

PUNJAB STATE POWER CORPORATION LIMITED & ORS. A

v.

NIRVAL SINGH

(Civil Appeal No. 4660 of 2019)

MAY 6, 2019 B

[SANJAY KISHAN KAUL AND INDIRA BANERJEE, JJ.]

Service law: Appointment – Compassionate appointment – Respondent sought compassionate appointment on account of death of his father who was working with the appellant – The policy of compassionate appointment was in force on the date of his application – However, his request was not acceded to on the ground that the implementation of the policy was kept in abeyance on account of the consideration of new policy – When new policy came into effect, respondent was sought to be granted the benefit under the new policy in terms whereof Rs 3 lakh was offered to him and in the alternative was offered a temporary post – Respondent declined both the options – After 7 years, he filed writ petition – High Court disposed of the writ petition with direction to the appellant to consider his application in a time bound manner as per policy – The appellant rejected the request – On second writ petition, the respondent was relegated to remedy of a civil suit – By impugned judgment, the relief was granted in favour of the respondent – On appeal, held: The fundamental principle is that there is no inherent right to obtain a compassionate appointment and such compassionate appointment has to be in accordance with the existing policy as the objective is to ameliorate the condition of the family at the relevant stage of time and it is the deviation from the rule of merit – There is more than one impediment in the way of the respondent – There was delay in approaching the Courts for redressal – The very objective of providing immediate amelioration to the family is extinguished – The earlier policy having been abolished and the new policy having coming into force, the application was considered under the new policy and the options available were offered to the respondent who failed to avail the same – The offer of solatium could be the only remedy available, more so at this stage of time – The solatium of Rs.3 lakh was offered

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- A *earlier – As per the current policy, the solatium is revised to Rs. 5 lakhs – In the interest of justice, a sum of Rs. 5 lakhs is directed to be paid to the respondent – Solatium.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4660 of 2019.

- B From the Judgment and Order dated 23.03.2018 of the High Court of Punjab and Haryana at Chandigarh in RSA No. 3975 of 2017.

Ms. Uttara Babbar, Ms. Bhavana Duhoon, Manan Bansal, Advs. for the Appellants.

- C Akshay Verma, Akashdeep Verma, Mrs. Sushma Verma, Advs. for the Respondent.

The following Order of the Court was passed

O R D E R

- D 1. Leave granted.

2. Heard learned counsel for the parties.

3. The respondent sought compassionate appointment on account of the death of his father on 17.05.2004, who was working with the appellants. On the date the application was submitted, the policy for

- E compassionate appointment dated 21.11.2002, is stated to have been in force.

4. The respondent did not get any compassionate appointment and it is the case of the appellants that the implementation of the policy was kept in abeyance on account of the consideration of a new policy.

- F The new policy came into effect on 23.11.2004. The respondent was sought to be granted the benefit under the new policy in terms whereof solatium of Rs. 3 lakhs was offered to him. In the alternative the respondent was also offered the benefit of temporary post. He declined both the options.

- G 5. For the first time the respondent approached any judicial forum in the year 2011 by filing a Writ Petition which was disposed of on 12.03.2012 to consider his application in a time bound manner as per policy. The petitioner, however, rejected the request. In the second Writ Petition filed assailing this decision, the respondent was relegated to the remedy of a civil suit as requested. The respondent filed the civil

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suit where his suit was initially dismissed but thereafter the appeal was allowed and in terms of the impugned order the second appeal has also been dismissed.

6. These orders are now sought to be assailed by the appellants.

7. The fundamental principle which has to be kept in mind is that there is no inherent right to obtain a compassionate appointment and such compassionate appointment has to be in accordance with the existing policy as the objective is to ameliorate the condition of the family at the relevant stage of time and it is the deviation from the rule of merit.

8. Learned counsel for the appellants has also drawn our attention to the Judgment of this Court in *State Bank of India and Another v. Raj Kumar* (2010) 11 SCC 661 where paragraphs 8 and 13 are as under:

“8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/ withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

“13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may

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A wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.”

9. In our view there is more than one impediment in the way of the respondent.

B 10. The first is the delay in approaching the Courts for redressal after a period of 7 years even if he is making representations. The very objective of providing immediate amelioration to the family is extinguished. The second is that the earlier policy having been abolished and the new policy having coming into force, the application has been considered under the new policy and the options available were offered C to the respondent who failed to avail of the same.

11. Our attention has been drawn to the relevant clause of the new policy which reads as under:

D “The above policy instructions shall be applicable from the date of issue of instructions. The cases, where compassionate employment has not been given due to discontinuance of the earlier policy since 4/2002, shall also be considered and requisite relief, in lieu compassionate employment, shall be granted as per above policy instructions.”

E 12. We are thus of the view that the offer of solatium could be the only remedy available, more so at this stage of time.

F 13. The solatium of Rs. 3 lakhs was offered immediately on 19th September, 2004. We are informed that as per the current policy the solatium has been revised to Rs. 5 lakhs. That being the position and the respondent having been deprived of the benefit of the amount, albeit by his own conduct, the interest of justice would be served by directing that the sum of Rs. 5 lakhs be paid to the respondent within two months from today.

14. The appeal is accordingly allowed, leaving the parties to bear their own costs.

Devika Gujral

Appeal allowed.