

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

LPA No.1575 of 2015 (O&M)
DATE OF DECISION : 31st JULY, 2018

Sanjeev Kumar

.... Appellant

Versus

State of Punjab & others

.... Respondents

**CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI
HON'BLE MR. JUSTICE KULDIP SINGH**

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Present : Mr. G. D. Gupta, Advocate for the appellant.

Mr. Rajesh Bhardwaj, Senior DAG, Punjab.

Mr. Rohan Mittal, Advocate for respondents No.2 to 4.

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A. B. CHAUDHARI, J.

1. By the present intra court appeal the appellant-Sanjeev Kumar has put to challenge the judgment and order dated 21.04.2014 passed in CWP No.2841 of 2014, by which the relief claimed by the appellant herein for grant of appointment on compassionate ground, was declined.

2. The admitted facts are as under:

Late Sh. Hari Ram father of the appellant, was working as Assistant Lineman with the respondent-Punjab State Electricity Corporation Limited, Patiala (in short, the Corporation). While he was on duty due to carelessness of another employee Balwinder Singh, SSA, he died and a criminal case was also registered against Balwinder Singh. Balwinder Singh prevailed upon the mother of the appellant that the appointment on compassionate ground would be given to appellant if

criminal proceedings against him were withdrawn and accordingly the mother of the appellant did not pursue the criminal proceedings with a sanguine hope to gain appointment on compassionate ground for the appellant. Thereafter the appellant filed application for appointment on compassionate ground on 03.11.2009. There was no response to the said application and as late as on 11.03.2013 a letter was issued to the appellant by the Corporation that the application was disposed of by giving special benefit to the widow of the deceased by sanctioning ₹3,00,000/-. Thus the response came only after four years. The appellant therefore sent a legal notice dated 08.08.2013 to the Corporation, asking them to provide employment to the appellant on compassionate ground. Since nothing was done by the Corporation the appellant filed CWP No.2841 of 2014, which was decided by the impugned judgment and order dated 21.04.2014, which is under challenge in the present appeal.

3. There is an affidavit in response to the LPA filed by Er. K. D. Chaudhari, Managing Director of the Corporation and it is interesting to note paragraph 3 of the said affidavit. Paragraph 3 says that on 23.11.2004 the policy not to grant compassionate appointment but to grant solatium, was introduced. With effect from 16.04.2010 the erstwhile Punjab State Electricity Board was divided into two separate corporations and a choice was given at that time either to opt for compassionate appointment or solatium. The circular was made effective from 16.04.2010 and it covered the cases after 16.04.2010. It is also stated in paragraph 3 of the affidavit that the policy dated 23.11.2004 regarding award of solatium was stopped by circular dated 04.03.2013

and only appointment on compassionate ground was contemplated in case of death of employee while on duty. It is thus stated in paragraph 3(d) of the affidavit that after 16.04.2010 in view of the change in the policy i.e. to provide appointment on compassionate ground, in total 2482 cases of dependants of the deceased employees have been given job on compassionate ground.

4. The learned counsel for the respondent-Corporation while vehemently opposing the appeal submitted that the date of death of the employee and in this case father of the appellant namely, 23.06.2009 would decide which policy would apply. We reject this argument outright. Firstly because there is no any such stipulation in the policy itself anywhere. Secondly, it sounds absurd that the date of death of the employee would be relevant.

5. As a matter of fact, we find in the present case that the application for appointment was made on 03.11.2009 but there was no reply for almost four years and thereafter by reply dated 11.03.2013 the request for appointment on compassionate ground was declined. Now, when the decision, not to grant employment on compassionate ground, was taken and communicated to the petitioner, what was in force, was the policy to provide employment on compassionate ground that was inserted w.e.f. 16.04.2010 and the policy dated 23.11.2004 regarding grant of solatium was retrospectively stopped by circular dated 04.02.2013, while the application for request of compassionate appointment was made on 03.11.2009. Even otherwise, from the admission in the above said affidavit it is manifest that policy dated 07.06.2010 by circular No.3/10

w.e.f. 16.04.2010 was already in existence and therefore the policy dated 23.11.2004, regarding award of solatium, had been put in to suspension as the Electricity Board was separated into two separate corporations w.e.f. 16.04.2010. It is thus clear that circular No.1/13 dated 04.02.2013 to stop the policy of award of solatium was issued to regularize the action of suspension of the said policy and nothing more. We, therefore, find on the facts of the present case that the respondent-Corporation has been taking inconsistent, self contradictory stand in the issue. In the process, it was the appellant, who suffered for no fault of his and was definitely entitled to grant of employment as per the policy of the Corporation as discussed above.

6. The submissions made by learned counsel for the Corporation, while relying on the judgment of Hon'ble the Supreme Court in the case of ***State Bank of India and others Versus Jaspal Kaur, (2007) 9 Supreme Court Cases 571***, that no compassionate appointment can be granted after number of years, as there is no immediate need at this stage, will have to be rejected. This decision is not applicable to the present case. The employer cannot be allowed to take advantage of his own wrong nor this Court would put premium on such actions.

7. The upshot of the above discussion is that the appeal must succeed so also the writ petition that was filed by the appellant before the learned single Judge. Having regard to the dilly-dallying attitude of the employer, we think, that there is no point in asking the respondents to consider the appellant for employment as the Corporation has already provided employment to thousands of persons on compassionate ground,

as stated in para 3(d) of the affidavit itself. The next reason is that respondents would again take its own time to make appointment of the appellant, who has already suffered for number of years. We, therefore, find we would be justified in making order to make appointment of the appellant within a specific time for a suitable post rather than leaving it to the respondent-Corporation.

8. In the result we make the following order:

ORDER

- (i) The LPA No.1575 of 2015 is allowed.
- (ii) The impugned judgment and order dated 21.04.2014 passed in CWP No.2841 of 2014, is set aside.
- (iii) The CWP No.2841 of 2014 stands allowed.
- (iv) The respondents are directed to provide employment to the appellant on a suitable post on compassionate ground, within a period of eight weeks from today, failing which the respondents shall start paying the salary of the post of Class IV to the appellant regularly every month till his actual appointment is made.

(A. B. CHAUDHARI)
JUDGE

31st JULY, 2018
'raj'

(KULDIP SINGH)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>