
(2012) 11 JH CK 0058
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3167 of 2011

Abhishek Prakash

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 21-11-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 11 JH CK 0058

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Ram Kishore Prasad, for the Appellant; Ravi Kerketta, J.C. to G.P. IV for the State and Mr. Suresh Kumar for the Accountant General, for the Respondent

Judgement

Alok Singh

1. Chandra Prakash Singh, father of the petitioner was working as Accountant in the office of District Dairy Development, Ranchi and has died in harness on 11.06.2008 leaving behind his widow Smt. Iti Rani Roy, elder son Amit Kumar and younger son Abhishek Prakash (present petitioner). Present petitioner has applied for compassionate appointment which was declined vide impugned order dated 18.05.2011 (Annexure No. 3 & 4) on the ground that petitioner's elder brother Amit Kumar is in service. It has been contended by the learned counsel for the petitioner that Mr. Amit Kumar, the elder brother of the petitioner is leaving separately from the family and was not dependent on the deceased employee late Chandra Prakash Singh on the date of his death. It has further been contended that since petitioner was dependent on his father on the date of his death, therefore, petitioner is entitled for the compassionate appointment.

2. Undisputedly, on the death of Sri Chandra Prakash Singh, the father of the petitioner, petitioner and his mother have received approximately Rs. six lacs rupees as death-cum-post retiral benefits.

3. Hon''ble Apex Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, has observed as under:

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 post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.

4. Hon''ble Apex Court in the case of Steel Authority of India Ltd. Vs. Madhusudan Das and Others, has held as under:

15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. That the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said rule. It is a concession, not a right.

5. Hon''ble Apex Court yet in another case in V. Sivamurthy Vs. State of Andhra Pradesh & Ors. reported in (2008) 13 SCC 730 has observed as under:

19. In V. Sivamurthy Vs. State of A.P. This Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well-recognised exception to the general rule, carved out in the interest of justice to meet certain contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule: (Scc P. 741, para 18)

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner.

6. Hon''ble Apex Court in the case of Union of India & Anr. Vs. Shashank Goswami & Anr. reported in JLJR (2) 2012 102 in paragraph No. 9 has held as under:

9. There can be no quarrel to the settled legal proposition that the claim for appointment on compassionate ground is based on the premises that the

applicant was dependent on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. Appointment on compassionate ground cannot be claimed as a matter of right. As a rule public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis and not to confer a status on the family. Thus, applicant cannot claim appointment in a particular class/group of post. Appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

7. Having perused the dictums of the Apex Court, I am of the view that it is now settled position of law that the purpose of compassionate appointment is to provide immediate help to the dependents of the deceased employee so that, dependents may not die in starvation. Compassionate appointment cannot be claimed as a matter of right, rather it can be provided to meet the sudden crisis. Since petitioner's family has already received almost Rs. six lacs as death cum post retiral benefits, therefore, there seems to be no crisis before the petitioner.

8. Hon'ble Apex Court in the case of *The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. Vs. Sipahi Singh and Others*, has held as under:

Writ of mandamus can be granted only in a case where there is a statutory duty imposed upon the officer concerned and there is a failure on the part of that officer to discharge the statutory obligation. The chief function of a writ is to compel performance of public duties prescribed by statute and to keep subordinate tribunals and officers exercising public functions within the limit of their jurisdiction. It follows, therefore, that in order that mandamus may issue to compel the authorities to do something, it must be shown that there is a statute which imposes a legal duty and the aggrieved party has a legal right under the statute to enforce its performance.

9. Since, petitioner has no legal right to claim compassionate appointment and has received sufficient amount of approximately six lacs rupees, therefore, no mandamus seems to be justified in favour of the petitioner.

10. Mr. Ravi Kerketta, learned counsel appearing for the respondents submits that request of the petitioner on the question of grant of benefit of M.A.C.P. is under consideration and appropriate decision shall be taken thereon preferably within 90 days from today. He further contends that decision so taken shall be communicated to the petitioner forthwith and monetary benefit, if any found

payable, shall be released soon thereafter. In view of the above, present petition stands disposed of as such.