

(2013) 01 KAR CK 0119

In the Karnataka High Court

Case No : Writ Petition No. 30227 of 2008 (S-RES)

Bandeppa Narayani

APPELLANT

Vs

The Deputy Commissioner and Others

RESPONDENT

Date of Decision : 22-01-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 309

Citation : (2013) ILR (Kar) 725

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : H.M. Dharigond, for the Appellant; Megha C. Kolekar, HCGP for R1 and R2 and Sri V.R. Datar, Advocate for R3, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Adopted father of the petitioner, Sri Revanasiddappa, who was working as a Class D employee in the office of the City Municipal Council, Bagalkot-587101, died on 15.3.2005, while in service. Petitioner submitted an application to the Chief Officer, City Municipal Council, Bagalkot, to provide him employment on compassionate ground. The said application was forwarded on 8.9.2005, to the Director, Department of Municipal Corporation, but was returned on 23.9.2005 for submission to the 1st respondent. The proposal was submitted to the 1st respondent. Upon consideration, the proposal was rejected on 9.1.2006 vide Annexure-E, on the ground that the petitioner being an adopted son, there is no provision for appointment of an adopted son, under the Rules. The petitioner having been notified of the said decision under a communication dated 13.2.2006 of the 3rd respondent vide Annexure-F, this writ petition has been filed to quash Annexures-E and F and direct the respondents to provide appointment on compassionate ground. Sri H.M. Dharigond, Learned Advocate appearing for the petitioner, firstly, contended that the petitioner being the son of the deceased Revanasiddappa and being a Class-I heir under the Hindu Succession Act, is

wholly dependent upon the income of the deceased employee. He submitted that the petitioner has passed SSLC and after the death of Revanasiddappa, has no income for livelihood and the non-grant of appointment on compassionate ground is arbitrary. Secondly, the bread earner having died while in service, the employer having sent a proposal to the 1st respondent, the same has not been considered with humanitarian angle. Thirdly, the decision taken by the 1st respondent vide Annexure-E and communicated by the 3rd respondent vide Annexure-F, is arbitrary and illegal. Lastly, the impugned decision being illegal, warrants interference.

2. Smt. Megha C Kolekar, Learned HCGP appearing for respondents 1 and 2, on the other hand contended that, appointment on compassionate ground is not a matter of right and being a policy decision, which has been brought into effect by enacting Karnataka Civil Services (Appointment on Compassionate grounds) Rules, 1996 (for short "the Rules"), was considered and decision taken in accordance with the Rules. She submitted that the definition under the Rules, "dependent of the deceased Government servant" means, his widow, son and unmarried daughter who were dependent and the definition of "family" in relation to deceased servant means, the spouse and their son or unmarried daughter, living with them. Learned Counsel submitted that the decision taken as at Annexure-E and communicated vide Annexure-F, is neither arbitrary nor illegal, warranting any interference.

3. Sri V.R. Datar, Learned Advocate appearing for 3rd respondent, submitted that the application of the petitioner was forwarded to the 1st respondent and that the decision of the 1st respondent was conveyed to the petitioner vide Annexure-F.

4. Perused the writ petition record and considered the submissions made by the Learned Advocates appearing for the parties. The point for consideration is, whether the rejection of the claim of "an adopted son" for appointment on compassionate ground is justified?

5. It is well settled by catena of decisions of the Apex Court that, appointment on compassionate grounds is an exception to the Constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India and that appointment cannot be claimed by way of inheritance. It is appropriate to notice the ratio of the decision in the case of Steel Authority of India Ltd. Vs. Madhusudan Das and Others, wherein, it has been held as follows:

15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz., that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme must be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all

eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.

(emphasis supplied)

6. In the case of I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, it has been held as follows:

6. An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the Police Department.

7. Public employment is considered to be a wealth. It in terms of the constitutional scheme. cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with.

Emphasis supplied.

7. In the case of National Institute of Technology and Others Vs. Niraj Kumar Singh, it has been held as follows:

16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder.

Emphasis supplied.

8. In the case of State of Jharkhand and Others Vs. Shiv Karampal Sahu, the Apex Court has held as follows:

11.....Appointment on compassionate grounds, it is trite, must be made keeping in view the provisions contained in Articles 14 and 16 of the Constitution of India. Such Schemes cannot be given an expansive meaning as the constitutional scheme envisages that all persons who are entitled to be considered for appointment would be eligible for being considered therefor. Any policy decision for appointment on compassionate grounds must, therefore, receive a strict construction.

Emphasis supplied.

