

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

CWP No. 3282 of 2005

Date of Decision: 22.10.2018

Suman Lata

...Petitioner

Vs.

State of Haryana and others

...Respondents

CORAM:- HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr. A.P. Bhandari, Advocate
for the petitioners.

Ms. Shruti Jain Goyal, DAG, Haryana.

Mr. Ravi Verma, Advocate
for respondent Nos. 2 & 3.

RAJIV NARAIN RAINA, J. (Oral)

1. The petitioner's husband was selected and appointed as Assistant Lineman in Haryana State Electricity Board (presently known as the Uttar Haryana Bijli Vitran Nigam Limited) in March 1993 pursuant to an advertisement for direct recruitment. He joined service. However, the appointment was made by the Board beyond the advertised vacancies. In a challenge to the selection, the excess appointments were invalidated which resulted in termination on 23.09.1997. Meanwhile, a fresh recruitment process was going on and the petitioner was again selected and appointed as Assistant Lineman on 06.10.1997.

2. The petitioner's husband died in harness on March 30, 2000.

The prevailing policy of compassionate appointments, at the time of death, was the 1995 instructions (08.08.1995) amended vide instructions dated 31.08.1995 which provided ex gratia appointment to dependents of deceased employee when the family in extreme financial distress due to loss of bread winner and to tide over emergent situations. The petitioner applied for compassionate appointment and during the processing of her application, the Haryana Compassionate Assistance to the Dependent of Deceased Government Employees Rules, 2003 came into force and all the earlier instructions were repealed. The 2003 Rules provided for compassionate appointment or financial assistance, as the case may be, at the option of the claimants/dependents. Unfortunately, the claim of the petitioner was declined on April 6, 2004 by passing the following order:

“Perusal of the documents reveals that Sh. Dinesh Kumar, ALM joined the Nigam service on 09.10.1997 and till death, he had rendered service for only 2 years 5 months & 22 days. According to provisions contained under the subject cited rules, the compassionate appointment or cash financial assistance is not admissible to the dependent of those who has less than three years service at his credit.

The employment case of Smt. Suman Lata w/o late Sh. Dinesh Kumar, has, therefore, been considered but found not feasible of acceptance under ibid provisions of the rules.”

The operating reason for rejecting the request for compassionate appointment/financial assistance is that the deceased Dinesh Kumar had rendered service only for 02 years 05 months and 22 days before he passed away while the policy required a minimum of 3 years service which he had not completed. Perusal of Haryana Government Notification dated February 28, 2003 which are rules framed under Proviso to Article 309 of the Constitution of India shows that it contains Rule 3(d) (ii) which defines “deceased government employee” as one “who has served the government for atleast 03 years”. These rules apply to the Board/Nigam.

3. The petitioner had served the Board/Nigam from March 1993 to September 1997 as an Assistant Lineman and that service cannot be excluded only because of the reasons which led to the termination. The Nigam had offered appointment to the petitioner on its own. He did not practice any deceit, misrepresentation or fraud to obtain the job since the only defect in the appointment was that it was made in excess of the advertised vacancies which was legally impermissible. It is worth recalling that this principle was evolved for the first time by the Supreme Court on August 23, 1993 in Hoshiar Singh v. State of Haryana, AIR 1993 SC 2606. The law was declared after the late husband was appointed in March 1993. Before that the picture was not clear for Government to be guided regarding filling vacancies beyond the advertised number. The principle is by now

entrenched in service law.

4. The fact also remains that the petitioner's late husband was successful in getting selected on merit again on the same post within a short span of only 15 days from termination of previous service. That period of service is not completely washed away and, on the other hand, deserves to be tagged with the period spent after 09.10.1999 i.e. 2 years 5 months and 22 days till the day Dinesh Kumar died. The petitioner's case falls under Rule 3(d) (ii) since her husband had served in government service at least for 3 years; for 'government service' read 'Board'. In this way the total service should be counted as there are no qualifying words in the rule defining service as to what is included or excluded from it. The Rule also cannot be read as 3 years prior to the death as that would be adding words when none exist. The scheme is a beneficial piece of legislation and must be given broad meaning shorn of technicalities of the law. In view of this, the impugned order dated April 6, 2004 is erroneous and cannot be legally sustained. The case of the petitioner for compassionate appointment or financial assistance has been wrongly rejected for a bad reason by holding that her husband had put in service of less than 3 years and thereby conveniently ignoring past service. When the sole operating reason of the order is found to be illegal, arbitrary and unreasonable then it cannot be saved and deserves to be set aside.

5. Accordingly, this petition is partly allowed. The impugned

order dated April 6, 2004 is quashed. The petitioner's claim for financial assistance will be reconsidered by passing a fresh order in accordance with law by applying the policies i.e. either of 2003, 2005 or the 2006 Rules, as the case may be, and her rights re-determined for award of financial assistance preferably within a period of two months from the date of receipt of certified copy of the order by the Nigam. Money found due and payable shall be disbursed within the following month. Case for compassionate appointment is turned down by reason of delay and other complications.

(RAJIV NARAIN RAINA)
JUDGE

22.10.2018

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Whether speaking/reasoned : *Yes*
Whether reportable : *Yes*