

(2001) 03 J&K CK 0004

In the Jammu And Kashmir High Court

Case No : Service Writ Petition (SWP) No. 2207 of 2000

Ashok Kumar

APPELLANT

Vs

National Hydro Electric Project Corpn.Ltd.and others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2003) 2 SCT 829

Hon'ble Judges : Arun Kumar Goel, J

Bench : Single Bench

Advocate : J.P. Singh, Surinder Kour, Advocates appearing for the Parties

Judgement

Arun Kumar Goel, J.—This writ petition has been filed by the petitioners for quashing order No. P&A/E&E/PF528/97/5094 dated

23.5.1997 rejecting his claim for appointment on compassionate grounds with a further direction to them to offer employment to him in place of his

father Late Shri Prem Nath, Cook who was working with the respondents. Petitioner has also prayed for giving employment with retrospective

effect.

2. Admitted facts of this case are that the father of the petitioner namely, Late Shri Prem Nath, Cook T.No. H529/E.No. 137751X. He was

working under the P&A Wing of the Salal Hydro Electric Project. He died on 2nd September, 1995 at Shri Ganga Ram Hospital, New Delhi. He

had been ordered to be taken to Shri Ganga Ram Hospital, New Delhi, by the authorities of N.H.P.C. with a view to get him treated in the said

hospital as it was duly approved by the authority. Petitioner claims to have made an application for being appointed on compassionate grounds on

26th September, 1995. Despite numerous requests having been made no relief was given to him, as such he was compelled to file SWP No.

2453/99 which was disposed of on 8.11.1999 with a direction to the respondents to consider the case of the petitioner and take a final decision

within two months.

3. In this background petitioner was informed on 7.1.2000 vide AnnexureE that the Committee appointed by the N.H.P.C. has after examination

and consideration of his request did not find any merit in it. This communication further reflects that the petitioner was already informed about the

decision of the Committee as far back as on 23.5.1997. Petitioner again filed SWP No. 265/2000 which was dismissed on 16.3.2000. When this

decision was challenged in LPA(SW) No. 425/2000, appeal was disposed of in the following terms :

Admitted.

The solitary ground on which the writ petition has been dismissed is that order dated 23rd May, 1997 passed by the respondents was not

specifically challenged. The appellant has come in appeal. It is submitted that in a writ of certiorari, the writ is against record and even if a particular

order is not challenged, this should not be made a ground for dismissing the petition. It is also submitted that in that eventuality an opportunity

should have been given to the appellant to challenge that order by amending the writ petition.

Shri J.P. Singh, learned counsel appearing for respondents submits that in the event of a fresh writ petition being preferred, the objection on the

ground of delay and laches would not be raised.

Taking note of the above aspect of the matter, the learned counsel for the appellant may, if so advised, prefer a fresh petition challenging the order

conveyed to him by the respondent corporation. In case, the writ petition is preferred within a period of three months from today, the objections

on the ground of delay and laches for filing the writ petition would not stand in his way. In case order dated 23.5.1997 has not been conveyed

then this be conveyed. Time fixed in this order would accordingly.

This appeal is disposed of as such.

4. In the aforesaid background the present petition has been filed.

5. With a view to support his case petitioner claims parity with the case of one Som Raj son of Shri Mansa Ram as well as Abdul Karim and other

persons. Since denial of appointment on compassionate grounds discriminates between similarly situate persons, as such action of the respondents

is not only illegal but is also arbitrary as well as discriminatory and is therefore liable to be set aside and consequently admissible relief being

allowed to the petitioner.

6. Respondents were put to notice. They firstly filed their objections but vide order dated 27.1.2001, they were called upon to file detailed counter

with a view to dispose of the matter at the threshold. Needful has been done. According to them case of the petitioner was examined by the

Committee constituted by the National Hydro Electric Project Corporation alongwith number of other cases for the grant of appointment on

compassionate grounds as per scheme framed by the said Corporation for compassionate appointments to next of the kin of the deceased

employee. The matter was set at rest as far back as on 14.1.1997. As many as 11 cases of next of the kin of the deceased employees working in

the projects of N.H.P.C. were examined by the Committee. Case of the petitioner was declined as it was not recommended by the Committee.

