

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

Sr. No.215

**CWP-1728-2019 (O&M)
Date of decision : 10.12.2020**

Rawel Singh and another

..... Petitioners

VERSUS

State of Punjab and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. M.K. Bhandari, Advocate, for the petitioners.

Ms. Akshita Chauhan, AAG, Punjab.

SUDHIR MITTAL, J.

The question which arises for determination in this writ petition is, whether, the son of an employee afflicted with a neurological disorder, is entitled to grant of Government employment on compassionate grounds, keeping in view the facts and circumstances of this case ?

The petitioners are father and son, petitioner No.1 being the father. He was appointed on daily-wage basis in the Excise and Taxation Department of the Punjab Government. In the year 2001, he was regularized as a Class-IV employee and subsequently, promoted to the Class-III post of Clerk. At the time of filing of the writ petition, he was serving as Junior Assistant at Sub-Office, Rajpura. In the year 2012, he developed some neurological ailment, which ultimately resulted in permanent disability to the extent of 75%. This is evident from Disability Certificate dated 29.4.2015 issued by a competent Medical Board. The office of respondent No.3 discontinued payment of salary w.e.f. 1.7.2017

on account of which, his son (petitioner No.2) submitted a representation dated 6.9.2017 (Annexure P-4). Request for employment on compassionate grounds was also included. This was followed by representation dated 13.9.2017 (Annexure P-5) addressed to the Social Security and Women & Child Development Department, Punjab. The said Department addressed communication endorsed on 24.10.2017 (Annexure P-5/A) to respondent No.3 to send comments on the representation made to it. Vide communication addressed on 1.11.2017 (Annexure P-6), respondent No.3 was asked to take appropriate action in accordance with existing instructions. The Punjab Government in the Excise and Taxation Department also wrote a communication dated 7.11.2017 to respondent No.3 asking him to take action in accordance with the relevant rules. Consequently, the office of respondent No.3 sought guidance from the Government vide its letter dated 25.1.2018 (Annexure P-8), whereupon, communication dated 13.7.2018 (Annexure P-9) was issued by the Government making reference to communication issued by the Social Security and Women and Child Development Department dated 30.4.2013 which was issued pursuant to judgment dated 6.3.2012 passed in CWP-5436-2009 titled as Roshni Devi Vs. HVPN. After examination of the issue, order dated 21.9.2018 (Annexure P-12) was passed directing release of salary w.e.f. 1.7.2017 and for continuation of service till the date of retirement. However, the request for compassionate employment was denied. This order has been impugned in the present writ petition.

In the written statement filed on behalf of the respondents, it has been averred that the request for compassionate employment cannot be granted as the existing policy on the subject does not cover this case. However, in accordance with Section 47 of the Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 (hereinafter refer to as 'the Act'), petitioner No.1 has been retained in service and is being paid his full salary. He shall be permitted to continue in service till the date of his superannuation. As per instructions dated 25.8.2000, dependents of employees, who retired on medical ground, are not entitled to compassionate employment.

In the replication filed on behalf of the petitioners, it has been averred that instructions dated 30.4.2013 (Annexure P-3) issued by the Social Security and Women & Child Development Department, cover the present case and consequently, petitioner No.2 is entitled to compassionate employment.

Arguments have been raised in accordance with the respective averments of the parties.

Section 47 of the Act provides that an employee, who acquires a disability during his service, shall continue in service till his age of superannuation and shall not be denied promotion during this period. Mental illness is covered in the definition of disability contained in Section 2(i). In accordance with this provision of law, petitioner No.1 has been permitted to continue in service till the date of superannuation, which was 31.3.2019 according to the written statement and has been

paid full salary till his retirement. No dispute has been raised by learned counsel for the petitioners regarding withholding of retiral benefits.

Claim for grant of compassionate employment is being raised on the basis of judgment dated 6.3.2012 passed in CWP-5436-2009 titled as Roshni Devi Vs. HVPN as well as instructions dated 30.4.2013 issued by the Social Security and Women and Child Development Department, Punjab.

In the case of Roshni Devi (supra), the husband of the petitioner had taken voluntary retirement due to mental illness. Six years later, the writ petition was filed stating that the order of voluntary retirement amounted to termination of service in violation of provisions of the Act and that the same deserves to be set aside. In the alternate, compassionate employment was sought on the basis of Scheme dated 31.8.1995, which provided for compassionate appointment to dependent of an employee, who had been declared medically unfit and had retired before attaining the age of 55 years in case of Class-III employee. The learned Judge found that the order of voluntary retirement was passed on a request made by the petitioner herself and thus, there was no illegality therein. However, the facts showed that before grant of voluntary retirement, the petitioner had not been properly counseled about her husband's rights under the Act. Accordingly, directions were issued to the Central Government as well as the State Government to ensure that necessary guidelines be laid down, so that no employee is terminated from service on account of mental ailments without consideration of his/her suitability for continuance in service and without counseling him

regarding his/her rights under the Act. The counseling would also include availability of compassionate employment, wherever, a scheme existed in that regard. Thereafter, instructions dated 30.4.2013 were issued to Heads of all Government Departments that the services of an employee, who has contracted a mental ailment during service and has been rendered medically unfit, be not terminated and in the scheme for compassionate employment, a provision be made for dependents of such employees. The relevant department was asked to take address the issue.

There is no gainsaying that a judgment is an authority for what it decides. It has to be read in the context, in which, it has been delivered and the relief sought. Reference can be made to Vishal N. Kalsaria Vs. Bank of India and others, 2016 (1), RCR (Civil) 911. Thus, considered, the judgment passed in Roshni Devi's case (supra), cannot be read to mean that in addition to the rights granted under the Act, compassionate employment must also be provided. The judgment only says that proper counseling must be provided to employees, who have incurred disability on account of mental afflictions while in service and in case, the scheme framed for grant of compassionate employment caters for dependents of such employees, they should also be counseled. Thus, either the employee continues in service till the date of superannuation in accordance with his rights under the Act or his dependent is granted compassionate appointment. Both reliefs are not permissible. There is no dispute that petitioner No.1 has continued in service till his age of superannuation and has been paid his arrears of salary. The claim for compassionate employment is thus, misconceived.

It deserves mention that a situation may arise, where, an employee suffering from mental ailment is unable to continue in service. In such a situation, his dependent would be entitled to grant of compassionate appointment in equity. Presently, the scheme for grant of compassionate employment/assistance does not cater for such a situation. Directions have already been issued in Roshni Devi's case (supra), in this regard and I endorse the same. The Department of Personnel, Government of Punjab, would be well advised to consider modification of its policy of compassionate employment/assistance, accordingly.

The claim for compassionate appointment is rejected and the writ petition is dismissed.

(SUDHIR MITTAL)
JUDGE

10.12.2020

Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No