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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No. 1153 of 2025 (O&M)

Date of decision : 22.07.2025

Dheeraj Kumar

... Appellant

Versus

State of Haryana and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ASHWANI KUMAR MISHRA
HON'BLE MR. JUSTICE KULDEEP TIWARI

Present Mr. Sanjiv Gupta, Advocate, for the appellant.

Mr. Bhupender Singh, Additional Advocate General, Haryana,
for the respondents.

ASHWANI KUMAR MISHRA, J.

Appellant is aggrieved by dismissal of his writ, wherein prayer was made to accord benefit of the '*Old Pension Scheme*' to him. It was urged that learned Single Judge has not correctly appreciated the facts of the case, which has occasioned a failure of justice to him.

2. Undisputed facts of the case are that the appellant's father had died in harness on 01.01.1993. The appellant was a minor then. An application for compassionate appointment was lodged by the mother on 08.02.1994. On attaining majority on 06.12.2004, the appellant applied for compassionate appointment. His application came to be rejected on 10.12.2014. Aggrieved by the rejection, the appellant instituted Civil Suit No. 315-C of 2006 **Dhiraj Kumar vs Dakshin Haryana Bijli Vitran Nigam Limited and others.** The suit was decreed by the trial Court on 27.01.2010 and the following directions were issued:-

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“12. Consequent upon the findings on the aforesaid issues, the suit of the plaintiff succeeds and the same is hereby decreed with costs. A decree for declaration is passed in favour of the plaintiff to the effect that he is entitled to be appointed against above one step lower than that on which his father was posted or on the post to which he is eligible on the basis of his qualifications under the defendants. The defendants are hereby directed to appoint the plaintiff accordingly within a period of two months from the date of this judgment. Decree-sheet be prepared accordingly. File be consigned to the record room, after due compliance.”

3. The consequential decree was issued, requiring the defendants to appoint the plaintiff/appellant within a period of two months from the date of the judgment. The defendants challenged the judgment in RSA No. 1018 of 2011 **Dakshin Haryana Bijli Vitran Nigam Limited and others vs Dheeraj Kumar**. The appeal came to be disposed of on 27.08.2015 vide the following order:-

“It being so, there is no illegality or infirmity in the orders passed by both the Courts below. No substantial question of law arises in the present appeal. Hence, the appeal is dismissed.

The appellants shall issue the appointment letter within two months from the date of the present orders.

In view of disposal of the appeal, all the pending applications also stand disposed of.”

4. It is thereafter that the appointment letter has been issued to the appellant on 27.04.2016.

5. CWP No. 9508 of 2025 has, thereafter, been filed for a direction to the respondents to extend the benefit of the old pension scheme

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instead of the '*New Pension Scheme*' to the appellant, by which he was come in. The basis of the appellant's claim was that his application for compassionate appointment, was made on 06.12.2004, when the '*Old Pension Scheme*' was in force, as such, the subsequent scheme known as the '*New Pension Scheme*' cannot be made applicable upon him, as such scheme came into effect from 01.06.2006.

6. Learned Single Judge has dismissed the writ petition after noticing the fact that the appointment of the appellant was made only in the year 2016, by when the '*New Pension Scheme*' was already introduced. Learned Single Judge has also observed that at best, the date of appointment may relate to the date of decree i.e. 27.01.2010, even then, the relief prayed for would not be admissible, inasmuch as, the '*New Pension Scheme*' was introduced much prior to it.

7. Learned counsel for the appellant has assailed the judgment of the learned Single Judge, on the ground, that the delay in considering the appellant's claim for compassionate appointment cannot be prejudiced. Reliance is placed upon the judgment of learned Single Judge of this Court in *Anil Kumar Yadav vs State of Haryana and others* 2024 (1) SLR 920.

8. The appeal is opposed by Mr. Bhupender Singh, learned Additional Advocate General, Haryana.

9. In the facts of the case, it is admitted that the appellant's father had died in harness in the year 1993. His claim for compassionate appointment was rejected in the year 2004. This rejection was challenged before the Civil Court in Original Civil Suit No. 315-C of 2006. The suit

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was decreed on 27.01.2010 by issuing a direction to appoint the appellant within two months. This judgment was challenged in appeal, which came to be disposed of on 27.08.2015. While dismissing the appeal, a direction has been issued to the employer to issue appointment letter within two months from the date of the order of this Court. The decree of the trial Court, as substituted by this Court in RSA No. 1018 of 2011, requiring the employer to issue appointment letter within two months has attained finality. The appointment letter has been issued to the appellant and he has joined pursuant thereto. The appellant has been working for the last 9 years and only in the year 2025, the writ has been filed for the relief mentioned above.

10. Appellant has been appointed only in the year 2016. The applicable Rule for payment of pension, in such circumstances, would be the Rule applicable either on the date of issuing appointment letter, or at best, in terms of the order, as passed by this Court in RSA No. 1018 of 2011. The appellant has accepted the appointment and has been working since then. Without laying any challenge to the date of appointment or/ and without assailing the decree passed in his own suit, he (appellant) cannot be permitted to contend that his appointment be treated, to have been made in the year 2004, merely, because his application for compassionate appointment was lodged then.

11. Neither in law nor in equity can the date of making the application for compassionate appointment, be treated to be the date relevant for the purposes of payment of pension to the employee concerned. Pension would be payable with reference to the date of entry into service, and the applicable scheme/ law, then in force. The appellant, therefore, cannot

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contend that merely, because he had lodged application in the year 2004, it be treated to have been made in the year 2004, for the purposes of payment of pension.

12. So far as, the judgment of this Court in Anil Kumar Yadav's case is concerned, the facts of that case are distinct. In Anil Kumar Yadav (supra), direction was issued by the competent Court of law, to appoint the petitioner forthwith, during the currency of the 'Old Pension Scheme'. It was in that context that the learned Single Judge has opined that any delay on the part of the employer, in issuing appointment cannot be to the prejudice of the applicant/employee, when the direction of the competent Court for appointing him was issued, while the 'Old Pension Scheme' was enforced. Facts of the case of Anil Kumar Yadav (supra) are, therefore, distinguishable.

13. In view of the discussions and deliberations held above, we find no force in this appeal, which consequently fails and is dismissed.

14. Pending miscellaneous application (s), if any, also stands disposed of.

(ASHWANI KUMAR MISHRA)
JUDGE

22.07.2025
vs

(KULDEEP TIWARI)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No