
(2011) 11 CAL CK 0076
In the Calcutta High Court
Case No : W.P.S.T. No.259 of 2011

Amulya Mahata

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 11-11-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 2 CHN 387

Hon'ble Judges : Shukla Kabir (Sinha), J;Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Gouri Sankar De, Mr. Rudranil De and Mr. Gopal Chandra Das, for the Appellant;Debangsu Basak For the Respondent No. 1, for the Respondent

Final Decision : Dismissed

Judgement

Ashim Kumar Banerjee, J.

FACTS

1. If we take the factual matrix in a narrow campus we would find one Dolgobinda was working as a GDA in Kotshila Rural Health Centre. He died in harness on January 20, 2002 just on the eve of his retirement. He was supposed to retire after about eleven months. He served the State for thirty-five years seven months thirteen days at the age of fifty-nine years one month two days, thus leaving ten months twenty eight days service left to his credit. His family received the post death benefit to the extent of Rs.3,89,831/- and was regularly drawing the family pension to the extent of Rs.3529/- per month. Dolgobindo had three bighas of cultivable land. His son's prayer for compassionate appointment was rejected on the ground that the family did not need any further financial support deserving compassionate appointment. The authority passed a reasoned order dated February 5, 2008 appearing at page 28 of the petition that became the subject matter of challenge before the Tribunal in O.A. No.5417 of 2008 disposed of vide judgment and order dated July 13, 2011 dismissing his

application. Being aggrieved, Amulya son of Dolgobinda, the petitioner before the Tribunal approached us by filing W.P.C.T No.259 of 2011.

JUDGMENT OF THE TRIBUNAL

2. The Tribunal considered the precedents on the issue of the Apex Court as well as High Court. The Tribunal held that the claim for compassionate appointment would be governed by the circulars dated April 16, 1998 and November 18, 1997 and not by later circular. On that score, the Tribunal joined issue with the reasoned order. The Tribunal however found favour with the argument of the State that the family did not need any further support. The Tribunal relied on the Patna High Court Judgment in the case of Ajoy Kumar vs. Canara Bank reported in 2002 Volume-I Labour Law Journal page 602. The Tribunal also found the applicant over-aged for Government service and thus ineligible for appointment. The Tribunal also held that since the applicant could manage his affairs for a long period after the death of his father his prayer could not be considered as an emergent need. The Tribunal ultimately rejected the prayer on the ground that it was not an appropriate case where the Tribunal should interfere with the decision of the State rejecting his prayer for compassionate appointment. According to the Tribunal, his claim did not deserve any merit.

RIVAL CONTENTIONS

3. We heard Mr. Gouri Sankar De, learned senior counsel for the petitioner and Mr. Debangsu Basak, learned senior Government advocate for the State. They relied on the following decisions :-

- i) Umesh Kumar Nagpal Vs. State of Haryana and Others,
- ii) 2000 4 SCC 493 (Balbir Kaur & Anr. vs. Steel Authority of India & Ors.)
- iii) Punjab National Bank and Others Vs. Ashwini Kumar Taneja,
- iv) 2005 10 SCC 89 (Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.)
- v) CHC 1 2009 339 (Nazrul Islam & Anr. vs. State of West Bengal & Ors.)
- vi) CHC 4 2009 748 (Rabin Routh vs. State of West Bengal & Ors.)
- vii) 2009 1 CHC 338 (Tapan Kumar Barman vs. State of West Bengal & Ors.)
- viii) 2010 4 CHC (Cal) 310 (In re : Sujoy Kumar Pandit)
- ix) Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others,

4. While Mr. De harped on the decision of the Apex Court in the case of Govind Prakash Verma (Supra) Mr. Basak stuck to the decision in the case of Nagpal (Supra) to support the judgment of the Tribunal. Mr. Basak placed the latest decision of the Apex Court on the issue in the case of Bhawani Prasad Sonkar (Supra) which, according to him, took care of all earlier precedents to negate the

contention of the petitioners.

LAW ON THE SUBJECT

5. Three decisions of our Court were relied upon to support the contention of the petitioner. If we look to Tapan Kr. Barman (Supra) we would find that it was an ex parte decision as the State did not appear and the My Lords sitting in the Division Bench did not have the privilege to consider the State version. We also find that the decisions in the case of Nagpal (Supra) was not placed before Their Lordships, at least no such mention was made. In the case of Rabin Routh (Supra), the Division Bench followed Tapan Kumar Barman (Supra). In fact, the decision was mainly based on Govind Prakash Verma (Supra). Their Lordships, although considered Ashwini Kumar Taneja (Supra), could not lay hands on Nagpal (Supra) which was an authority on the issue. The decision in the case of Najrul Islam (Supra) was based on given facts. This decision was also based on the ratio decided in Govind Prakash Verma (Supra). If we look to Govind Prakash Verma (Supra) we would find that the Apex Court therein did not consider the earlier decisions on the issue, particularly the decision in the case of Nagpal (Supra). Their Lordships considered the rules of the Life Insurance Corporation of India and ultimately held that retiral benefit could not be the basis of order of rejection in case of compassionate appointment. That was also the consistent view of our Division Bench in those three cases referred to above. The other Apex Court decision however held it otherwise. If we look to the latest one in the case of Bhawani Prasad Sonkar (Supra) we would find that the Apex Court laid down guidelines to be followed in case of compassionate appointment. It would be apt to reproduce the said guideline and paragraph 20 is thus quoted below :-

Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind :

- i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.
- ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.
- iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.
- iv) Compassionate employment is permissible only to one of the dependents of the deceased/incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category

that is Class III and IV posts.

