

State of Haryana and Another

Vs

Dhan Singh

Civil Appeal No. 12172 of 1995

(K. Ramaswamy, K. S. Paripoornan JJ)

04.12.1995

ORDER

1. Leave granted.

2. We have heard learned counsel on both sides. The question is whether the brother of the deceased employed who died in harness is eligible for employment on compassionate grounds. The High Court of Punjab and Haryana by order dated 30-12-1993 in CWP No. 8419 of 1993 directed appointment of the brother of the deceased employee. Feeling aggrieved, the State has come up in appeal.

3. The only question is whether the brother is a dependant of the deceased employee who died in harness. By proceedings dated 31-10-1985, the Government had stated that the underlying idea to introduce the scheme was to help the bereaved family of a deceased employee immediately by way of providing employment to one dependant of the deceased government employee in addition to ex gratia payment etc. The Government in an earlier circular dated 9-3-1979 had stated that the Government took the decision that the family members of the employee, who died while in service or had retired due to disability, would be given the facility of employment. Accordingly directions were given. The word 'family' has been defined under Rule 6.16-B(a) of the Punjab Civil Services Rules, Vol. III applicable to the Government of Haryana which reads thus :

"6.16-B. (1) For the purpose of this rule :

(a) 'family' shall include the following relatives of the officer -

(i) wife, in case of male officer;

(ii) husband, in case of female officer;

(iii) sons; (including step-children and adopted children)

(iv) unmarried and widowed daughters; (including step-children and adopted children)

(v) brothers below the age of 18 years and unmarried and widowed sisters, including step-brothers and sisters;

(vi) father; (including adoptive parents in case of individuals whose personal law permits adoption)(vii) mother;##

(viii) married daughters; and

(ix) children of a pre-deceased son.

4. A reading of this rule would clearly indicate that for the purpose of the above rules 'family' includes the wife, in the case of male officer, husband, in the case of a female officer, sons, unmarried and widowed daughters (including step-children and adopted children), brothers below the age of 18 years and unmarried and widowed sisters (including step-brothers and sisters), father, mother (including adoptive parents in case of individuals whose personal law permits adoption), married daughters and children of a pre-deceased son. It would thus be seen that in the case of a brother, he will be a member of the family as dependant if he is below 18 years. If he seeks employment under the rules, he cannot be appointed if he is below 18 years and has not become major. The moment he crosses 18 years, he no longer remains to be a dependant member of the family of the deceased government employee.

5. Shri Prem Malhotra, learned counsel appearing for the respondent has stated that previously they had appointed the brother of the deceased employee and, therefore, the Government is estopped by contending that the brother is not a dependant of the deceased government employee. It might be that some Department had wrongly given the benefit but such wrong action cannot become right, in the face of specifically unambiguous language in which the rules are couched. Under these circumstances, the High Court was not right in giving direction to appoint the brother of the deceased on compassionate grounds.

6. The appeal is allowed accordingly. If the widow of the respondent's brother is eligible for employment, it would be open to her to make an application and the Department is directed to consider her application according to the rules. No costs.