

High Court of Punjab & Haryana

Bench: Hon'ble Mr. Justice Namit Kumar

Date of Decision: 15th March 2024

Case Number: CWP-7797-2017

Civil Writ Jurisdiction

Sandeep Kaur ...PETITIONER

VERSUS

Punjab State Power Corporation Ltd. and Another ...RESPONDENT(S)

Legislation and Rules:

Articles 226/227 of the Constitution of India

Haryana Compassionate Assistance to the Dependents of Government Employees Rules, 2006

Subject: The petition involves the denial of compassionate appointment to the petitioner, the widow of a deceased employee of Punjab State Power Corporation Ltd. (PSPCL), and the request to treat her husband as a regular employee posthumously.

Headnotes:

Labor Law – Compassionate Appointment – Regularization of Contractual Employee – High Court dealt with the issue of compassionate appointment and regularization of a deceased contractual employee. The court considered whether the husband of the petitioner, who was employed as a Lineman on a contract basis, could be regularized posthumously, thereby entitling the petitioner to compassionate appointment and other benefits. [Para 1-4, 9-10]

Interpretation of Contractual Employment – held – emphasized that the appointment of the petitioner's husband, despite being termed as 'contractual', was regular in nature, meeting the standards of Articles 14 and 16 of the Constitution of India. The court observed that the terms of the appointment indicated more than a mere contractual relationship. [Para 8-9]

Criteria for Regularization and Compassionate Appointment – considered – the court evaluated whether the deceased employee had fulfilled the criteria for regularization, which would impact the petitioner's entitlement to compassionate appointment and family pension. The comparison was made with similar cases where contractual employees were regularized. [Para 10-11]

Decision – Partial Acceptance of Petitioner's Claims – High Court ordered that the deceased husband of the petitioner be treated as a regular employee posthumously, having completed the requisite period of service. The petitioner was entitled to consequential benefits. However, the court directed the respondent-corporation to separately consider and decide on the petitioner's claim for compassionate appointment and family pension in accordance with the law. [Para 12]

Referred Cases:

- Reena Devi Vs. State of Haryana: 2015(4) LLJ 293
- Chameli Devi Vs. Haryana Power Generation Corporation Ltd., CWP No.11530 of 2003

Representing Advocates:

Mr. Ashok Bhardwaj for Petitioner

Ms. Monica Chhibber Sharma with Ms. Priyanka Goyal for Respondents

NAMIT KUMAR, J.

1. The petitioner, who is widow of the deceased employee namely Sh. Kasturi Singh, who has rendered services with respondents PSPCL, has approached this Court by way of filing the instant writ petition under Articles 226/227 of the Constitution of India seeking a writ of certiorari for quashing the order dated 05.08.2016 (Annexure P8), vide which the claim of the petitioner for compassionate appointment has been rejected, further a writ of mandamus has been sought for directing the respondents to treat the husband of the petitioner as regular employee and grant compassionate appointment to the petitioner and to regularize the services of the husband of the petitioner on completion of three years of service and to grant family pension to the petitioner and release arrears thereof along with interest. 2. The brief facts, as have been pleaded in the petition, are that in the month of January 2011, the respondents vide advertisement CRA No.267/11, advertised 5000 posts of Lineman. However, the said selection was challenged in CWP No.4881 of 2011 and this Court vide interim order dated 09.11.2011 granted permission for recruitment of 1000 Lineman and subsequently, vide judgment dated 27.11.2013 (Annexure P-1), the writ petition was disposed of. The husband of the petitioner was offered appointment to the post of Lineman on contract basis, vide appointment order dated 23.11.2011 for 02 years commencing from the date of joining. It is the case of the petitioner that although the word 'contract' was mentioned in the appointment letter of her husband, however, the said appointment was regular for all intents and purposes and consequently, the husband of the petitioner joined as such on 06.12.2011 after going through a medical examination as required under the terms of the appointment. After his joining, he along with 40 SSA's (Sub Station Attendants) completed two weeks class room induction training from 13.02.2012 to 25.02.2012 at T.T.I., P.S.P.C.L., Patiala and they were further directed to join their duties and their posting station for carrying their job training from 27.02.2012 to 07.04.2012 and after completing the said training, husband of the petitioner started serving the respondent-Corporation as Lineman.

Unfortunately, he died on 07.12.2014 leaving behind the petitioner (wife), minor daughter and old aged parents, who all were fully dependent upon him and after his death, his family was in penury. The petitioner submitted an application for appointment on compassionate ground which was rejected by respondent No.2 vide impugned order dated 05.08.2016, on the ground that

there is provision of giving compassionate appointment only to the dependents of regular employees.

