

(2024) 04 KL CK 0186
In the High Court Of Kerala
Case No : Writ Petition (C) No. 2392 Of 2018

B. Anandan

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 03-04-2024

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2024) 04 KL CK 0186

Hon'ble Judges : Easwaran S, J

Bench : Single Bench

Advocate : T.C.Govinda Swamy, M.Alfred Lionel Winston, Kala T.Gopi, T.V.Vinu, S.Chandrasenan

Final Decision : Dismissed

Judgement

Easwaran S, J

1. Is delay in approaching the High Court under Article 226 of the Constitution of India fatal for successfully pursuing the claim for a compassionate appointment? The answer to the above question lies in intrinsically analyzing the scheme of compassionate appointment qua the claim of the petitioner.

2. The petitioner is the son of one Sri.R.Balachandran Pillai, who was a Constable in Railway Protection Force (RPF). He died on 25.05.2006. An application for compassionate appointment was given by his wife nominating their daughter. The said request was considered and on 11.06.2008, the daughter Kum.Krishna Balachandran Pillai was offered compassionate appointment and she was asked to appear for suitability test. It appears that the daughter of late R.Balachandran Pillai and Valsala did not accept the said offer. Later Smt.Valsala on 10.02.2012, by Ext.P12 requested the authorities to cancel her earlier request and to grant compassionate appointment to the petitioner, who is her son. Later, this was reiterated on 08.01.2014. Considering the said request by Ext.P1 order, the authorities have declined the request and taken a stand that the petitioner

cannot be considered for compassionate appointment.

3. A counter affidavit has been filed on behalf of respondents 1 to 4. A preliminary objection is taken with regard to the maintainability of the present Writ Petition on the ground that Ext.P1 order is dated 16.08.2016, whereas the Writ Petition is filed in the year 2018 and, therefore, there is an unexplained delay. It is also contended in the counter affidavit that the mother had changed the request for nominating the son instead of her daughter for compassionate appointment only in the year 2011. According to the respondents, Kum.Krishna Balachandran Pillai given ample opportunities for appointment which was never utilized. Reliance has been placed on the judgments of the Honourable Supreme Court, which govern the field with regard to the appointment on compassionate grounds. Therefore, it is prayed that the Writ Petition is liable to be dismissed.

4. I have heard Smt.Kala T.Gopi, learned counsel appearing for the petitioner, and Sri.T.V.Vinu, the learned Central Government Counsel.

5. Multiple questions are required to be addressed by this Court before deciding this lis. The primary question is whether the delay in filing the writ petition is fatal to the cause projected by the petitioner. Secondary question is with regard to the entitlement of the petitioner to claim compassionate appointment on the death of his father Sri. R.Balachandran Pillai.

6. Since the issues are interconnected on facts, the same will be dealt conjointly. The records reveal that the father of the petitioner died on 25.5.2006. On the death of Late Sri.R.Balachandran Pillai, the mother of the petitioner sent a request on 2.11.2006 for compassionate appointment for her daughter, who was then eligible for claiming compassionate appointment. Kum.Krishna, daughter of late R.Balachandran Pillai was offered compassionate appointment. It appears that daughter of late Sri.R.Balachandran Pillai was not inclined to take up the appointment. She had however requested the respondents to give a more suitable posting to her than the one which was offered in the year 2008.

7. In the meantime, that the mother of the petitioner decided to cancel the nomination of her daughter and decided to request the authorities to appoint the petitioner under compassionate grounds. The request was however turned down by the authorities on 16.8.2016.

8. The learned counsel for the petitioner submitted that as per Clause I(x) of Ext.P14 which is the guidelines governing the appointment on compassionate grounds, the petitioner is entitled to claim compassionate appointment on attainment of majority. The clause referred to above specifically provides that a minor son to be appointed will be attaining majority of age within a period of five years of the event of death, which is the basis for appointment on compassionate grounds. Therefore, it is contented that the application submitted by the petitioner is in order. The learned counsel for the petitioner further refers to Clause III of Ext.P14 to contend that the son of the deceased employee is also a person eligible to be appointed on compassionate grounds. In so far as the time

limit for compassionate appointment is concerned, the counsel submitted that the same is governed by Clause V of Ext.P14, and the period can be up to five years from the date of occurrence of the death and the relaxation can be granted by the General Manager by following certain conditions. Therefore, according to the learned counsel for the petitioner, the claim of the petitioner ought not to have been rejected by the respondents.

9. On an anxious consideration of the pleadings, this Court cannot ignore the factum of delay in filing the writ petition. According to the respondents, an unexplained delay of 2 years has occurred from the time of passing of impugned order till filing of the writ petition. When the issue of limitation is evaluated, one can find that the provisions of the Limitation Act is not per se applicable to the writ proceedings since the same being a constitutional remedy. Although no period of limitation is prescribed in filing of the writ petition under Article 226 of the Constitution of India, the same cannot be taken as the normal rule. In certain cases, courts will be called upon to decide the question of delay depending upon the facts. It is beyond doubt that remedy under Article 226 is discretionary. Such discretionary relief could be declined, if it is shown that there is unexplained delay. In *Karnataka Power Corporation Ltd. Vs K. Thangappan* [(2006) 4 SCC 322], the Supreme Court of India had occasion to consider the similar issue, wherein it was held that unexplained delay can be a ground to decline jurisdiction under Article 226. A similar question can now come up for consideration before the Apex Court in *Nadia Distt. Primary School Council Vs Sristidhar Biswas* [(2007) 12 SCC 779], wherein it was held that delay is a significant factor in granting relief. The ratio decidendi as could be culled out from the above decision is that unexplained delay is a factor decisive for this Court in refusing to exercise of the jurisdiction.

