

Haryana State Electricity Board & Anr.

Vs

Hakim Singh

(Dr. A. S. Anand, K. T. Thomas JJ)

30.09.1997

JUDGMENT

THOMAS, J.

1. Leave granted.

2. This appeal by the Haryana State Electricity Board ('the Board' for short) is in challenge of the order of the High Court of Punjab and Haryana declaring that respondent is entitled to be considered as eligible for appointment in the employment of the Board on compassionate grounds.

3. The facts leading to this appeal are the following:

Father of the respondent one Hakim Singh was a Lineman in the employment of the Board. He died on 24.8.1974 in harness leaving behind him his widow and minor children including the respondent. About 14 years after the death of Hakim Singh his widow applied for appointing her son (the respondent) in the employment of the Board on compassionate grounds mainly basing on two circulars issued by the Board, one on 26.9.1985 and the other, in partial modification of the earlier, on 1.10.1986. As per the said circulars one member of the family of the deceased employee could be considered for employment in the service of the Board as a goodwill gesture, provided request for such employment is made within one year of the death of the employee.

4. Respondent who filed the writ petition in the High Court submitted that when his father died he was only four years old and hence his mother could make the application in the prescribed form only when he attained majority and that the Board has not given any favorable response to the repeated representations made in this matter. The Board took the stand that as the application was not made within the period specified in the circulars the Board was unable to entertain the request for employment on compassionate ground. While resisting the writ petition the Board cited the decision of the same High Court dated 18.1.1995 in Sohan Lal Vs. HSEB, in support of their stand.

5. Learned Single Judge of the High Court distinguished Sohan Lal's case on the premise that the claimant therein waited for five years after attaining majority and that made him disentitled to employment on compassionate grounds, whereas in the present case the request was made soon after respondent attained majority. Learned Single Judge found support from three other decisions of the High Court as the facts therein were more comparable with the facts in the case. The extended period of three years indicated in the circular has been interpreted by the High Court to mean in the case of a minor child as applicable from the date he became a major. High Court has observed that "this is the only possible way to give effect to the policy of giving employment to the deceased

employee where his dependents happen to be minor children." Accordingly, learned Single Judge allowed the writ petition and directed the Board to entertain the claim of the respondent.

6. Though the Board has filed an appeal before a Division Bench of the High Court the same was dismissed summarily. However, the Division Bench granted further period of three months to the Board to comply with the directions issued by the learned Single Judge.

7. During consideration of the Special Leave Petition an endeavor was made to have the matter otherwise settled between the parties. But learned counsel for the Board, after taking instructions, submitted to us that a decision on the legal position is very much warranted from this Court as large number of similar claims are pending consideration before the Board.

8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

9. The first circular which afforded such a beneficial provision to the dependants of a deceased employee was issued by the Board on 14.9.1983 wherein it was specified that "only one member of the family of the deceased employee is to be considered for employment in the Board's service as a goodwill gesture and the intention is not that the employment is to be provided as a matter of course". In the circular the time-limit within which the dependent of the deceased employee is to be accommodated was fixed as one year. The circular further stressed that "the request for employment would be entertained only in the case in which the widow submits application for employment immediately after the death of her husband". On 26.9.1983 the Board issued a circular clarifying that the purpose of such a provision was not that employment would be given as a matter of course. However, the Board extended the period as in the case of a widow with minor children from one year to three years "provided a request for giving such employment is made to the Board within one year of the death of the employee."

10. High Court relied on an earlier decision of the same High Court in which after considering the same circulars it was observed thus:

"Neither in the service of the Haryana Government nor in the service of the respondent-Board a person below the age of 18 years can be given employment. Therefore, if a deceased employee is survived by minors, it is impossible to give effect to the condition incorporated in the circulars of the Board dated 26.9.1985 and 1.10.1986, which requires submission of application within three years of the death of the employee. A condition which is impossible to be performed is ordinarily liable to be treated as arbitrary and unconstitutional but if such condition can be given a reasonable meaning so as to avoid the charge of unconstitutionality that interpretation has to be preferred. Therefore, the instructions contained in the circulars dated 26.9.1985 and 1.10.1986 will have to be interpreted to mean that in case if a minor child the period of three years would be applicable from the date he becomes major".

11. Learned Single Judge followed the aforesaid observations and issued the impugned directions to the Board.

12. We are of the view that the High Court has erred in over stretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member.

13. This Court has considered the scope of the aforesaid circulars in Haryana State Electricity Board Vs. Naresh Tanwar and Anr. etc. [1996(2) JT 542].

14. In that case widow of a deceased employee made an application almost twelve years after the death of her husband requesting for accommodating her son in the employment of the Board, but it was rejected by the Board. When she moved the High Court the Board was directed to appoint him on compassionate grounds. This court upset the said directions of the High Court following two earlier decisions rendered by this Court, one in Umesh Kumar Nagpal Vs. State of Haryana & ors. [1994(4) SCC 138] the other in Jagdish Prasad Vs. State of Bihar & Anr. [1996(1) SCC 301]. In the former, a Bench of two Judges has pointed out that "the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for the post held by the deceased". In the latter decision which also was rendered by a Bench of two Judges, it was observed that "the very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family". The learned Judges pointed out that if the claim of the dependent which was preferred long after the death of the deceased employees is to be countenanced it would amount to another mode of recruitment of the dependent of the deceased government servant which cannot be encouraged, de hors the recruitment rules".

15. It is clear that the High Court has gone wrong in giving a direction to the Board to consider the claim of the respondent as the request was made far beyond the period indicated in the circular of the Board dated 1.10.1986. Respondent, if he is interested in getting employment in the Board, has to pass through the normal route now.

16. We, therefore, allow this appeal and set aside the impugned judgment of the High Court.