3. On issuance of notice of motion, written statement has been filed by the respondents wherein it has been stated that the husband of the petitioner was recruited as Lineman against advertisement CRA No.267/11 which was initially for 02 years and thereafter, extended for 01 more year on the same terms and conditions. The husband of the petitioner was not a regular employee and only continued for 03 years on contract basis, whereas the other employees were regularized w.e.f. 01.07.2015, on completion of 03 years of service but since the husband of the petitioner was no more in service as on 01.07.2015, therefore, her claim for compassionate appointment has rightly been rejected.

4. Learned counsel for the petitioner submits that the husband of the petitioner was appointed as Lineman after following the due procedure of selection and the said appointment was regular for all intents and purposes and the word 'contract' in the appointment letter was a misnomer. To buttress the said argument, he has referred to clause 2, 3(ii) & (v), 4, 7, 8, 9 and 13 of the appointment letter, which reads as under :-

"2) i) You will submit Medical Fitness Certificate issued by concerned Civil Surgeon before joining the assignment. You will join your contractual duties within 30 days of issue of this letter failing which your candidature will be treated as cancelled. ii) You will submit requisite affidavit duly attested by Executive Magistrate to the effect that.

- a) You have never been convicted for any offence by any Court of law.*
 - b) You are not a dismissed employee of my Government/Board Corporation etc.*
 - c) You are not having more than one living spouse.*
- 3)ii) The statutory deduction as per relevant rules and regulations of government shall be made from your monthly remunerations.*
- v) EPF/ESI contribution as per provisions of the EPF/ESI Act will be applicable.*
- 4) During your contract period you can be deputed to other Sub-Divisions/Sub Stations as SSA/Locations of PSPCL/PSTCL anywhere in Punjab as per requirement/work related to PSPCL/PSTCL.*
- 7) You are governed by PSPCL/PSTCL regulations. Your services can be placed in PSPCL/PSTCL or any other organization such BBMB etc. against the vacant posts of Lineman or SSA or any other post deemed fit by management.*

- 8) *You shall undergo training of 4 months in various organization/installations of PSPCL/PSTCL and in Technical Training Institute of PSPCL at Patiala or other places. On successful completion of training of 4 months, you shall be allowed to continue for the balance contract period. In case your work & conduct during training period is not found satisfactory, your contract shall be terminated immediately.*
- 9) *During the period of your contract, you will devote yourself wholly to the Corporation or its successor companies and not secure any other job either full time or part time for remuneration or on honorary basis.*
- 13) *You will also submit your consent through Affidavit attested by the Executive Magistrate thereby agreeing to the above mentioned terms & conditions of the contract and you will not challenge any terms and conditions of the offer of hiring your services as Lineman on contract basis including salary, service conditions, rules and regulations in comparison to corporation regular employees in any court of law.”*

5. Learned counsel for the petitioner further submits that services of all other Linemen appointed in pursuance to advertisement CRA No.267/11, who have completed three years of service on contract basis, have already been regularized w.e.f. 01.07.2015 and since the husband of the petitioner has completed 03 years service prior to his death, therefore, his services were liable to be regularized. In support of his contention, he has placed reliance upon the judgment of this Court passed in **Reena Devi Vs. State of Haryana and others : 2015(4) LLJ 293** (Annexure P-9) and **CWP No.11530 of 2003 titled as ‘Chameli Devi Vs. Haryana Power Generation Corporation Limited through its Managing Director, Sector 6, Panchkula and another’ decided on 21.03.2012** (Annexure P-14).

6. Per contra, learned counsel for the respondents, on the basis of averments made in the written statement, submits that since the husband of the petitioner died before 01.07.2015, though completed 03 years service on contract basis, is not entitled for deemed regularization since he was working on contract basis and there is no provision of grant of compassionate appointment to the dependents of contractual employees, therefore, the claim of the petitioner has rightly been rejected by the respondents.
7. I have heard learned counsel for the parties and perused the relevant record with their able assistance.

