

(2017) 03 JH CK 0019

In the Jharkhand High Court

Case No : Writ Petition (S) No. 6721 of 2007

Ajit Kumar Sinha

APPELLANT

Vs

Damodar Valley Corporation

RESPONDENT

Date of Decision : 16-03-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 JLJR 655 : (2017) 2 LLJ 493

Hon'ble Judges : Mr. Shree Chandrashekhar, J.

Bench : Single Bench

Advocate : Mr. Pratyush Kumar, Advocate, for the Petitioner; Mr. S.K. Ughal, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Mr. Shree Chandrashekhar, J.—Claiming compassionate appointment in terms of Office Memorandum dated 02.01.1995 the petitioner has approached this Court.

2. The petitioner asserts that on 27.02.1995 his father made an application for his appointment on compassionate grounds. The learned counsel for the petitioner contends that this is the application, a composite one, seeking voluntary retirement on medical ground and for grant of compassionate appointment. However, a bare reading of application dated 27.02.1995 (vide Annexure-2) would disclose that this is an application in terms of Office Memorandum dated 02.01.1995, which has been issued in the context of compassionate appointment. The materials brought on record by the petitioner would disclose that his father continued to make representations for voluntary retirement on medical grounds, pleading that he was not able to perform his duties. Copy of letters dated 04.03.1995 and 21.12.1995 forwarding representations of petitioner's father have been brought on record. There is no application in terms of CCS (Pension) Rules. By an order dated 14.06.1996, petitioner's father was directed to appear before the Medical Board on

26.06.1996. Since the petitioner has failed to bring on record an application in proper format submitted by his father seeking voluntary retirement on medical grounds, it is on 14.06.1996 when it can be assumed that the application for voluntary retirement was taken cognizance of. An order for voluntary retirement on medical ground was passed by the respondents on 31.07.1996 and the employer-employee relationship of the father of the petitioner and the respondent-DVC severed on 06.09.1996. The petitioner is claiming compassionate appointment in terms of Office Memorandum dated 02.01.1995 which reads as under :

"In exceptional cases when a Department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter of a Govt. servant retired on medical grounds under Rule-38 of CCS(Pension) Rules, 1972 or corresponding provisions in the CCS Regulations before attaining the age of 55 years. In case of Group "D" employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years."

3. By his own account, the application for compassionate appointment when was submitted (which is not supported by the application/representation filed by the father of the petitioner), petitioner's father had attained 56 years 09 months and 18 days of age, and by the time an order for voluntary retirement on medical grounds was passed he had attained 58 years 03 months and 19 days and thus having attained the age of 57 years could not have claimed compassionate appointment. The learned counsel for the petitioner however, referring to a decision in "Food Corporation of India & Anr. v. Ram Kesh Yadav & Anr". [(2007) 9 SCC 531], contends that on account of delay on the part of the respondents, the petitioner cannot be denied compassionate appointment for which he is entitled under Office Memorandum dated 02.01.1995.

4. A bare perusal of the decision in Ram Kesh Yadav case would disclose that the application for voluntary retirement on medical ground was kept pending and in the aforesaid facts, the Supreme Court held that the applicant was entitled for compassionate appointment. Besides the facts in this case, what distinguishes the said case from the facts of the present case, is the Office Memorandum dated 02.01.1995 which prohibits compassionate appointment to the dependent of an employee taking voluntary retirement on medical ground after attaining the age of 57 years. The decision in Ram Kesh Yadav case could have helped the petitioner had the voluntary retirement on medical ground to his father been delayed on account of delay on the part of the respondents, but in the facts of the present case it does not help the case of the petitioner.

5. In view of the Office Memorandum dated 02.01.1995 wherein compassionate appointment to the dependent of a Group "D" employee whose normal age of superannuation is 60 years, cannot be offered if the employee was retired on medical ground after 57 years, the petitioner has rightly been denied

appointment in terms of Office Memorandum dated 02.01.1995. Moreover, twenty years after his father retired, the petitioner cannot seek compassionate appointment.

6. In the aforesaid facts, I find no merit in the writ-petition and accordingly, it is dismissed.