

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

CWP No.8965 of 2016 (O&M)

Date of Decision: 14.08.2019

Amandeep Singh

... Petitioner

Versus

Punjab State Power Corporation Limited and others

... Respondents

CORAM:- HON'BLE MR. JUSTICE ARUN MONGA

Present:- None.

ARUN MONGA, J.

Chaddar Andazi, Customary Social Practice in Punjab followed in the society where a young widow is married to surviving brother of her deceased husband is stated to be the reason of rejecting the request of widow of deceased Bhupinder Singh for grant of compassionate appointment. Request of her son was declined on the ground of her having remarried.

2. At the relevant time, deceased Bhupinder Singh was working as lineman when in course of his duty he died in harness on 01.07.1990, due to electrocution. As per the relevant applicable Policy governing compassionate appointments, one dependent member of a deceased employee dying in harness was to be provided compassionate appointment.

3. While the widow was denied appointment on the ground of having married the brother of her deceased husband, who too later on died untimely, minor son (petitioner) of the deceased employee being one year old was non-suited. Later,

when he applied on attaining the age of majority his application was rejected on the ground that his mother had since got remarried, therefore, he is not eligible for benefit of compassionate appointment.

4. The petitioner initially applied for the job on 10.10.2007 immediately after attaining the age of 18 years. His application for appointment (Annexure P-2) was accompanied with marks sheet certificate Annexure P-3, 10+2th certificate Annexure P-4 and his diploma in ITI in electrician trade at Annexure P-5, respectively.

5. Having pursued the matter for sufficient long period, verbally from time to time, he eventually submitted another written representation dated 23.07.2012 (Annexure P-6). It was pursuant to the said representation that vide letter dated 22.10.2012, petitioner's mother was asked to give original documents/testimonials of the qualifications of petitioner which were duly submitted vide letter dated 08.11.2012. Owing to submissions of original documents, the petitioner was sanguine with legitimate expectation that he would be provided employment in due course owing to which he could not even apply for any alternative jobs since he was not in possession of his original testimonials.

6. Having waited for reasonable period, the petitioner submitted another representation dated 12.06.2013 (Annexure P-10) followed by 10.01.2015 (Annexure P-11).

7. The representations of the petitioner were submitted in the background of no objection by his mother for giving the job to

the petitioner instead of her. Though the mother of the petitioner had remarried, but as fate would have been, she is currently a widow again as even the step father(brother of the father of the deceased) of petitioner also died.

8. The petitioner has also pleaded that the respondents have committed hostile discrimination in rejecting his application. On one hand, respondents No.4 and 5 have been appointed on compassionate grounds on 11.11.2014 but petitioner has been rejected. Finding no leeway, the petitioner was compelled to file an earlier writ petition before this Court which was disposed of vide order dated 26.02.2015 (Annexure P-12) directing the respondents to consider the case of petitioner within a period of 3 months. Pursuant thereto, vide an order dated 10.09.2015, impugned herein, the application of the petitioner has been rejected. As already stated, ostensibly, on the ground that due to performance of second marriage by the mother of the petitioner, his right as a son of the deceased is not recognized as per prevalent instructions.

9. In the return, same stand has been taken in tune with the reasoning given in the impugned order that since the widow of the deceased employee had remarried and, therefore, her son is also dis-entitled to seek employment on attaining majority.

10. I have gone through the rival pleadings and the record appended thereto.

11. The stand of the respondents, *inter alia*, as reflected from the return is that the petitioner is not entitled to

compassionate employment as the very objective of providing the same is to release the family from immediate financial hardship. The family members of the deceased employee cannot claim compassionate appointment as a matter of right. It is not a vested right as has been held by Hon'ble the Supreme Court in case titled as ***Jagat Singh Vs. State of Bihar 1996 (2) S.C.T. 207***, therefore, ameliorating relief of providing release to the family of their financial hardship should not be taken as opening to an alternative mode of recruitment to public employment.

