

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.1259 of 2021 (O&M)
Date of Decision: 06.01.2022

Komal

.....Appellant

Versus

State of Haryana and others

.....Respondents

**CORAM: HON'BLE MR.JUSTICE RAVI SHANKER JHA, CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI, JUDGE**

Present : Mr. Kartar Singh Malik-I, Advocate for the appellant.

(The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court)

ARUN PALLI, J.

This is an *intra Court* appeal, under Clause X of the Letters Patent, against an order and judgment dated 15.11.2021, vide which the writ petition preferred by the appellant claiming *ex gratia* appointment and family pension with other admissible benefits has since been dismissed.

The facts that are required to be noticed are limited.

Late Vijay Kumar (father of the appellant) was appointed as temporary Constable in Haryana Armed Police on 17.09.1995. The selection, pursuant to which, the deceased was selected and appointed, was assailed before this Court, which was set aside, vide order and judgment dated 16.02.1996, of the Division Bench of this Court. However, in an appeal preferred against the said decision, the Supreme Court, vide an interim order, required the selectees to continue in service.

However, on 03.10.1997, during the pendency of the appeal, father of the appellant had passed away. And later the Supreme Court, vide order and judgment dated 17.01.2001, affirmed the decision, rendered by the Division Bench (supra) and accordingly the appeals were disposed of. Mother of the appellant, whereafter, made a claim for appointment on compassionate ground as also the family pension with other retrieval benefits. However, vide orders dated 04.07.2002 (Annexure P-12), 30.05.2003 (Annexure P-11) and order No.6893/ACE (Annexure P-10), the authorities declined her claim. For, the appointment of the deceased itself was set aside by this Court. And, just because, pursuant to an interim order, the deceased continued to serve the department till his death, no further benefit could accrue therefrom. Resultantly, the petitioner approached this Court, vide a writ petition, referred to above. However, the learned Single Judge, upon consideration of the matter, dismissed the petition for, selection and consequent appointments were set aside by this Court much prior to the death of the deceased, and thus, he was no longer in service. Further, father of the appellant had passed away in 1997, and the writ petition was filed only in the year 2021, therefore, claim of the appellant also suffered from delay and latches.

Thus, this appeal.

Learned counsel for the appellant merely reiterates the argument that was advanced before the learned Single Judge: even though the selection and appointment of the father of the appellant was set aside but pursuant to an interim order, passed by the Supreme Court, he continued in service thus, he was very much in employment of the

department and died in harness. Therefore, he asserts that notwithstanding the final judgment dated 17.01.2001, rendered by the Supreme Court, whereby the decision of the Division Bench was affirmed, she shall still be entitled to all the service benefits and appointment on compassionate ground. As regards the delay, it is urged that claim qua family pension was a recurring cause of action, and as regards *ex gratia* appointment, she was merely one year old at the time of death of her father and immediately upon attaining the age of majority she approached this Court. Therefore, there was no delay in filing the petition.

We have heard learned counsel for the appellant and perused the records.

Concededly, the deceased was appointed on 17.09.1995. It is not disputed either that selection in question and all consequent appointments being fraught with multiple infirmities/illegalities were set aside by this Court on 16.02.1996. However, pursuant to an interim order, passed by the Supreme Court, in an appeal against the said decision, the deceased, along with other selectees, continued to serve the department till, he passed away on 03.10.1997. Thus, *ex facie*, the deceased was not in service but merely continued to serve the department owing to an interim order (ibid). Need we say that the interim order passed by the Supreme Court was provisional/temporary in nature and operative only till the matter was finally decided. Therefore, no other benefit could enure therefrom to the deceased or his family. Not just that once the selection and consequent appointment of the deceased was held to be *void ab initio*, we are afraid, if the appellant could still stake a claim for family pension

and to grant her *ex gratia* appointment. Rather, as observed by the learned Single Judge, the decision holding the selection/appointment of the deceased as void would relate back to the date of his appointment.

Undoubtedly, her father had passed away when she was a minor being hardly a year old. Upon being pointedly asked, learned counsel for the appellant could not refer to any rule/policy which vests an indefeasible or hereditary right in a minor to claim *ex gratia* appointment on attaining the age of majority. Unfortunate, though, her father had passed away almost a quarter of a century ago. Further, as per the case set out by the appellant herself she had attained majority in the year 2017 whereas the petition was filed after more than three years therefrom. Therefore, the case of the appellant suffered from gross, inordinate and unexplained delay. Rather, it appears the petition filed by her was merely speculative.

In the wake of the position, as sketched out above, we are dissuaded to interfere with the impugned order and judgment rendered by the learned Single Judge. The appeal being bereft of merit is accordingly dismissed.

(RAVI SHANKER JHA)
CHIEF JUSTICE

(ARUN PALLI)
JUDGE

06.01.2022

Manoj Bhutani

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No