



RSA-861-2014

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

RSA-861-2014

Date of decision:-06.08.2024

Raj alias Dakhan

...Appellant

Versus

Secretary, Local Bodies, Municipality, Punjab, Chandigarh and another

...Respondents

CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**Present** : Mr.Vinay Bajaj, Advocate
for the appellant.Mr.Puru Jarewal, AAG, Punjab
for respondent No.1.Mr.M.S. Batth, Advocate
for respondent No.2.

SUVIR SEHGAL, J.(ORAL)

1. Plaintiff – appellant is in second appeal before this Court challenging the concurrent finding recorded by the Courts below.

2. Pleaded case of the plaintiff – appellant is that her father Babu Ram was serving as a Sweeper with defendant – respondent No.2 and unfortunately expired in harness on 29.11.2005. After his death, she applied for appointment on compassionate basis. It has been averred that



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the plaintiff was dependent upon her father and her husband was not maintaining her. She had been taking care of her parents. It had been also submitted that her mother as well as sister had given affidavits to the effect that they do not have any objection in case plaintiff is given an appointment.

3. Upon notice, defendant No.1 was proceeded against ex-parte and suit was contested by the defendant No.2 by filing a written statement wherein besides taking some objections regarding maintainability etc., the claim was denied by relying upon the scheme for compassionate appointment 2002, Ex.D1. Defendant No.2 took a stand that the plaintiff does not fall within the definition of dependent as per the scheme. Plaintiff filed replication controverting the stand of defendant No.2. On the basis of pleadings of the parties, issues were framed. After the parties led evidence, Trial Court by judgment and decree dated 18.04.2012 dismissed the suit. Plaintiff remained unsuccessful in the first appeal, which was dismissed by the learned Additional District Judge, Bathinda by judgment dated 28.05.2013, leading to the institution of the present second appeal.

4. Counsel for the appellant has urged that the plaintiff – appellant being the married daughter of the deceased cannot be excluded from the definition of dependent under the scheme of 2002. He has placed reliance upon a judgment of Division Bench of this Court in **State of Punjab & another Versus Amarjit Kaur, 2023 (1) Law Herald 352**. He submits that SLP (C) No. 9356/2023 filed against the said judgment was dismissed by the Supreme Court on 18.10.2023.



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5. Counsel representing the respondents have opposed the appeal and have supported the judgments and decrees passed by the Courts below.

6. I have heard counsel for the parties and considered their rival submissions, besides examining the record with their able assistance.

7. In Amarjit Kaur's case (supra), the question for consideration was as to whether a married daughter is liable to be excluded from consideration for appointment on compassionate grounds under the policy/relevant rules. The compassionate appointment policy, 2002, Ex.D1 came up for interpretation before the Division Bench and it was held that the exclusion of a married daughter is arbitrary. While modifying the judgment of the writ Court, the Division Bench has held as under:

“25. We are of the considered opinion that the exclusion at the outset in the case of a married daughter is apparently arbitrary. As noticed above, the eligibility aspect and the fact that she may be dependent upon the deceased employee would be subject matter of consideration by the competent authority as per the scheme of the Government. The rejection at the threshold only on the ground of gender would be violative of Articles 14 & 15 of the Constitution of India since in contrast similarly situated sibling like the son who may be married and living separately would come within the zone of consideration since in his case, under Clause (b) of Note-I, it is not that his consideration is excluded



being the married son. The policy also further provides that under Clause 6, the eligibility is to be seen and therefore, being excluded by the definition of dependent family member, married daughters are kept out of the zone of consideration of eligibility. Same would thus mitigate against the factor that under Clause 14, an undertaking is also to be given that the family is to be maintained and the property is to be looked after of the deceased Government servant and the appointment can be terminated. Thus, a married daughter is shut out from even applying as she would not come within the zone of consideration whether she is dependent or not but exclusion is only on account of gender and it would be patently discriminatory. The deceased Government employee might have only been blessed with daughters and a widow who is not in a position to take up employment. Merely because the daughters are married would not exclude them from the zone of consideration as they would be in a position to help the widow if they are given employment keeping in view the undertaking which is also to be taken from the said applicant on account of favourable consideration.”

8. Adverting to the facts of the present case, an examination of the judgments under appeal show that the sole ground, which has weighed with the Courts is that the plaintiff – appellant was a married daughter of the deceased and not dependent upon the deceased. The finding recorded by the Courts below is contrary to the law settled by the Division Bench of this Court and therefore cannot be sustained.



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Resultantly, the instant appeal merits acceptance.

9. For the afore-going reasons, judgments and decrees passed by the Courts below are set aside. Suit is decreed to the effect that the application of the plaintiff – appellant for appointment on *ex gratia* basis shall be considered by defendant – respondent No.2 within a period of four months from the communication of a copy of this judgment.

9. Appeal is disposed.

10. Pending application, if any, is also disposed of.

(SUVIR SEHGAL)
JUDGE

06.08.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No