6. We would also find that Nagpal (Supra) was considered along with other decisions on the issue. It is however true that Govind Prakash (Supra) was not placed before Their Lordships. If we follow the latest one we would find a concrete guideline framed by the Apex Court. Neither the guidelines however give any scope to reject the application solely on the ground that the family received the post death benefit nor was it specific that the said amount should not be taken into account. We thus feel that neither Nagpal (Supra) nor Govind Prakash (Supra) is inconsistent with each other.

7. Taking a sum total, we feel that Article 14 and 16 of the Constitution read together would per se oppose the scope of compassionate appointment as it would foreclose the other eligible candidates to come within the zone of consideration infringing their Fundamental Right guaranteed under the Constitution. Such exception could only be made provided there was specific rule for the same in the particular department of the State and such rules would guide the service conditions of the deceased employee. Such rule could only be used sparingly and that too, for extending support to the bereaved family whom were faced with the untimely death of the sole bread earner leaving the family in a sudden precarious condition. To be specific, if the rule provides the deponent could make an application immediately after the death and such application must be backed by concrete cogent evidence on the issue of acute financial stringency that the family suffered due to untimely death.

APPLYING RATIO

8. Coming to the factual matrix, we find that Dolgobinda died in 2002 whereas his son applied for compassionate appointment in 2007 after about five years of his death. In paragraph 7 of the petition he claimed that the application was made on March 25, 2003 whereas Dolgobinda died on January 20, 2002 meaning thereby he applied after one year two months. It is however not clear on which date he made the application. From the reasoned order we find that the authority considered his application of 2007. Be that as it may, the petitioner was the younger son of the deceased. He was silent about the elder son about his means of livelihood. Deceased left the widow and his two sons. He served the State almost for the entire service career leaving ten months twenty eight days to his credit. His death could not be termed to be 'sudden' leaving the family in sudden precarious condition.

9. The authority referred to the post death benefit to assess the financial condition of his family. From the reasoned order, we do not find that the post death benefit was the sole cause of rejection. In our considered view being prompted by Nagpal (Supra), all aspect should be taken into account by the authority to come to a definite conclusion as to whether the family did suffer any acute financial stringency. To do such exercise the post death benefit should certainly come within the zone of consideration. We fully agree with the other

Division Bench view that the same could not be the sole basis of rejection. We feel, that could have been one of the causes creating impediment in the way of getting compassionate appointment.

10. The Tribunal should not have held that he was over-aged. It is true that he was thirty-eight plus in 2008. However we are not definite whether the authority did receive his application in 2003 when he was thirty-five.

11. Nagpal (Supra) categorically held that compassionate appointment could not be granted after a lapse of a reasonable period. It was not a vested right. The object being to enable the family to get over the financial crisis, which the family faced at the time of death of the sole bread earner, it could not be considered after a lapse of reasonable time. Taneja (Supra) categorically held that rejection on the ground that there was no financial hardship suffered by the family after receipt of the post death benefit was not improper. Such categoric decision should not be lost sight of or ignored while deciding the issue. Mr. De however tried to avoid the same on the ground that it considered a particular scheme that empowered the authority to consider the issue. In our view, the moot question was whether the family was in financial stringency after the death and to examine such financial stringency no one could ignore the financial support the family got as and by way of post death benefit. Balbir Kaur (Supra) also considered a similar issue. There also, the rule did provide consideration of the post death benefit. The Apex Court held that compassionate appointment could not be denied on the ground that the Family Benefit Scheme was available.

12. All decisions lead to the moot question on two points :-

i) The family suffered acute hardship that they could not anticipate and was not prepared for the same. It was an unforeseen situation.

ii) To come to a definite conclusion as to whether the application could successfully pass through the above test, one would need to consider the financial condition of the family as on the day when a contemporaneous application for compassionate appointment is made and considered.

13. The Authority was not entitled to refuse to entertain such application either on the ground that the family received financial support by way of post death benefit or that there was any other alternative Family Benefit Scheme available. The authority was obliged to consider such application by taking into account the entire factual matrix which would obviously include the financial support the family got either by way of post death benefit or by way of any other family benefit scheme. Even after taking into consideration of the same if the family still needs support, there should be a departure from the rule so contained in Article 14 and 16 and compassionate appointment should follow. The present case, in our view, did not successfully pass through such test, hence, does not deserve any interference at our end.

RESULT

14. W.P.S.T. 259 of 2011 thus fails and is hereby dismissed without however any order as to costs

DIRECTION

15. Urgent Photostat copy will be given to the parties, if applied for.

Shukla Kabir (Sinha), J:

16. I agree.