicable with prospective effect and not with retrospective effect, therefore, from this angle also, the case of the appellant could not be considered afresh. Further,

as per Rule 3 of the 2003 Rules, the same were applicable to those dependents of the deceased Government employees whose cases were pending on the date of coming into force of the 2003 Rules and the cases already decided were not to be reopened. In other words, since the case of the appellant had already been decided, therefore, the case of the appellant could not be reopened in terms of Rule 3 of the 2003 Rules.

6. Since, the appellant was already over age at the relevant time, therefore, rejection of his claim cannot be said to be illegal, arbitrary or erroneous. It is needless to mention here that no one can put his claim for compassionate appointment under the ex-gratia scheme as a matter of right. The very purpose of compassionate appointment is to mitigate the hardship of the family whose sole bread earner had died. In the instant case, the appellant did not explain his financial status before the respondents or in the writ petition, after the death of his father and, therefore, it has rightly been observed by the learned Single Judge, that it cannot be said that the appellant had ever faced any acute financial stress. The appellant after rejection of his claim in the year 2003, did not make any sincere effort till date to look for public employment on merits in open competition with others by using his skills and talent. Keeping in view this aspect of the matter, the learned Single Judge had rightly observed that it is too late now to provide the job to the appellant by issuing a mandamus and had dismissed the petition. It is also pertinent to mention here that the learned Single Judge had left open to the mother of the appellant to approach the authorities to claim financial assistance, in case, any of the policies of the Government are applicable to the case of widow of the father of the appellant and the respondent-Department would proceed her case, in

accordance with law within reasonable time. In case, the money is found due and payable under the scheme/rules that shall be paid to the mother of the appellant and the process be concluded within 3 months. It is necessary to add here that according to the stand of the respondents in their written statement that vide order dated 09.05.2006 (Annexure P-5), the family of the deceased i.e. the appellant and his mother are entitled for grant of cash financial assistance of ₹ 2.5 lacs only which they did not accept for the reasons best known to them. Hence, in the fitness of things, the respondents are hereby directed to keep in mind the above fact while deciding the representation of the mother of the appellant, if filed, within three months.

7. The instant Letters Patent Appeal stands dismissed, accordingly.

8. Since main appeal has been dismissed, no separate order is required to be passed in the application for condonation of delay in filing the appeal and the same is left open.

9. A copy of this order be forwarded to the respondents to avoid multiplicity of litigation.

(RAMENDRA JAIN)
JUDGE

May 04, 2017
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(AJAY KUMAR MITTAL)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No