8. The undisputed facts of the case are that the petitioner was appointed as Lineman on contract basis for a period of two years vide appointment letter dated 23.11.2011. The said appointment was made after following the due process of selection and although the same has been termed as contract, however, it was made in conformity with the provisions of Articles 14 and 16 of the Constitution of India as the posts were advertised, applications were invited, the claim of various candidates were considered and thereafter, the selection was finalized. The terms and conditions of the appointment letter, which have been reproduced above, also suggest that it is not mere a contractual appointment.
9. Be that as it may, the services of all other Linemen, who were appointed along with the petitioner in pursuance to advertisement CRA No.267/11, have already been regularized on completion of 03 years of service w.e.f. 01.07.2015 and since unfortunately, the husband of the petitioner died in harness on 07.12.2014, his services could not be regularized. The object of the decision of the Board of Directors to regularize the services of the Lineman appointed in pursuance to the advertisement No.CRA-267/11 was that whosoever has completed more than 03 years of service, his service be regularized w.e.f. 11.07.2015. Admittedly, the petitioner has completed more than 03 years services prior to his death and can be extended the benefit of regularization, as have been granted to the other similarly situated employees, who were appointed along with the petitioner.
10. In **Reena Devi's case (supra)**, similar claim has been accepted by this Court wherein a widow was claiming financial assistance from the respondent-State of Haryana under the Haryana Compassionate Assistance to the Dependents of Government Employees Rules, 2006. The said judgment reads as under :-

“2. Shorn of the unnecessary details, the facts,

which are borne out from the record of the case and which have emerged from the arguments raised at the bar are that the petitioner's husband Late Shri Ram Niwas, after going through the regular selection process conducted by the Haryana Staff Selection Commission (hereinafter referred to as – the Commission), through appointment letter dated 10.02.2012 (Annexure P-1), was appointed as a Driver (Heavy Transport Vehicle) on contract/daily wages basis. After going through a medical examination, as required under the terms of his appointment, he joined the services of the respondents on 22.02.2012. Unfortunately, he expired in harness on 21.03.2013. His death, spiralled his family in financial constraints, which led to the application by the petitioner –

his widow, for the grant of financial relief under the 2006 Rules. The application filed by her was rejected on the basis of Memo dated 20.07.2011 issued by the Chief Secretary to Government of Haryana to the Director General, State Transport, Haryana, wherein it was stipulated that the financial assistance under the 2006 Rules was to be granted only to the regular employees.

*3. In support of his case, counsel for the petitioner has relied upon a decision of this Court in **C.W.P. No. 5593 of 2011 – Kelo Devi vs. State of Haryana and others, decided on 07.02.2013**, wherein, after setting aside Memo dated 20.07.2011, the petitioner therein, who was identically placed as the petitioner, was held entitled to the grant of ex-gratia assistance under the 2006 Rules, by holding as under :-*

“14. The appointment letter dated 21.6.2008 in respect of the husband of the petitioner has been placed on record at Annexure P1. Undoubtedly, such appointment letter has been captioned as appointment as Heavy Vehicle Driver, Class 'B' on contractual/daily wage basis. A further perusal of such appointment letter would reveal that the husband of the petitioner was appointed on a consolidated salary of Rs.3,000/- per month and against a temporary post. As per condition No.2 of such letter of appointment, the husband of the petitioner was obligated to serve a one month's notice or salary in lieu thereof in the eventuality of his choosing to resign from the post. The husband of the petitioner had also been called upon to obtain a Medical Fitness Certificate from the Chief Medical Officer concerned as required under Rule 3.1 of the Punjab Civil Service Rules, Volume-I, applicable to the Haryana State. It was further stated that such appointment could be governed by the Haryana Service Rules, 1995 governing the post of driver. The admitted position of fact is that prior to joining the post of driver, the husband of the petitioner was medically examined and the requisite Medical Certificate of Fitness on first entry into Government service as per Rule 3.1 of the Haryana Civil Service Rules had been issued by the competent Medical Officer/Civil Surgeon, Jind, Annexure P3.

15. The categorical averments made in the petition as regards the posts of Drivers having been duly advertised and the husband of the petitioner having been duly selected and appointed in pursuance to a regular selection process have not been rebutted in the written statement filed on behalf of the State.

