

Sr. No. 228

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

**CWP No.24132 of 2016 (O&M)
Date of Decision: 02.04.2019**

Rupinder Kaur

... Petitioner

Versus

State of Punjab and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Jimmy Singla, Advocate,
for the petitioner.

Mr. Abhaypal Singh Gill, AAG, Punjab.

Mr. Jaswinder Singh, Advocate,
for respondents No.1 to 3.

Mr. Rohal Mittal, Advocate,
for respondent No.4.

ARUN MONGA, J.(ORAL)

Present petition has been filed, *inter alia*, seeking issuance of a writ in the nature of mandamus directing the respondents to grant employment on compassionate grounds to the petitioner whose father died in harness.

2. Succinctly, the facts are that the petitioner was 3 years of age when her father, while serving as 'Horticulture Supervisor' with erstwhile Punjab State Electricity Board-PSEB (Punjab State Power Corporation Limited-PSPCL-successor-in-interest), died on 04.06.1988.

3. Learned counsel for the petitioner has drawn my

attention to the Scheme/Policy dated 03.07.2008 (Annexure P-2) issued by Government of Punjab, which governs the appointments to be made on compassionate grounds, in the Government Departments of the State of Punjab.

4. Learned counsel for the petitioner contends that the said Policy/Scheme is applicable on the respondent-PSPCL. He also relies on the RTI information provided to the petitioner conveying the office note-sheets, whereby, the application of the petitioner was considered and nowhere it has been opined that the Scheme, *ibid* is not applicable on the PSPCL/PSEB.

5. He contends that on behalf of the petitioner, her mother vide application dated nil (Annexure P-3) sought appointment to Category 'C' or 'D' post for the petitioner on her attaining the required age. The same has till date neither been rejected nor accepted and has been kept pending by respondent-PSPCL. However, under RTI she has received information that the application of the petitioner was sent for legal opinion as is reflected from note dated 23.12.2009 Annexure P-9, wherein, it was opined that the petitioner is not entitled to any benefit. He further states that subsequent to the application, PSEB vide a Circular dated 21.06.2006 (Annexure P-7), decided that only solatium will be granted in case of the employees dying in harness and no compassionate appointment will be given.

6. In view thereof, the petitioner also applied for solatium vide application in the prescribed format (Annexure P-8).

Notwithstanding, neither the benefit of earlier Policy/Scheme of

granting job on compassionate ground nor the benefit of solatium vide later Policy has been granted to the petitioner till date. He contends that the petitioner kept approaching the respondents from time to time and was eventually forced to file the present writ petition.

7. Learned counsel for the petitioner relies on a judgment dated 27.04.2010, rendered by this Court in **CWP No.9413 of 2009**, wherein, it has been held that delay cannot be the ground for declining the benefit for grant of job on compassionate grounds. He contends that in the present case, in any case, delay is not attributable to the petitioner and it was the respondents who caused the inordinate delay in considering the application of the petitioner. He submits that the said application was neither rejected nor any decision was ever conveyed to the petitioner. It is only in the year 2014, after petitioner applied under RTI and gathered information from the noting sheets of the relevant file, of erstwhile PSEB, which revealed that the application of the petitioner for seeking job, though was considered, but in view of the legal opinion, the same was not processed to its logical conclusion.

8. Per contra, learned counsel for PSPCL submits that petitioner ought to have pursued her case with respondent No.4- Punjab State Transmission Corporation Limited (PSTCL), as the post on which the petitioner's father was working was assigned to respondent No.4-PSTCL, after unbundling of erstwhile PSEB. Learned counsel for respondent No.4, on the other hand, submits

that said submission of respondent No.2-PSPCL is factually incorrect as respondent No.4 has no employee of its own and the entire staff is being taken on deputation by respondent No.4 from respondent No.2-PSPCL.

