
(2002) 05 JH CK 0073
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3578 of 2001

Babujan Ansari

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2002

Acts Referred:

Citation : (2002) 05 JH CK 0073

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Ruby Parween, Sunil Kumar, for the Appellant; Azeemuddin, J.C. To G.P.-1, for the Respondent

Final Decision : Allowed

Judgement

Tapen Sen, J.—The Intervenor Application is allowed.

2. Heard Ms. Ruby Parween, learned counsel for the petitioners and Mr. Sunil Kumar learned counsel for the intervenor and Mr. Azeemuddin, learned J.C. to the G.P.-1.

3. The Petitioner (Babujan Ansari) has made a prayer for quashing Annexure-8 which is the Order dated 12.7.2001, passed by the Deputy Collector-cum-Chairman District Compassionate Committee, Gumla, rejecting the claim of the Petitioner for appointment on compassionate grounds, a further prayer has been made for a direction upon the Respondents to appoint the Petitioner on compassionate considerations taking into account the fact that his father, the only earning member of the family, died while he was in service.

4. The Petitioner has stated that his father Sheikh Mohd. Hadish, was an Orderly Peon in the Dumri Block and he had two wives. The Petitioner is the son of the first wife and has two sisters while the second wife i.e., the Intervenor herein has one son and one daughter. On the date of his death on 12.8.1996, the father of the Petitioner was in service and he left behind both the two wives and their respective children.

5. The Petitioner has further stated that immediately after the death, the family members entered into an agreement with mutual consent amongst themselves before the "Anjuman Islamia" (Muslim Society) with regard to all property, family pension, compassionate appointment etc. and It was agreed that the Petitioner will be the only candidate to claim compassionate appointment and the first wife would be entitled only to a sum of Rs. 22,000/- from the death-cum-retiral benefit of the deceased employee while the second wife would be entitled to the entire rest of the amounts except Rs. 22,000/- and she shall also be entitled to monthly family pension. A photo copy of the agreement is annexed as Annexure-1 to the Writ Petition.

6. The Petitioner has also relied upon Annexure-2, which is an Affidavit said to have been sworn by both the wives on 19.9.1996 showing that it was decided that it would be the Petitioner who would only be entitled for compassionate appointment and that his mother would be paid only a sum of Rs. 22,000/- and rest of the amounts including all subsequent monthly pension would be payable to the second wife namely Most. Mohmuda Bibi.

7. The Petitioner has further stated that as per the said family agreement, he applied for compassionate appointment after filling up the prescribed proforma and submitted the same before the Block Development Officer, Dumri Block on 7.11.1996 which was subsequently forwarded to higher authorities including the Deputy Collector, District Establishment, Gumla, recommending the case of the Petitioner vide Annexure-3.

8. The Petitioner has stated that even the State Government had issued a Circular as early as on 5.10.1991 (Annexure-4) laying down the procedure to be followed for compassionate appointment in relation to the legal representatives of those employees who died in service. The Petitioner has stated that he fulfilled all the criteria laid down therein but for reasons best known to the authorities concerned, these have not been taken into consideration. The Petitioner states that in spite of his matter having been forwarded, no action was being taken, as a result whereof he filed a number of representations whereafter he filed a Writ Petition being CWJC. No. 2950/90 (R) in which an Intervention Application was also filed by the second wife. Thereafter, the Hon'ble Court vide Order dated 6.4.2001 as contained at Annexure-6 disposed off the Writ Application without entering into the merits of the contentions of the parties and directed the Respondents to consider the case of the Petitioner as well as of the Intervenor (i.e., The Second Wife namely Most. Mohmuda Bibi) and take a decision in accordance with the Circular of the Government.

9. Thereafter, the Petitioner filed various representations along with a copy of the Order of this Court dated 6.4.2001 some of which have been brought on record by Annexures-7 and 7/1. The Petitioner has stated that on 12.7.2001 the Respondents have rejected the claim of the Petitioner on the sole ground that as per the Circular No. 1600, dated 4.2.1991, the maximum age for direct recruitment has been fixed at 35 years whereas the Petitioner was only 36 years,

10 months and 11 days on the date of the Application. According to the Petitioner, this circular is not at all applicable as the same relates to regular appointment whereas the Petitioner is claiming for compassionate appointment. The Petitioner states that his case is governed by Circular dated 5.10.1991 (Annexure-4) which has not even been taken into account by the Respondents for reasons best known to them.

10. A counter affidavit in this case has been filed on behalf of the Respondent No. 3 (The Deputy Collector, District Establishment, Gumla), who has stated, inter alia, that the claim of the Petitioner is time barred as the Petitioner was over age on the date he had filed his application on 7.11.1996 and on that day he was 36 years, 10 months and 11 days whereas as per Circular dated 4.2.1991 he should have been 35 years.