16. Upon the petitioner having submitted a representation for grant of financial assistance on the death of her husband, apparently such claim was processed and a clarification in that regard was sought by the General Manager, Haryana Roadways, Jind from the Director General, State Transport, Haryana vide letter dated 16.11.2010, appended as Annexure R2 along with the written statement. Such document would be a clincher in the present case. A perusal of the same would reveal that the husband of the petitioner had been selected and appointed to the post of heavy vehicle driver/bus driver in pursuance to a process of selection conducted by the Haryana Staff Selection Commission. As such, for all intents and purposes, the appointment of the husband of the petitioner would have to be construed to have been effected on a regular basis even though against a temporary post. It is only on account of the operation of the statutory Rules that the language 'contractual/daily wage' has been implied in the appointment letter. Such language cannot work to the detriment of the present petitioner insofar as her claim for grant of ex-gratia assistance under the 2006 Rules is concerned. The service rendered by the late husband of the petitioner would certainly fall within the scope and ambit of the expression 'temporary service' under the Family Pension Scheme, 1964 which, in turn, would render the petitioner to be eligible for the grant of financial assistance under the 2006 Rules.

17. Even otherwise, the 2006 Rules have been promulgated with a laudable object i.e. to provide assistance to the family of the deceased Government servant who dies in harness. Such provisions are in the nature of a beneficial provision and are to be given a wider meaning while interpreting the same, rather than a restricted one which would negate the very object of such provisions. The observations of the Hon'ble Supreme Court in the case of **Bombay Anand Bhavan Restaurant v. The Deputy Director, ESI Corporation and Anr., 2009(4) SCT 421** would be most relevant in this behalf which are in the following terms:

*“The Employees State Insurance Act is a social security legislation and the canons of interpreting a social legislation is different from the canons of interpretation of taxation law. The courts must not countenance any subterfuge which would defeat the provisions of social legislation and the courts must even, if necessary, strain the language of the Act in order to achieve the purpose which the legislature had in placing this legislation on the statute book. The Act, therefore, must receive a liberal construction so as to promote its objects. This Court, in the case of **ESI Corporation,***

Hyderabad v. Jayalakshmi Cotton and Oil Products (P) Ltd., (1980) Lab IC 1078 has observed that the ESI Act is a social security legislation and was enacted to ameliorate the various risks and contingencies which the employees face while working in an establishment or factory. It is thus intended to promote the general welfare of the workers and, as such, is to be liberally interpreted.”

18. For the reasons recorded above, the memo dated 20.7.2011, Annexure P8, is set aside. The petitioner is held to be entitled for the grant of exgratia assistance under the 2006 Rules in terms of taking the service rendered by the late husband of the petitioner i.e. with effect from 26.6.2008 till 5.9.2010 to be 'temporary service'. Consequently, the petitioner shall be released the admissible financial assistance as per the 2006 Rules within a period of one month from the date of receipt of a certified copy of this order.”

4. Having gone through the judgment rendered in **Kelo Devi (supra)**, I find that it fully covers the case of the petitioner in her favour.

5. In view of the above, the present writ petition is allowed. The petitioner is held entitled to ex-gratia assistance under the 2006 Rules, on account of the service rendered by her late husband. The admissible financial assistance, as per the 2006 Rules, be released to the petitioner within a period of one month from the date of receipt of a certified copy of this order.”

11. In **Chameli Devi's case (supra)**, the claim for family pension was denied to the widow, whose husband died after completing 04 years on work charged basis as Auto Mechanic, later came to the post of Assistant Foreman. In the said judgment it has been held as under :-

“1.When the claim was made by the petitioner on the ground that her husband was entitled to be treated as a regular employee on the basis of the Government instructions issued on 24.03.1987 that all work-charged employees working in the Haryana State and who had completed 4 years of continuous service as on 31.12.1986 should be regularized. Although the petitioner's husband was not alive as on 31.12.1986, since he had completed 4 years in terms of the Government policy statement, the petitioner claimed that she was entitled to family pension by taking the benefit of the policy. The petitioner would bring support to her case by reference to a judgment of a Division Bench in **Smt. Chameli Versus State of Haryana and others in CWP No.13059 of 1997, decided on 12.01.1999**, that the circular issued later would still be applicable if the number of years of service as

workcharged employee had been completed during the life time of an employee, who had died prior to the issuance of the circular. The Division Bench was considering the case of a similar policy statement issued by the State on 26.10.1983 before which time the employee had died, namely, in July 1983 in that case.”

12. In view of the above, the present petition is partly allowed. The husband of the petitioner shall be treated as regular employee of the Corporation on completion of 03 years of service and the petitioner shall be entitled to all the consequential benefits arising therefrom. However, the claim of the petitioner for compassionate appointment and family pension is concerned, the respondent-Corporation shall consider and decide the said claim in accordance with law by passing a speaking order after granting an opportunity of personal hearing, within a period of three months, from the date of receipt of certified copy of this order and convey to the petitioner.

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