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

CWP-8486-2015

Date of decision-28.08.2018

Darshan Singh

...Petitioner

Vs.

State of Punjab and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE JITENDRA CHAUHAN

Present: Mr. Gaurav Sharma, Advocate for
Mr. Pawan Kumar, Advocate for the petitioner.

Ms. Ambika Bedi, AAG, Punjab.

JITENDRA CHAUHAN, J. (Oral)

This writ petition under Articles 226/227 of the Constitution of India has been filed for issuance of a writ in the nature of certiorari for quashing the impugned letter dated 26.03.2014 (Annexure P-12) and further directing the respondent(s) to appoint the petitioner as a Class-IV employee on compassionate grounds in view of the provisions contained in The persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995.

Briefly, the facts of the case are that father of the petitioner, namely, Sh. Lal Singh was appointed as a Class-IV employee in the Department of Irrigation in the year 1981. During service, petitioner's father lost his vision in the year 1998 and was issued certificate of 100% disability. In the year 1999-2000, the petitioner was allowed to work as Class-IV employee against the duties of his father, whereas, salary was being

generated in the name of petitioner's father till the date of his retirement i.e.31.03.2014. This arrangement continued for about 14 years with the assurance that he would be allowed to continue even after retirement of his father by considering the total length of service. The representations were submitted by the petitioner but no action was taken.

Learned counsel contends that case of the petitioner is covered by ratio of law laid down in a judgment passed by this Court in CWP-5436-2009, titled as “**Roshni Devi Vs. Haryana Vidyut Prasaran Nigam and others**” decided on 06.03.2012 (Annexure P-10). Further he states that impugned order dated 26.03.2014 (Annexure P-12) has been passed by respondent No.4 without application of mind.

On the other hand, learned State counsel though admits that the petitioner had been performing duties of Class-IV employee against the post held by his father, however, it is asserted that father of the petitioner has superannuated and, therefore, the arrangement has come to an end, the petitioner cannot claim any relief as a matter of right.

I have heard learned counsel for the petitioner and have gone through the case file.

The petitioner started working as Class-IV employee in place of his father after he lost vision in year 1998, as made out from the disability certificate, with respondent(s) but the salary was drawn in the name of father of the petitioner, on the assurance that after retirement of his father, he shall be given appointment. However, after the retirement of his father, the petitioner after having working for almost 14 years has been thrown out.

This Court in CWP-5436-2009, titled as “**Roshni Devi Vs. Haryana Vidyut Prasaran Nigam and others**” (Annexure P-10) while dealing with similar question has held as under:-

*“5. It was perhaps possible that the employer must have apprised the petitioner or her husband properly that the Act protected continuance in service and there ought to have been an effort to readjust the petitioner's husband in some other type of activity which would have been still suitable. It is not clear from the record brought before me that the employer undertook such an exercise. Several social welfare legislations that are brought will become meaningless if we were to apply the legal maxim *lex ignorantia non excusat* (ignorance of law is no excuse) and in the Indian context where illiteracy is prevalent in a large measure, there is a duty on the part of the employer to counsel suitably on the rights of an employee, who is physically or mentally vulnerable. In this case, although the brother of the employee had at some point of time made a request that the employee be sent for medical examination, all the subsequent communications have been made by the petitioner. She has merely put thumb impressions in several communications and it is obvious that she was being led by others in the request for premature retirement. If it were a case of voluntary retirement, the issue of compassionate appointment does not arise. Since the official records show that it was a case of voluntary retirement, it was only logical that they had also denied any consideration for compensate assistance. However, I would find that the premature retirement had come about in a situation where the petitioner had not been properly*

counselled and the employer did not do what it ought to have done under the 1995 Act.

6. It may not be possible to set the clock back at this length of time for the employer to reconsider the decision when an option for premature retirement had been given even without reference to the provisions of the Act. This ought to allow for making an exception and I would direct the respondents to consider the petitioner's claim for compassionate assistance as though the retirement had been made by the establishment on account of his physical unfitness. After all, the Rules relating to compassionate assistance does provide for granting appointment in a situation where the employment has ceased by medical unfitness in terms of clause 5 of the 1995 State Scheme. The respondents have not filed 2003 State instructions before the Court for me to examine how the consideration could be undertaken for compassionate assistance. The petitioner can forward a request for compassionate assistance either for herself or any other dependent within two weeks from the date of receipt of copy of this order. On such a request being made, the respondents shall consider the issue of compassionate assistance in the manner provided under the relevant Rules within a period of 6 weeks from the date of receipt of the communication. If there is no vacancy within the quota reserved for compassionate assistance, the same is directed to be included in the list of pending cases for consideration within the time which the Rules allow for. If there is no vacancy to which the dependent could be adjusted, at least exgratia financial assistance shall be considered. Since this direction comes through an order of Court, the issue of delay from

the date of termination of the employee for the year 2002 shall not be applied against the petitioner. This order has been passed under the special circumstances where I find the termination was made without properly apprising the employee of the provisions of the 1995 Act.

7. The copy of this judgment is directed to be circulated to the Central Ministry of Social Justice & Empowerment as well as to the and State Co-ordination Committees constituted under the 1995 Act for them to issue appropriate guidelines to the Departments of Labour, Human Resources Development and the State Agencies dealing with empowerment of persons with disabilities that no employer shall terminate the services of an employee who has become mentally ill during the service, without due consideration of suitability of the employee to any other post and without properly counselling the employee about his rights. It is also further directed that wherever compassionate assistance scheme exists that contains provision for giving employment to any dependent to such employee, the employer shall counsel the dependent for appropriate application in that regard and adjust such dependent for suitable employment.”

The respondent being State is a model employer. The stand taken by the State that the petitioner had been discharging the duties assigned to his father is totally absurd and not expected from the State as the job in question is not transferable. The action of the respondents in allowing somebody else to carry out duties of an employee itself is a breach of the Civil Service Rules. As there is a policy for compassionate appointment for

the category of the persons like the petitioner, the appropriate course would have been to retire the father of the petitioner and appoint the petitioner against the post so vacated. It was also expected from the State being a model employer that it would apprise the employee of his right particularly when it pertains to Class-IV employees who normally are handicapped on account of their being not so qualified as the academic qualifications required for appointment are normally of the basic level i.e. either primary or middle pass.

The father of the petitioner as well as the petitioner were not properly counselled who took the assurance made by the respondent as a gospel truth. Now after having invested about 14 years with the respondent/department, he has been left in lurch. At this stage of his life, the petitioner may not be eligible for appointment in any other Government department on account of his being over age at this stage.

Thus, in view of the above, this writ petition is allowed with a direction to respondent(s) to issue appointment letter to the petitioner to the post of Peon against the post vacated by his father on retirement.

(JITENDRA CHAUHAN)
JUDGE

28.08.2018

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No