

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(112) CM-654-C-2023 in/and
RSA-3002-1996
Date of Decision : January 31, 2023

Dharampal .. Appellant

Versus

State of Haryana and others .. Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kamal Mor, Advocate, for the applicant-appellant.

Ms. Vibha Tewari, Assistant Advocate General, Haryana.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-654-C-2023

Present application has been filed for listing the case for an early actual date of hearing.

Notice of the application to the counsel opposite.

Ms. Vibha Tewari, Assistant Advocate General, Haryana, who is present in the Court, accepts notice on behalf of the respondents and raises no objection for the grant of prayer as raised in the present application.

Keeping in view the facts mentioned in the application, the same is allowed and the main appeal is taken up for hearing today.

RSA-3002-1996

Present Regular Second Appeal has been filed by the appellant by which, the judgment of the lower Appellate Court dated 27.09.1996 has been impugned by which order, the judgment and decree dated 11.01.1996 of the trial Court, allowing the suit filed by the appellant herein was set aside by the lower Appellate Court.

The facts which led to the filing of the present Regular Second Appeal is that the appellant-plaintiff's father namely Lakhi Ram was working as a Chowkidar with the respondent-Department starting from the year 1980 on work charge basis and the services of the father of the appellant-plaintiff were regularized in the year 1987. Unfortunately, father of the appellant-plaintiff died on 17.10.1988 and after the death of his father, the appellant-plaintiff claimed the appointment on compassionate ground. As the benefit of compassionate appointment was not being given by the respondent-Department, the appellant-plaintiff filed a civil suit for declaration and mandatory injunction with a direction to the defendant-Department to appoint the appellant-plaintiff on a suitable post on a compassionate ground. The said suit was decreed by the trial Court vide order dated 11.01.1996 on the ground that as the services of the father of the appellant-plaintiff were regularized in the year 1987, hence, after the death of a Government employee, the dependents are entitled for compassionate appointment thereby directing the respondent-Department to adjust appellant-plaintiff on class IV post within three months on compassionate ground. Feeling aggrieved against the judgment and decree of the trial

Court dated 11.01.1996, respondent-State filed an appeal, which appeal came to be decided on 27.09.1996 holding that the compassionate appointment cannot be claimed as a matter of right and even otherwise, as per the instructions of the Government dated 08.05.1995, only the spouse of the deceased employee or un-married children can be considered for compassionate appointment under the scheme and as the appellant-plaintiff is married, he lost his right to be considered for compassionate appointment and the judgment of the trial Court dated 11.01.1996 was set aside and the suit filed by the appellant-plaintiff was dismissed, hence, the present Regular Second Appeal has been filed.

Learned counsel for the appellant-plaintiff submits that at the time of the death of the father of the appellant, he was not married though, before the filing of the civil suit, the appellant-plaintiff got married, hence, the claim of the appellant-plaintiff for compassionate appointment could not have been rejected by the lower Appellate Court on the ground that the appellant was married, hence, the judgment dated 27.09.1996 of the lower Appellate Court is liable to be set aside.

On being asked to show the evidence which had come on record to prove that the appellant was not married at the time of death and had married later on so as to prove that the findings recorded by the lower Appellate Court are perverse to the facts on record, learned counsel for the appellant conceded that no such evidence has come on record that the appellant was not married at the time of the death. In the absence of any evidence brought to the notice of this Court qua the arguments raised and no perversity being pointed out in the order passed by the lower Appellate

Court, it cannot be held that the appellant was not married at the time when his father died in the year 1988.

Learned counsel for the appellant further submits that there was no evidence which had come on record that he was married so as to deny him the benefit of compassionate appointment.

The judgment of the trial Court has recorded a fact that even the prosecution witness No.1 submitted that children of the dead employee were married which means that at the time of the death, the children of the deceased employee were married. Even otherwise it was for the appellant-plaintiff to prove his case by leading specific evidence to overcome the condition imposed for the grant of compassionate appointment, which evidence is not on record so as to claim benefits.

Further, the present is a case of compassionate appointment. It is a settled principle of law that the compassionate appointment is not a right but a concession. That being so, it is a conceded position that the appellant is going to attain the age of superannuation in April, 2023 i.e. 58 years. The death of the employee concerned i.e. father of the appellant-plaintiff was in the year 1988 and 35 years have passed since the employee died. The compassionate appointment is only given to come over the financial crisis and is not a mode of appointment.

Once, 35 years have passed, the appellant is already going to attain the age of superannuation proved in service regulation within a period of two months from today coupled with the evidence which has come on record, in the present Regular Second Appeal, this Court will not interfere keeping in view the findings which has been recorded by the Courts below

which has gone unrebutted especially when no perversity in the findings of the lower Appellate Court could be pointed out by the learned counsel for the appellant either on the facts or law.

Dismissed.

January 31, 2023
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes