

(1995) 02 GAU CK 0018
In the Gauhati High Court
Case No : C.R. No. 64 of 1995

Athokpam Satyabrata Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 16-02-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1996) 3 LLJ 721

Hon'ble Judges : M. Sharma, J

Bench : Single Bench

Advocate : B.P. Sahu, for the Appellant; L. Shyamkishore, G.A., for the Respondent

Final Decision : Allowed

Judgement

M. Sharma, J.

1 .This writ petition has been preferred by the petitioner praying for his appointment to the post of Section Officer Grade - I (Elect) under "Die-in-harness" scheme. The petitioner is a graduate and he obtained BE (Elect) degree. He was appointed on March 29, 1990 to the post of Section Officer Grade - II (Elect) against the vacant post of Section Officer Grade - I (Elect) under the die in harness scheme on the expiry of his father who died in harness (Date of death is not mentioned). Since his appointment as such petitioner has been making representation for his appointment in the post of Section Officer Grade - I (Elect) which he claimed to be entitled as similarly situated other persons were appointed in Section Officer Grade - I (Elect) under the scheme. The petitioner has given some examples by which similarly situated persons have been appointed as such (1) Shri Th Ranjit Singh, Section Officer Grade - I in the Public Health Engineering Department, Manipur under the die in harness scheme, (2) Shri K. Lokeshore Singh, B.E (Agri) as Section Officer in the Department of Agriculture under the said scheme vide office order No. 29 dated : February 24, 1989 of the Chief Engineer, PHED, Manipur. Contention of the petitioner is that

the post of Section Officer Grade - I to which he was appointed as Section Officer Grade - II is a regular vacancy in the Electricity Department and he has all the requisite qualification for being appointed as Section Officer Gr-I, that he has the reliable information that a number of diploma holders as well as engineering graduates (Elect) have also been again appointed as Section Officer Grade -I even at the first instance of their appointment in the Electricity Department. Further contention of the petitioner is that those engineering graduates who have been appointed as section officer Grade I at the first instance of their appointment under the scheme are equally situated with him and he has been only discriminated for being appointed to the same Grade, that is, Grade-I and which is discriminatory and in violation of Articles 14 and 16 of the Constitution of India.

2. In a catena of decisions the Apex Court has given guidelines for compassionate appointment under the scheme popularly known as "Die in harness" scheme. The ratio of those decisions is that in compassionate appointment factors are necessary for being taken into account before affording such employment, that mere death of an employee does not entitle his family for compassionate appointment. The foremost principle of the scheme is that the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the death of the employee. This position has been clarified by their Lordships in Umesh Kumar Nagpal v. State of Haryana and Ors. 1995 LLJ 798 (SC). For proper appreciation of the situation paragraph 2 of the judgement is quoted below :

"The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood, In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus 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 a 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. The posts in Classes III and IV are the lowest posts in non-manual 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. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

Their Lordships in this judgment expressed dismay pointing that the decision of the Apex Court in *Sushma Gosain v. Union of India*, 1990 LLJ 169 has been misinterpreted to the point of distortion.

3. From the series of judgements it can be held that appointment on compassionate ground must be on the following consideration ; (1) a dependant member of the family is entitled to compassionate appointment subject to fulfilment of necessary conditions, (2) that application must be made within a period of one year from the date of death of the deceased, (3) the government or the public authority concerned has to examine the financial condition of the family of the deceased and if it is only satisfied that the family will be in hardship if a job is not afforded to the eligible member of the family. (4) the posts in Class - III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate ground, the object being to relieve the family of the financial destitution and to help it get over the emergency, (5) there cannot be choice for the post by the applicant claiming compassionate appointment under the scheme, (6) no other posts are expected or required to be given by the public authorities for the purpose. (7) compassionate appointment is given to tide over the immediate financial destitution faced by the death of the bread winner and not to provide employment for the members, (8) the applicant must have minimum qualification for appointment (9) neither the qualifications of the dependants of the deceased nor the post which deceased held is relevant to appoint on compassionate ground in the higher posts.

4. Coming to the case in hand it is found that the petitioner was appointed under the scheme in 1990. Mr. Shyamkishore, learned Govt. Advocate submitted that

the other persons who were shown to be appointed under the scheme were appointed in 1992. Therefore petitioner's claim cannot be entertained. Further the petitioner was appointed in a vacant post and his post is secured. The government has been adopting procedure in implementing the scheme which is not above challenge. Apparently the petitioner was appointed against a vacant post of Section Officer Grade - I as Section Officer Grade -II (Elect.) In that case petitioner's appointment shall be considered with other similarly situated employees, no matter they were appointed subsequent to the petitioner. The claimant for appointment on compassionate ground has no right to any particular post of his choice. He can only claim to be considered for such appointment State of Madhya Pradesh and others Vs. Ramesh Kumar Sharma, The policy matter / scheme cannot be applied discriminating the similarly situated persons at the will of the concerned authority.

5. This court reiterate the view that the appointment on compassionate ground under the die in harness scheme need application without any discrimination, though the right to be appointed on compassionate ground is not a vested right, the State Government's appointments in question has not justified compassionate employment in Class - I and II posts. Further this court is not inclined to disturb the appointment of other persons in Gr. I under the scheme as the petitioner's case is only to accommodate him in the post of Section Officer - Grade I which is still lying vacant and in which he can be accommodated. A caution is given to the Government to abide by the scheme so that real needy and eligible member of the destitute family can be afforded a job to meet the crisis to get over the immediate financial crisis. Keeping in mind that the scheme is not to provide employment to the members of the family of the deceased who is otherwise economically not unable to get.

6. In view of my above discussion I hold that the petitioner is entitled to be posted as Section Officer Grade-I as has been done to the other similarly situated persons. In the result the petitioner is allowed.