Minutes of proceedings and the decision taken have been produced by Mr. Singh in that behalf. According to them since deceased father of the

petitioner was nearing retirement at the time of his death, therefore, claim of the petitioner has been rightly declined. Cases of Som Raj and Abdul

Karim are not similarly situate with that of the petitioner. Former's father i.e. Som Raj had died during the course of employment in an accident,

whereas the father of Abdul Karim was not nearing retirement and had nine years to serve while he died in harness. It is further case of

respondents that death of the father of the petitioner was natural and was not during the course of his employment. Respondents have further stated

that after lapse of six years claims of the petitioner has become stale as he has subsisted somehow, besides this petitioner is having monthly income

from agriculture of Rs. 1500/ per month. His elder brother is working as tailor and family has a shop. Thus in these circumstances, petitioner is not

entitled to any relief. So far deceased being removed to Shri Ganga Ram Hospital, New Delhi is concerned, it was for his treatment as per the

policy of the corporation and his death was not arising out of much less during the course of his employment. Thus plea of similarity between the

case of Som Nath and Abdul Karim was specifically denied. According to respondents agreement entered into with the workmen on the one side

and the management on the other, case of the petitioner was considered in accordance with the agreement arrived at. This agreement is being

uniformly followed in all the cases of compassionate appointments, and the respondents have prayed for dismissal of the writ petition.

7. Mrs. Surinder Kour, learned counsel appearing for petitioner submitted that there is no laxity muchless fault on the part of the client. In case the

matter got delayed, it cannot be attributed to the petitioner because he had applied immediately after the death of his father. Fact remains that his

case was turned down which position is clearly made out from the AnnexureH as far back as on 23.5.1997 attached by the petitioner with the writ

petition. Despite this order petitioner suffered earlier judgment in SWP No. 2453/99. On the date of passing of this order AnnexureH was very

much in existence. It is not understood why this fact was not brought to the notice of the court when order AnnexureD was passed on 8th

November, 1999.

8. Respondents when confronted with the said judgment of the court passed vide AnnexureE, stated that they had informed the petitioner regarding

rejection of his claim in terms of the settlement signed with the apex union of the Corporation rejected his claim and further informed the petitioner

that order was conveyed to him as far back as on 23.5.1997. Admittedly, this order does not appear to have been challenged anywhere, though in

LPA petitioner was allowed to file fresh writ petition if so advised to challenge the same. According to her this is a fit case where judicial discretion

in the peculiar circumstances needs to be exercised in favour of her client.

9. On the other hand all these pleas have been controverted by Shri Singh, learned counsel appearing for respondents, who submitted that

petitioner was well aware when he filed the earlier writ petition in the year 1999 that his case stands already rejected. Still in deference to the

direction of the court as law abiding public undertaking, decision was taken afresh and was conveyed to the petitioner in addition to his being

informed that his earlier writ petition stands dismissed. According to Mr. Singh

petitioner even otherwise is not entitled to any relief looking to the timegap between the date of death of his father and when the present case has been taken up. Both sides placed reliance on the precedents to which reference will be made hereinafter.

10. So far matter relating to grant of appointment on compassionate grounds is concerned, it is meant to overcome the situation in which the family of the deceased employee is placed after the death of its sole breadwinner, to ensure that family of the deceased should not be made live in penury & destitution. Various public undertakings like respondent No. 1 have framed different schemes to provide minimum relief in the shape of compassionate appointment so that bread and butter of the family is assured. It is a measure of immediate relief and is not a source of alternative employment by ignoring muchless overlooking the process of recruitment under the relevant rules governing the same. Such schemes/rules/regulations for providing appointment on compassionate grounds is an exception to the general rules. It cannot be claimed as a matter of right nor a litigant like petitioner has any indefeasible right to claim such appointment. Time factor is one of the relevant circumstances, in a case where such a claim can be declined.

11. Ordinarily submissions urged on behalf of the petitioner should have found favour with the Court and thus consequential relief was to follow.

However, fact remains that for the reasons set out herein after, prayer made in the writ petition cannot be allowed.