9. Learned counsel for the petitioner has relied on the judgment dated 18.02.2010 of this Court vide **CWP No.19234 of 2008 titled as Rajwinder Kumar Vs. State of Punjab and others**, wherein, while upholding the claim of the petitioner for compassionate appointment, this Court concluded as follows:-

“For the reasons afore-stated, the writ petition is allowed; the impugned order dated 09.03.2006 (Annexure P-5) is hereby quashed and the respondents are directed to appoint the petitioner under the ex gratia scheme on a suitable post within a period of three months from the date of receipt of certified copy of this order.

*It is further directed that meanwhile, if there is any amendment in the Policy decision of the State Government, the claim of the petitioner for appointment shall be considered as per the ex gratia Scheme/Policy which was in vogue at the time when the father of the petitioner died or when the petitioner acquired the eligibility for employment as has been held by a Division Bench of this Court in **Sheela Devi Vs. State of Haryana and others, 2008 (4) SCT 475.**”*

10. Vide circular No.9/06 dated 21.06.2006 issued by the Punjab State Electricity Board, it was decided to amend some of the provisions of the instructions regarding payment of solatium in lieu compassionate appointment and the revised instructions were issued as under:-

“1. Second Proviso of para 4(1) may be substituted as under:

Where spouse is already in Government/Board's service: provided secondly that where the spouse is already in Government/Board's service etc., no other dependent shall be eligible for compassionate payments except where the spouse is holding class III or IV posts, in that case only solatium will be granted but no special pension.”

11. Further, vide letter dated 03.07.2008 (Annexure P-2), the Punjab Government added the following proviso below para 13(a) of the policy/instructions regarding grant of employment in State services on compassionate grounds:

“Provided that in the case where the deceased Government employee leaves behind his/her minor children, who are studying at the time of death of the employee and are not qualified for an employment in the government and the spouse is not in position to join the government job, a dependent child may be allowed to apply for compassionate appointment by the competent authority within a period of one year from the date of attaining the age and educational qualifications for a Group C or D appointment in Government.

2. On humanitarian consideration, it has also been decided as a special one time measure to extend this benefit to all old deserving cases. In such cases, an application for employment may be made within six months from the date of issue of these instructions, if not already made. The administrative department should complete the process of giving employment within a period of nine months from the date of issuance of these instructions. No further relaxation shall be allowed under any circumstances.”

12. It is not disputed that the said Policy/Instructions were/are applicable to the employees of respondent No.2 for the benefit of their families.

13. In the present case, admittedly, Dyal Singh died in harness, when he was in the employment of Punjab State Electricity Board for short hereafter referred to as PSEB (Predecessor in interest of respondent No.2). Application dated 28.12.1988 (Annexure P-3) was submitted by his widow to the PSEB praying that his daughter (the petitioner herein) born on 13.07.1985 be given a job on attaining the required age and eligibility and a post be kept reserved for her. Reply dated 04.08.2009 sent by the PSEB that the case of employment of the petitioner would be considered as per rules and instructions in vogue, on receipt of request at an appropriate time.

14. In my opinion, the Instructions (Annexure P-2) ought to be interpreted liberally keeping in view their benevolent purpose, spirit and object. The provision for the grant of compassionate employment to the children is specially meant for the benefit of the children and not to deprive them of the benefit of compassionate appointment, merely because the spouse of the deceased employee does not need compassionate employment. In this view of the matter, the phrase “ the spouse is not in position to join the government job” seems to include cases, where the spouse is already employed and is not in a position to join the compassionate appointment under the Government. It appears that the petitioner's case is covered for compassionate

appointment by the Policy/Instructions (Annexure P-2) and for solatium by the Policy/Instructions (Annexure P-7).

15. In view of the above discussion, this writ petition is allowed with a direction to respondent No.2 to offer appointment to the petitioner on a suitable post in Group 'C' or 'D' in terms of the Policy/Instructions (Annexure P-2) and in the event petitioner is found not eligible under the said policy then in alternative to grant her solatium in terms of the Policy/Instructions (Annexure P-7). Needful be done within a period of three months from the date of receipt of a certified copy of this order.

16. The petition is thus disposed of.

02.04.2019

vandana

(ARUN MONGA)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes/No
Yes/No