11. The aforementioned contention to the effect that the Petitioner was over age as per Circular dated 4.2.1991 is not acceptable to this Court because that Circular as contained at Annexure-A to the Counter Affidavit relates to "Sidhi Niyukti" (Direct Appointment), i.e. regular appointment as has been contended by the Petitioner also. So far as the Circular which should have been taken into consideration is the Circular that he has brought on record vide Annexure-4 and that specifically states that it relates to the procedure to be followed in cases of appointment on the basis of "Anukampa" (Compassionate Considerations).

12. In that view of the matter, the aforementioned objection or ground taken by the Respondents is held to be not applicable in the case of the Petitioner. The aforesaid ground, having been taken into consideration and the same being the only ground in so far as this Petitioner is concerned is therefore, held to be neither proper nor as per the earlier order of this Court passed in CWJC No. 2950 of 1990 (R).

13. So far as the Intervenor Applicant is concerned, who has been represented in this case by Shri Sunil Kumar, Advocate and who has also made his submissions on her behalf, it would be relevant to mention that at Paragraph-4 of the Intervention Application, she has stated that she is the second married wife of Late Sheikh Mohd. Hadish. She has also stated that the Petitioner Babujan Ansari is the son of the first wife. According to her, the first wife also died on 22.7.1999 and therefore, at present, preference has to be given to the second wife of the deceased.

14. This submission of the Intervenor is totally misconceived because the date of filing the Application for compassionate Appointment as stated by the Deputy Collector, District Establishment, Gumla in his Counter Affidavit at Paragraph-4, is 7.11.1996, a date on which the first wife (Petitioner's mother) was very much alive. That apart, it has not been denied by the Intervenor Applicant that there has been an agreement before the "An-juman Islamia" by which it was decided that the Petitioner would be the sole candidate for compassionate appointment and the first wife would be entitled to only a sum of Rs. 22,000/-and that the

second wife would be entitled to the rest of the amounts plus all future monthly pension. In addition to the aforementioned, in the Supplementary Affidavit filed by the Petitioner, it has been stated that the second wife has received all the death-cum-retiral benefits along with family pension from September 1996 to June, 1997 as per the aforementioned agreement and that the same has been paid by the authority without any dispute.

15. It would be interesting to also note that this very same intervenor namely Most. Mohmuda Bibi through Shri Sunil Kumar, Advocate had filed a Writ Application before this Court being W.P. (S) No. 3736 of 2001 wherein she had made a prayer for payment of Provident Fund. In that Writ Application she had stated that she is the second wife of Late Sheikh Mohd. Hadish and that the Respondents had paid all other benefits in her favour except Provident Fund which had not been paid. Consequently, the Deputy Collector, Gumla and The District Provident Fund Officer, Gumla had been directed to look into the claim of the said Most. Mohmuda Bibi and pay her the admitted Provident Fund etc. This order was passed on 16.8.2001 by an Hon'ble Single Judge of this Court.

16. This fact very conveniently been suppressed by this Intervenor Applicant and she has not stated in the Intervention Application that she has been paid all benefits except Provident Fund although in that Writ Petition she had admitted having received all payments except Provident Fund.

17. Her conduct, right from the very beginning therefore appears to be not fair at all. This Court would not have known about the filing of that Writ Application had the Counsel for the Petitioner not produced for my perusal a photo copy of the Order 16.8.2001 passed in that case i.e. WP (S) 3736 of 2001. Her attitude of receiving the amounts mentioned by herself in that Writ Petition on the one hand, and on the other, intervening in this Writ Petition and claiming that she be given preference and compassionate appointment, amounts to attempting to eat the cake and have it too. This cannot be allowed. If she is so adamant then she must give a statement of the entire amounts that she has received till date and she should be prepared to return the same. She cannot say that the Petitioner is not entitled to anything. Since there was a family settlement, in the manner stated above, then she should not frustrate that family settlement in the manner that she has opted to do in unnecessarily prolonging this matter on account of her objections/interventions.

18. In view of what has been stated above, it is held that there was no justification on the part of the Respondents in having refused to consider the case of the Petitioner on the ground that he was over age as per a Circular which related to regular appointees. There is also no justification on the part of the Intervenor applicant to unnecessarily interfere and delay the process of appointment of the petitioner, regard specially being had to the fact that she is a recipient of a substantial amount as admitted by her in her own Writ Petition being WP (S) 3736 of 2001 which was disposed off on 16.8.2001.

19. In view of the premises aforesaid, the Impugned Order dated 12.7.2001 (Annexure-8) Is therefore, set aside and the matter is remanded to the Respondent No. 2 (The Deputy Commissioner, Gumla) to pass afresh order in accordance with law taking into account the observations made above.

20. The Writ Petition is accordingly allowed. There shall however, be no Order as to costs.

21. Let the photo copy of the order dated 16.8.2001 passed in W.P. (S) No. 3736 of 2001 be kept on record.