10. Suffice to say, the above decisions can be said to be only a guiding factor in determining whether this Court should exercise its discretion in entertaining the writ petition. However, no hard and fast rule can be laid down in this regard. However, when one analyses the principles laid down by the Apex Court and applies the same to the facts of this case, this Court is not persuaded to exercise its discretion in entertaining this writ petition since there is admittedly an unexplained delay of 2 years. The unexplained delay when considered against the touchstone principles governing the compassionate appointment, certainly proves to be detrimental to the interest of the petitioner. Hence, this Court is constrained to hold that the delay in filing the writ petition is not explained and, hence, this Court is not persuaded to exercise its jurisdiction.

11. Despite the above, even assuming that this Court is persuaded to investigate the merits of the claim, what would be the result? The answer lies in assimilating the intrinsic facts involved. It may be true that the petitioner was not eligible to claim appointment at the time of death of his father. But, it is pertinent to note that his mother late Valsala had not chosen to wait till the petitioner attained majority and claim appointment. If that was the case, necessarily this Court

would have to incline to accept the contention of the petitioner. Instead of that the mother of the petitioner first nominated her daughter. It is also pertinent to note that the mother never decided to cancel the nomination until 02.06.2011. At the same time, it is interesting to note that by Ext.P9, the sister of the petitioner never relinquished her claim for appointment on compassionate grounds. But, on a contrary, she requested the Chief Security Commissioner, Railway Protection Force to accommodate her in a more suitable post rather than the one which was offered. Read with Exts.P9 and P11 with Ext.P12, I am inclined to take a view that the petitioner cannot claim appointment on compassionate grounds, especially when his sister has not relinquished her claim to compassionate appointment. The respondents cannot be expected to continuously offer appointment on compassionate grounds to the legal heirs of a deceased employee.

12. The Rules of Interpretation of a Scheme for compassionate appointment is well defined. The very purpose of compassionate appointment is the immediate amelioration to the family. Whether the basic principles governing the compassionate appointment will be contravened if a direction is issued to the respondents directing them to appoint the petitioner on compassionate appointment? Answer is in affirmative. It may be true that when the eligibility of the legal heirs arose, petitioner not being qualified, the mother of the petitioner chose to exercise her right under the scheme of appointment and nominate her daughter for the compassionate appointment instead of the petitioner. If that be so, an offer which was made by the respondents being accepted by the mother by nominating her daughter for appointment and later the daughter not choosing to accept the said offer, but rather requesting the authorities to give appointment to her on a more convenient post, will definitely obliterate the claim of the petitioner seeking for compassionate appointment. It cannot be construed that the scheme of compassionate appointment permits the members of the family to raise repeated claims for appointment. One must remember that the compassionate appointment is not a method of appointment and is only intended to get over the penury caused to the family of deceased. On facts, it is clear that Shri. Balachandran Pillai expired in the year 2006. After 18 years, this Court cannot issue direction to the respondents to appoint the petitioner on compassionate grounds.

13. In State of Gujarat Vs Aravind Kumar T Tiwari [(2012) 9 SCC 545] the Hon'ble Supreme Court of India held that the compassionate appointment is not to be claimed as a matter of right and is not a method of appointment. It has to be strictly made in accordance with the rules.

14. In Government of India Vs P Venkatesh [(2019) 15 SCC 613], the Apex Court once again reiterated that writ of mandamus cannot be issued after 21 years of the death of the employee. Here, on facts, the death of the employee was in the year 2006. After 18 years, this Court is not persuaded to issue a writ of mandamus to the respondents either to consider the claim of the petitioner or

appoint him in a suitable post.

15. Viewed in the above perspective, the respondents discharged their duty by offering Kum.Krishna, the daughter of the deceased employee, appointment on compassionate ground. The non acceptance of the said offer coupled by the reluctance of the daughter to relinquish the claim gives to irresistible conclusion that the petitioner is not entitled to succeed in the writ petition.

16. The learned counsel for the petitioner further refers to Ext.P3 and contends that her sister has already given a consent letter for the petitioner to be appointed on a compassionate ground. I am afraid that I am not in a position to accept the said contention because it is the petitioner who has represented in the year 2016 and not his sister directly to the respondents. It is also not clear when that consent letter was given to the Chief Security Commissioner. Even assuming that the consent letter was granted, the same will not entitle the petitioner to claim compassionate appointment because, the offer for compassionate appointment was once given on 2008 and at that point of time, Kum.Krishna Balachandran did not accept the same and rather went on to represent before the authorities for a convenient posting in this regard.

In the totality of the circumstances and also considering the well defined principles governing the manner in which the compassionate appointment has to be made, I am not inclined to interfere with Exhibit P1 order. Accordingly, the Writ Petition is dismissed. No order as to costs.