12. Neither the petitioner has appended the compassionate appointment Policy of the respondent with the petition nor the respondents have placed the same on record along with its written statement. I have necessarily, therefore, to rely upon the same from the following observations contained in the impugned order dated 10.09.2015 (Annexure P-13).

“That after becoming major a demand notice was received on the compassionate grounds to Chief Engineer vide Memo No.2689 dated 03.03.2015 by the son of the deceased for consider this case. In this regard vide Memo No.3945 dated 17.06.2015 Operation Division Nabha, it was revealed that at the time of death of worker the deceased son was minor and second marriage was performed by the wife of deceased. Therefore, as per the policy prevalent at the time of death of employee there is provision of considering only the dependent members of the family of the deceased. Due to the performance of second marriage by the wife after the death of her husband, right of son of the deceased to get job on compassionate grounds is not recognized as per prevalent instructions therefore the case was already

rejected. As the applicant has mentioned in his application dated 10.01.2015 that his mother had contracted 2nd marriage and now his step father has also expired.

Therefore, as per PSEB, now PSPCL instructions the claim of the applicant for appointment on compassionate grounds or for solatium in lieu of job is not justified therefore it is rejected.”

13. Conceded position that emerges from perusal of the above is that on the death of the father of the petitioner “only” the dependent members of the family of the deceased were entitled to seek appointment on compassionate grounds at the time of death. Meaning thereby, either the widow or the son, being the dependent members of the deceased could have sought the job particularly. That the widow had remarried due to the compulsions of her race to survival, which though as traversity would have been, also did not work out to her advantage, as she lost her second husband too (brother of the deceased). Yet again, forcing her to live in penury. While on the other hand, the son being a minor at the relevant time did not apply for the job.

14. Net result, thus, remained that none of them were considered for job as per the prevalent Instructions. In the worst case scenario, if the widow had chosen not to apply, it is not the case of the respondents that in that event the minor son could have been denied his right to apply on attaining majority. The rejection of the application of the widow, even if it is assumed was for valid reasons, though I am in disagreement with the same, it could not have been the reason to deny her minor son the right to be

considered on attaining majority.

15. On the other hand, the conduct of the respondents to the extent of inducing the petitioner to submit his application along with all the original testimonials and keeping the same in their custody while the case, on the other hand, was kept on hold without conveying any decision is also highly unfair. The justification rendered in the return filed by the respondents is that if the petitioner had submitted his original certificates with the authorities, he could have asked for return of the same, whenever he was to apply for alternative job anywhere else. The said justification is not tenable seen from the context of the petitioner, that once he had submitted his original testimonials at the asking of the respondents, he had legitimate reasons to believe that in due course, his case will be considered, in accordance with law.

16. In the totality of the circumstances, I am of the view that declining to consider the case of the petitioner on the ground that his mother had re-married is arbitrary and capricious. In case, the mother of the petitioner had remarried, it can at best be a ground to decline her appointment on compassionate grounds. But the petitioner, who is the biological son of the deceased employee and admittedly died in harness while performing his duties in an accident totally attributable to his nature of job. In any case, it is hard to construe that after the re-marriage of the mother of the petitioner, the petitioner does not cease to be a dependent family member of the deceased employee.

17. In view of my discussion above and reasons contained

therein, the impugned order dated 10.09.2015 (Annexure P-13) is set aside with a direction to the respondents to reconsider the application of the petitioner in accordance with prevalent applicable Policy at the relevant time by considering him a dependent family member of the deceased employee and proceed to accord the benefit of the Policy in accordance with law.

18. Let a decision be taken in accordance with law.

19. It would be appreciated if the applicant's case is considered as expeditiously as possible and, in any case, not later than the next available vacancy commensurate with his eligibility/qualifications.

20. Disposed of in above terms.

14.08.2019

vandana

**(ARUN MONGA)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No