

(2014) 02 JH CK 0038
In the Jharkhand High Court
Case No : L.P.A No. 5 of 2013

Abhishek Prakash

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 24-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 2 AJR 799 : (2014) 2 JLJR 172

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Ram Kishore Prasad, Advocate for the Appellant; Ratnakar Bhengra, G.P. IV for the State and Mr. Sudarshan Srivastava, Advocate for the Respondent No. 7, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, C.J. and Shree Chandrashekhar, J.—Aggrieved by order dated 21.11.2012 passed in W.P.(S) No. 3167 of 2011 whereby the prayer for a direction upon the respondents to provide compassionate appointment has been rejected, the appellant has approached this Court by filing the present Letters Patent Appeal.

2. The brief facts of the case are that, the father of the appellant namely, late Chandra Prakash Singh joined as Accountant in the year, 1976 in the District Dairy Development Office, Ranchi and he died in harness on 11.06.2008 and he left behind his wife and two sons. The appellant is the younger son of the late Chandra Prakash Singh. The appellant submitted an application on 15.09.2008 seeking appointment on compassionate ground, which has been, rejected by order dated 18.05.2011. Challenging the order of rejection dated 18.05.2011, the appellant had filed the writ petition, which has been dismissed by the impugned order dated 21.11.2012.

3. A counter-affidavit has been filed on behalf of respondent No. 2 stating that

the application of the appellant was placed before the District Level Compassionate Committee which in its meeting dated 04.02.2010 decided that before taking a decision on the application of the appellant, the financial condition of the family of the deceased government employee should be ascertained. Accordingly, the Circle Officer, Barauni submitted a report vide letters dated 28.04.2010 and 28.04.2011 stating that the dependents of late Chandra Prakash Singh do not reside in the village and as such the financial condition of the family of the deceased employee could not be ascertained. Therefore, the appellant was directed vide letter dated 29.04.2011 to submit information with regard to the employment of his elder brother namely, Amit Kumar. However, the appellant vide letter dated 11.05.2011 informed that he is not aware about the employment of his elder brother namely, Amit Kumar. The case of the appellant was placed before the District Level Compassionate Committee on 18.05.2011 and the Committee decided to reject the application seeking appointment on compassionate ground.

4. Heard the learned counsel for the parties and perused the documents on record.

5. The learned counsel for the appellant submitted that claim of the appellant has been rejected in the light of instruction contained in letter dated 12.07.1977 issued by the Department of Personnel, Administrative Reforms, Government of Bihar which was already superseded by Circular dated 05.10.1991. It is further submitted that though the Circle Officer vide letter dated 08.10.2009 issued a certificate that the family of the appellant has only 0.12 acres of land and a house made of brick and earthen material, the claim of the appellant has been erroneously rejected in the light of the letter dated 12.07.1977. The learned counsel for the appellant has relied on the decision of the Hon'ble Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and contended that the grant of retiral benefits cannot be made a ground for denying the benefit of compassionate appointment.

6. Per-contra, Mr. Ratnakar Bhengra, learned counsel for the respondent-State of Jharkhand has submitted that, the contention of the learned counsel for the appellant that the instruction dated 12.07.1977 has been superseded is factually incorrect in as much as, in the light of the decision of the Hon'ble Supreme Court in Auditor General of India and others Vs. G. Ananta Rajeswara Rao, , the respondent-State of Jharkhand has been following the instruction contained in letter dated 12.07.1977. The learned counsel has drawn attention of the Court to a letter dated 07.08.2007 written by Deputy Secretary, Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand. It is submitted that in the Circular dated 05.10.1991 in paragraph 9(ch), power has been given to the Department of Personnel, Administrative Reforms and Rajbhasha, to issue necessary clarification in so far as, appointment on compassionate ground is concerned.

7. Referring to the Form submitted by the applicant himself, the learned counsel

for the respondents has submitted that the appellant furnished a wrong information in as much as, he has stated that no one in his family was Working whereas his elder brother has been found working.

