

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

(229)

RSA-793-2016 (O&M)

Date of Decision : 18.04.2023

**State of Haryana through its Collector, Office situated at D.C. Office,
Panipat and others**

...Appellants**Versus****Om Patti****...Respondent*****CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI***

Present: Ms. Vibha Tewari, Assistant Advocate General, Haryana
for the appellants.

Mr. Mohit Aneja, Advocate for the respondent.

Harsimran Singh Sethi J. (Oral)

The present regular second appeal has been filed challenging the judgment and decree of the lower appellate court dated 30.09.2015 by which, the judgment and decree of the trial court dated 04.10.2012 has been set-aside and the suit filed by the respondent-plaintiff has been allowed.

Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

The husband of the respondent-plaintiff, namely, Krishan Chander was working with the appellant-defendant-department and while working in the appellant-defendant-department, he unfortunately died on 26.07.1993. The respondent-plaintiff applied for compassionate

appointment and as the said claim was under consideration, in order to mitigate her miseries, the appellant-defendant-department appointed her on daily wage basis as a Water Carrier on 19.08.1993. The said appointment continued upto 31.03.1994, after which, as no extension was granted, her services were terminated.

The respondent-plaintiff challenged the said termination order before the Labour Court-cum-Industrial Tribunal, Panipat, where the claim of the respondent-plaintiff for reinstatement in service was dismissed. She challenged the decision of the Labour Court before this Court by filing CWP No. 3080 of 2001 but the same was also dismissed and no relief of continuation in service was granted to her by this Court.

Keeping in view the application, which the respondent-plaintiff had filed for the grant of compassionate appointment after the death of her husband and was pending consideration with the department, the department allowed the said plea by giving the respondent-plaintiff a regular appointment as a Peon w.e.f. 13.03.2002. After joining on regular basis, the respondent-plaintiff claimed the regular appointment on compassionate ground from the initial date of appointment as a Water Carrier on daily wage basis i.e. 19.08.1993, which benefit was not extended to her by the department.

Feeling aggrieved against the decision of the department in not extending the compassionate appointment w.e.f. 19.08.1993, the respondent-plaintiff filed a civil suit claiming the same and keeping in view the evidence and the facts, which came on record, the trial court came to the conclusion that as the compassionate appointment is a concession, hence

she cannot be granted the benefit of compassionate appointment with retrospective effect and the suit was dismissed by the trial court vide judgment and decree dated 04.10.2012.

Feeling aggrieved against the said decision of the trial court, appeal was preferred, which came to be decided on 30.09.2015 and the lower appellate court allowed the appeal and set-aside the judgment and decree of the trial court dated 04.10.2012 and allowed the suit by holding that once in the year 2002, the department came to the conclusion that respondent-plaintiff is entitled for appointment on compassionate ground, hence, there is no reason why the said compassionate appointment should not be antedated to the initial date when she was appointed on daily wage basis as Water Carrier and direction was issued to the department to consider the compassionate appointment of the respondent-plaintiff w.e.f. 19.08.1993 instead of 13.03.2002 with all consequential benefits. The said order passed by the lower appellate court is under challenge in the present regular second appeal.

Learned counsel for the appellants-defendants argues that the compassionate appointment is a concession given by the department to mitigate the miseries, which the family of a deceased employee suffers but the said compassionate appointment, which is a concession, cannot be claimed as a matter of right and hence, direction given by the lower appellate court to antedate her compassionate appointment from 22.03.2002 to 19.08.1993 is not at all correct and the same is liable to be set-aside.

Learned counsel for the respondent-plaintiff submits that once the respondent-plaintiff kept on sitting upon her claim for compassionate

appointment for a period of more than 8 years, she should not suffer any prejudice on account of the said delay hence, the judgment of the lower appellate court dated 30.09.2015 is perfectly valid and legal and is liable to be upheld.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

It may be noticed that the appointment with retrospective effect, as being claimed by the respondent-plaintiff, is qua compassionate appointment. The compassionate appointment is a concession granted only to mitigate to hardship of the family of a deceased employee. It is also a settled principle of law that the concession cannot be claimed as a matter of right. In the present case, nothing has come on record, as to whether, any person was granted compassionate appointment in preference to the respondent-plaintiff, whose cause of action had accrued after the claim of the respondent-plaintiff. In the present case, the compassionate appointment can only be allowed keeping in view the availability of a vacancy and the number of claimants and the claim of all is to be considered by giving priority keeping in view the date of the death of the employee concerned. In the absence of any such document on record to prove that the claim of the respondent-plaintiff was ignored up to the date of regular appointment on 22.03.2002, no direction could have been given by the lower appellate court to antedate the compassionate appointment. The lower appellate court misdirected itself while passing the order, impugned in the present regular second appeal.

Further, it is also a conceded fact that after the death of the

husband, the respondent-plaintiff was appointed on 19.08.1993 on a daily wage basis, which employment on daily wage basis continued up to 31.03.1994 and thereafter, services of the respondent-plaintiff was terminated, which action has already been upheld up to this Court. By the impugned order, the lower appellate court has totally ignored the judgment of this court by which, the non-continuation of the respondent-plaintiff in service was upheld by this Court while passing order in CWP No. 3080 of 2001. By the judgment of the lower appellate court, respondent-plaintiff get the reinstatement in service from 1993, which order goes contrary to the order passed by this Court in the writ petition filed by the respondent-plaintiff. Hence, on this account also, the judgment and decree of the lower appellate court dated 30.09.2015 cannot be sustained.

At this stage, learned counsel for the respondent-plaintiff submits that though the respondent-plaintiff is not being given benefit of antedated appointment but the services which the respondent-plaintiff has rendered from 19.08.1993 till 31.03.1994 be taken into account for calculating the pensionary benefits as the daily wage service prior to the regular appointment is liable to be counted for the said purpose.

Learned counsel for the respondent-plaintiff has not been able to dispute the fact that the daily wage service rendered prior to the regular appointment is liable to be taken into account as a qualifying service for computing the pensionary benefits. The present appeal is allowed and the judgment and decree of the lower appellate court dated 30.09.2015 is set-aside with the clarification that the daily wage services, which the respondent-plaintiff had rendered from 19.08.1993 till 31.03.1994 be taken

as a qualifying service for computing the pensionary benefits.

Appeal is allowed in above terms. Decree sheet be prepared accordingly.

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As the main appeal has been allowed, the present application stands disposed of.

April 18, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No