

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 8958 of 2015

Date of Decision : 07.12.2018

Lali Devi

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM: *HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI*

Present: Mr. Deepak Sonak, Advocate for the petitioner.
Mr. S.K. Vashisht, Deputy Advocate General, Haryana.
Mr. V.K. Kaushal, Advocate for respondents No. 2 to 5.

Harsimran Singh Sethi, J.(Oral)

In the present case, petitioner is challenging the order dated 10.05.2013 (Annexure P-6) by which the petitioner has been denied the grant of benefits under the ex-gratia policy.

The facts as mentioned in the writ petition are that the respondent-department issued an advertisement on 04.03.1996 by which 2056 posts of Assistant Lineman and 556 posts of Shift Attendants were advertised. Husband of the petitioner, who was fully eligible, applied in the reserved category of Scheduled Caste. After the completion of selection process, husband of the petitioner could not be selected. Some similarly situated persons filed writ petitions before this Court bearing CWP Nos. 15558 of 1997, 17812 of 1997 and 16278 of 1997, wherein it was claimed that the reserved category candidates, who had more marks than the last selected candidate of General Category needs to be shifted to the General

Category and the post so vacated by them needs to be given to the candidate next in merit in the reserved category. The claim so made was granted by this Court vide order dated 03.12.2008.

Unfortunately, husband of the petitioner passed away on 24.10.2007 before the decision was rendered by this Court allowing the claim of the similarly situated persons.

While implementing the judgment, the respondents on the basis of the merit already prepared, reframed the merit list and issued an appointment order to the husband of the petitioner on 16.10.2009 (Annexure P-2) appointing him on the post of Assistant Lineman. At that time, the respondents did not knew that husband of the petitioner-Rohtash had already passed away approximately two years ago.

After the appointment order was issued, the petitioner started making representations for the grant of ex-gratia amount. The said prayer was made by a deemed fiction that the husband of the petitioner should be treated in service from 1997 when the other selected candidates were allowed to join and on the said deemed assumption, after the death of the husband of the petitioner on 24.10.2007, the petitioner should be considered entitled for the grant of ex-gratia benefits.

The said request of the petitioner was rejected by the respondents by passing an order dated 10.05.2013 (Annexure P-6). As per the said order, the respondents have clearly stated that as the husband of the petitioner had already died much prior to the issuance of the appointment order and he never joined the post, therefore, no legal right accrues in favour of the legal heirs. The said order is under challenge before this Court.

I have heard learned counsel for the parties and have gone through the case file very carefully.

Learned counsel for the petitioner contends that once the appointment order was issued on 16.10.2009 in favour of the husband of the petitioner and as per Clause-7, the appointment was to take effect from 1997 (without backwages) it should be deemed that the husband of the petitioner remained in service from 1997 till 24.10.2007, when he unfortunately died and, therefore, petitioner should be considered eligible for the grant of ex-gratia benefits.

Though it is a hard case but once a person has never joined a post, he cannot be considered as an employee of the department. In the present case, even before the right could have been established by this Court, which was established on 03.12.2008 in respect of the appointment to be given, the husband of the petitioner had already died. The appointment order dated 16.10.2009 (Annexure P-2) was issued inadvertently to a dead person. Once the petitioner's husband never joined, there cannot be deemed fiction of joining by the husband of the petitioner from 1997.

In view of the aforesaid facts and circumstances of the case, no fault can be found with the impugned order dated 10.05.2013 (Annexure P-6).

The writ petition is, accordingly, dismissed.

December 07, 2018
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No