8. Having considered the arguments of the learned counsel for the parties, we find that the application of the appellant seeking appointment on compassionate ground has been rejected not only because the elder brother of the appellant is in service but since, the appellant has suppressed the financial condition of his family. It has been recorded by the learned Single Judge that an amount of approximately six lacs rupees, has been paid to the family of the appellant on account of retiral benefits to the deceased employee. The contention of the learned counsel for the appellant that the instruction contained in letter dated 12.07.1977 has been superseded by the Circular dated 05.10.1991 is also incorrect. The respondents have produced material on record which would indicate that the financial condition of the family is taken as one of the relevant considerations for grant of appointment on compassionate ground. Moreover, it is well accepted that compassionate appointment is not a mode of appointment rather, it is an exception to Article 14 and 16 of the Constitution of India. The appointment on compassionate ground cannot be claimed as a matter of right and the object of granting compassionate appointment is to enable the family to tide over the sudden crisis. It has also been held by the Hon''ble Supreme Court that a major criteria for offering compassionate appointment should be the financial condition of the family of the deceased person.

9. In Union Bank of India and Others Vs. M.T. Latheesh, , the Hon''ble Supreme Court has held that, "it is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule, the appointment has to be exercised only in warranting situation and circumstances existing in granting appointment and guiding factors should be financial condition of the family."

10. In State Bank of India and Others Vs. Jaspal Kaur, , the Hon''ble Supreme Court has held as under,

23. Hence a major criterion while appointing a person on compassionate grounds should be the financial condition of the family the deceased person left behind. Unless the financial condition is entirely penurious, such appointments cannot be made.....

11. In Union of India (UOI) and Another Vs. Shashank Goswami and Another, , the Hon''ble Supreme Court has held as under,

10. Appointments on compassionate grounds have to be made in accordance with the rules, regulations of administrative instructions taking into consideration the financial condition of the family of the deceased.

12. In view of the law laid down by the Hon''ble Supreme Court, even if it is assumed that the instruction contained in letter dated 12.07.1977 has been

superseded, it cannot be contended that the financial condition of the family of the deceased employee cannot be considered before taking a decision on an application seeking appointment on compassionate ground.

13. In "Balbir Kaur and Anr. v. Steel Authority of India Ltd. and others" (supra), the case on which the learned counsel for the appellant has placed reliance, the Hon"ble Supreme Court has held as under:

13.But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earned and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with the compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit, would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

14. In Auditor General of India and others Vs. G. Ananta Rajeswara Rao, the Hon"ble Supreme Court held that "in deserving cases even where there is an earning member in the family, a son/daughter/near relative of a government servant who dies in harness leaving his family in indigent circumstances, may be considered for appointment to the post". The Hon"ble Supreme Court further held that "all such appointments are, however, to be made with the prior approval of the Secretary of the Ministry/Department concerned, who before approving the appointment will satisfy himself that the grant of the concession is justified, having regard to the number of dependents left by the deceased government servant, the assets and liabilities left by him, the income of the earning member as also his liabilities, whether the earning member is residing with the family of the deceased government servant and whether he should not be a source of support to other members of the family".

15. Letter No. 4041 dated 07.08.2007 had been issued by the Department of Personnel & Administrative Reforms, Government of Jharkhand, to the Deputy Commissioner to assess the financial condition of the family of the deceased Government servant and to take a decision in the light of the judgment of the Hon"ble Supreme Court in the case of "Auditor General of India & Ors. Vs. G. Ananta Rajeswara Rao" (supra) and also as per the Circular of the Government contained in Memo. No. 12754 dated 12.07.1977. The application for compassionate appointment was considered by the District Establishment Committee on 08.05.2011. The appellant refused to give information about his elder brother's employment stating that the family is not in touch with the elder brother. On the other hand, the mother of the appellant had produced a document (Annexure-B) from which it is seen that the elder brother of the appellant is residing in the same house. There is thus contradictory document

regarding the employment of the elder brother of the appellant. The appellant has not denied that the appellant and his family received six lacs rupees on account of terminal benefit of the death-cum-post retiral benefits. It is also not denied that the elder brother is residing in the same house though the appellant has taken the plea that he is living separately and is not supporting the family. Based on the decision rendered in the case of "Auditor General of India & Ors. Vs. G. Ananta Rajeswara Rao" (supra) and Circular of the Government contained in Memo. No. 12754 dated 12.07.1977, the appellant's claim for compassionate appointment was rejected.

16. The facts in the present appeal are entirely different from the fact in the case of "Balbir Kaur and anr. Vs. Steel Authority of India Ltd. and others" (supra). The plea taken by the appellant is disbelieved because appellant furnished false information and he tried to suppress the financial condition of his family. We find no infirmity in the impugned order dated 21.11.2012 warranting interference and therefore, this Letters Patent Appeal is dismissed.