9. In the case of Regional Director, Employees' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries, it has been held as follows:

10.....We do not doubt that beneficial legislations should have liberal construction with a view to implementing the legislative intent but where such beneficial legislation has a scheme of its own there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

Emphasis supplied.

10. In the case of Deepal Girishbhai Soni and Others Vs. United India Insurance Co. Ltd., Baroda, it has been held as follows:

53. Although the Act is a beneficial one and, thus, deserves liberal construction with a view to implementing the legislative intent but it is trite that where such beneficial legislation has a scheme of its own and there is no vagueness or doubt therein, the Court would not travel beyond the same and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered thereby.

Emphasis supplied.

11. In the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, it has been held that the request for compassionate appointment has to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

12. In the case of State of Gujarat and Others Vs. Arvindkumar T. Tiwari and Another, it has been held as follows:

8. It is a settled legal proposition that compassionate appointment cannot be claimed as a matter of right. It is not simply another method of recruitment. A claim to be appointed on such a ground, has to be considered in accordance with the rules, regulations or administrative instructions governing the subject, taking into consideration the financial condition of the family of the deceased. Such a category of employment itself, is an exception to the constitutional provisions contained in Articles 16, which provide that there can be no discrimination in public employment.

Emphasis supplied.

13. In the case of P.C. Sreeram Vs. State of Karnataka and others, Rule 3 (3) of the Rules, was sought to be struck down on the ground that the exclusion of "adopted son" for consideration for appointment on compassionate grounds is arbitrary. Noticing that sub-Rule (3) of Rule 3 excludes an adopted son or daughter for consideration of appointment on compassionate grounds, it has

been held as follows:

Any person adopted may succeed to the estate of the deceased under the personal law, but this itself will not entitle him to get an appointment on compassionate grounds. Therefore, if the adopted son or a daughter is excluded from consideration, it cannot be said that there is any arbitrariness in framing the Rules. Further, the learned Counsel for the petitioner also is not able to satisfy, how the said rule is arbitrary.

Emphasis supplied.

14. In the case of Sujeethkumar D. Ghatke Vs. State of Karnataka and Others, brother of the appellant had died while in service and the appellant filed an application for appointment on compassionate grounds, since, a brother could claim appointment on compassionate grounds as per Government Instructions No. DPAR 30 SSR 84, dated 22nd August, 1985. The application was rejected on 25.2.1997, on the ground that a brother was not entitled for appointment on compassionate grounds, in view of the provision of the Rules. The Division Bench has held as follows:

5. Appointment on compassionate ground is not a matter of right. It is for the legislature to make a provision as to who out of the members of the family can be given appointment on compassionate grounds. The legislature has defined the "Family" of the deceased Government servant to be his/her spouse, their son and unmarried daughter, who are living with them. Accordingly, the definition of the "Dependent" entitled for appointment on compassionate grounds has been restricted to the widow, son and the unmarried daughter living with the deceased employee. The challenge to the said rule as being discriminatory has no force. Brother of the deceased Government servant cannot put himself at par with the widow, son or unmarried daughter of a deceased employee.

Emphasis supplied.

Further, It was observed that, even all Class-I heirs have not been included in the definition of "Family" and "Dependents" in the Rules and it was held that, restricting the appointment on compassionate grounds to some of the Class-I heirs who were immediately dependent and living with the deceased employee is a reasonable classification based on an understandable and discernible criteria. The exclusion of brother for giving appointment on compassionate grounds was held as neither discriminatory nor unreasonable and otherwise also, being a policy matter, Courts should not interfere in such matters.

Rule 3 of the Rules being relevant, the same reads as follows:

3. Eligibility for appointment:- (1) Appointment on compassionate grounds under the rules shall not be claimed as a matter of right and shall not be given as a matter of course.

(2) x x x

(3) An adopted son or daughter of a deceased Government servant shall not be eligible for appointment under these rules.

In view of the said provision specifically making "an adopted son or daughter" of deceased servant not eligible for appointment on compassionate grounds and also the enunciation of law by the Apex Court and this Court, in the decisions noticed supra, and as an expansive meaning cannot be given and the Rule should be strictly interpreted, the decision taken by the 1st respondent, vide Annexure-E and conveyed by the 3rd respondent, vide Annexure-F, is neither arbitrary nor illegal. An adopted son having not been included in the definition of Rule 2(1)(a) and (b) of the Rules and in view of the ineligibility as per sub-Rule (3) of Rule 3, noticed supra, the rejection of the claim of the petitioner for appointment on compassionate ground is justified.

In the result, Writ Petition being devoid of merit, is dismissed with no orders as to costs.