12. After the death of his father when claim was made by the petitioner it was turned down in the year 1997. Thereafter, till petitioner was permitted vide order of Division Bench to challenge the order of rejection of 1997, petitioner admittedly sustained himself from the date of his father's death and till the filing of the present case. No doubt Mrs. Kour, learned counsel for petitioner stated that there is no fault of her client in the matter being delayed, therefore, this cannot be made a valid ground to reject her client's claim. With a view to submit this line of argument, she placed reliance on a decision of Karnataka High Court in the case of Kumari A.G. Ramaya v. Syndicate Bank, 2000 Lab.I.C. 3571 and Rupali Choudhary v. State of West Bengal and others, 2000 Lab.I.C., 3794 and has urged for allowing this writ petition.

13. So far case of Kumari A.G. Ramaya is concerned, it has no applicability to the facts of the present case. It is distinguishable on facts as well as

laws governing the same. Reason being that petitioner does not claim being ignorant about the scheme in question and or his being entitled to the

benefits of such scheme of compassionate appointment after attaining majority as was in the case before Karnataka High Court. Therefore, this

judgment does not in any manner advance the case of the petitioner.

14. Similarly case of Rupal Choudhary (supra) also does not in any manner benefit the petitioner in the present writ petition. While justifying the

rejection of his case, respondents have specifically pleaded that firstly on account of time factor, secondly because of his having independent

income of Rs. 1500/ per month and having shop and above all having sustained from the date of death of his father till date therefore, he is not

entitled to any relief. Even otherwise so far rejection of his claim for appointment on compassionate grounds is concerned specific case of the

respondents is that it does not fall within the scheme framed by the N.H.P.C. As such this decision also does not advance the petitioner's case any

further.

15. On the other hand while considering belated claim of the claimant like that of the petitioner, Supreme Court of India in a case of Dhalla Ram v.

Union of India and others while dismissing the petition held as under :

This Special Leave Petition arises from the order of the Central Administrative Tribunal made on 12.7.1998 dismissing petitioner's application for

appointment on compassionate grounds. The father of the petitioner died on December 13, 1965 on which date the petitioner was below 6 years.

He attained majority on his own statement. On July 12, 1997, when he compiled 18 years of age. He made on 1997, when he compiled 18 years

of age. He made on application on July 15, 1987 for his employment on compassionate grounds. The very object of making appointment on

compassionate grounds is to rehabilitate the family in distress of the deceased employee who dies in harness. There should be no difficulty to

consider an eligible candidate for providing immediate sustenance to the members of the deceased employee. He had applied on July 15, 1987

and the application was rejected on July 14, 1988. He filed the O.A. on July 12, 1993. In view of the long delay, after the refusal by the

Government in filing the application, the same cannot be entertained. The appointment on compassionate grounds is not a method of recruitment

but is a facility to provide for immediate rehabilitation of the family in distress for relieving the dependent family members of the deceased employee

from destitution.

2. Under these circumstances, we do not find any ground warranting interference with the order passed by the Tribunal dismissing the application

on July 12, 1993.

16. Though this was a case of appellant having attained the majority after about 10 years of the date of death of his father. However, sum and

substance in this judgment, is that the purpose of providing compassionate appointment is to provide immediate sustenance to the family of the deceased.

17. Again in case of Umesh Kumar Nagpal v. State of Haryana and others, 1994(3) SCT 174 (SC) : 1994(4) SCC 138 it was held 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 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. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can

be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency.

Offering compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased and making

compassionate appointments in posts above Classes III and IV, is legally impermissible.

Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such

employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis

which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

18. As already noted on factual side regarding parity in the case of Som Raj and Abdul Karim respectively are clearly distinguishable on facts.

Photo copy of the minutes of the proceedings taken by the Committee while examining the case of the petitioner and other persons, clearly

indicates that the case of the petitioner was considered but was turned down. How it is bad could not be pointed out by Mrs. Surinder Kour

learned counsel appearing for petitioner.

19. Faced with the aforesaid circumstances, learned counsel for the petitioner submitted that this is a hard case and for no fault of her client he is

being denied the benefit of scheme in question. She made reference in this behalf to Annexure M attached with the writ petition. According to her

petitioner is entitled to relief prayed for in the writ petition. However she was unable to justify the claim of her client in the circumstances narrated

hereinabove.

20. No other point is urged.

21. As a result of aforesaid discussion, there is no merit in this writ petition which is accordingly dismissed, after writ petition was formally admitted

and heard finally with the consent of learned counsel for the parties. Since pleadings were complete and they wanted it to be disposed of at this

stage only.