

S.No.216

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

LPA No.589 of 2017 (O&M)

Date of Decision:31.10.2022

Pt. Bhagwat Dayal Sharma, PGIMS, RohtakAppellant

Vs.

Kapil and others

.....Respondents

**CORAM:- HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MR. JUSTICE JAGMOHAN BANSAL**

Present:- Mr. Amit Rao, Advocate for Mr. Anurag Goyal,
Advocate for the appellant.

Mr. R.S. Kundu, Advocate for respondent No.1.

Mr. Manav Dhull, Advocate for Mr. Ramesh Hooda,
Advocate for respondents No.3, 4 and 6.

G.S. SANDHAWALIA, J.(Oral)

The present Letters Patent Appeal has been filed against the order and judgment of the learned Single Judge in CWP No.8033 of 2015 decided on 03.03.2017. The learned Single Judge while allowing the writ petition set aside the communication dated 12.01.2015 (Annexure P.17) and directed the appellant to re-consider the case of the writ petitioner at par with decision in CWP No.4066 of 2007 decided on 27.08.2008 (Annexure P.13).

Thus the consideration for appointment on account of the fact that the father of the writ petitioner was retired on medical grounds being unfit was directed keeping in view the fact that similarly situated persons as such have been granted the said benefit. The instructions dated 31.08.1995 (Annexure P.6) provide for such a contingency under Clause 5. Counsel for the University has primarily drawn strength from the instructions dated

31.03.2003 issued by the State having been placed on record as Annexure A.1 to submit that the State issued the instructions whereby keeping in view the Haryana Compassionate Assistance to the Dependants of Deceased Government Employees Rules, 2003 (for short, 'the 2003 Rules') had been introduced and, therefore, later the instructions dated 31.08.1995 (Annexure P.6) stood withdrawn. It is accordingly argued that the absence of any such instructions in view of the 2003 Rules being introduced, the provision, as such, for appointment is only on the ground in case of death of a government employee and not in the case of retirement on the ground of medical grounds.

We are of the considered opinion that the matter stands settled in favour of the petitioner by the Co-ordinate Bench of this Court in **Harmeet Singh v. State of Haryana and others, 2014(3) RSJ613.** In the said case, offer of appointment which had been made on account of the premature retirement of the father of the writ petitioner was subject-matter of challenge since the offer granted for appointment had been recalled. The argument raised by the State as such was that the 2003 Rules were in play, and, therefore, appointment on the ground of right under the Instructions dated 31.08.1995 could not be invoked. The Co-ordinate Bench has held that the said Rules deal with the appointment to the dependants of deceased government employees alone and do not talk about the rights in respect of employees who were retired on ground of medical condition. The relevant portion reads as under:-

“7. We have heard learned counsel for the parties and

find that the writ petition filed by the petitioner warrants to be allowed. The right of the compassionate appointment on account of medical incapacitation was conferred vide circular dated 31.08.1995, the relevant clause has been reproduced above. Such clause was inserted in a scheme contemplating appointment on compassionate grounds to the dependents of the deceased employees. The Rules deal with right of the appointment to the dependents of deceased Government employees alone. There is no reference of employment or of financial assistance to the dependents of the employees who have been declared medically unfit and retired from service. Therefore, Clause 19 of the Rules can be read only to the extent that the provision has been made in the Rules i.e. in respect of employment of dependents of deceased Government employees and not in respect of the employees who are retired on account of medical condition.

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10. In the present case, the petitioner has been offered appointment in terms of Government instructions dated 31.08.1995. Such instructions cannot be deemed to be superseded by framing of the Rules which deals with only appointment on compassionate grounds of the deceased Government employee. Such rules does not take into his (sic. this) ambit, the appointment to the dependents of Government

servants who are declared medically unfit. The petitioner was offered appointment and has joined services as well. The termination effected for the reason that the Rules does not contemplate appointment on compassionate grounds is wholly unjustified and is illegal. The termination order is also unwarranted for the reason that it was passed without giving an opportunity of hearing.”

In such circumstances, the reliance, as such, by the appellant on the 2003 Rules is misplaced and even the fact remains that on 31.03.2003/20.03.2006, the withdrawal as such is of the right to compassionate appointment on account of death of the employee as contained in the 2003 Rules are also of no help to the appellant. The said communication thus would be also of no help since the withdrawal is regarding the right which was granted for consideration as such on the ground of the death of the employee which was also provided in the policy dated 31.08.1995.

The policy specifically, however, also talked about the right of the employee as such to seek appointment on account of compassionate ground to the dependant of the government servant on account of the fact that the person has been declared unfit/incapacitated by the Special Medical Board. Clause 5 reads as under:-

“5. That facility of compassionate appointment to a dependent of a government servant shall be available if the letter is

declared medically unfit/blind/incapacitated by the special medical board and retired on or before attaining the age of 55 years in the case of Class I, II, III officers/ officials and 57 years in case of class IV employees. A Government employee who is declared incapacitated/ blind after 55 years of age in the case of group A, B, C and after 52 years of age in the case of Group D employees, will not be entitled to this facility. Subject to this case of compassionate employment to a dependent of a deceased employee would be applicable in these cases as well.”

In such circumstances, once there is no specific instruction qua the right as such of persons who are unfit and the specific instructions qua withdrawal, are only for the dependants seeking appointment. Thus we are of the considered opinion that the learned Single Judge was justified as such in directing re-consideration.

However, as already noticed, vide the impugned order dated 12.01.2015 which was under challenge before the learned Single Judge, the competent authority as such had noticed that similarly situated persons had been granted the relief on account of having approached this Court and since they had been removed from service, the appellant had taken them back into job. The authority, however, came to the conclusion that one illegality or mistake does not justify other illegality or mistake. The appellant thus has also acted upon the policy dated 31.08.1995 and granted the benefit to the other dependents whose parents were declared unfit. The learned Single Judge also referred to the said fact to invoke Article 14 of the

Constitution of India.

Keeping in view the fact that the State, as such, cannot discriminate amongst its employees, in the considered opinion, the order passed by the learned Single Judge does not suffer from any infirmity especially keeping in view the fact that the issue has already been decided in favour of the writ petitioner and against the appellant by the co-ordinate Bench. Resultantly, we do not find any merit in the present appeal and the same is dismissed.

(G.S. SANDHAWALIA)
JUDGE

31.10.2022
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(JAGMOHAN BANSAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No