

**(1994) 06 KAR CK 0020**  
**In the Karnataka High Court**  
**Case No : Writ Petition No. 10149 of 1994**

Basavaraj Fakirappa Manvi

APPELLANT

Vs

Managing Director, KSRTC

RESPONDENT

**Date of Decision :** 28-06-1994

**Acts Referred:**

Constitution of India, 1950 — Article 226, 39A

**Citation :** (1994) ILR (Kar) 2020 : (1994) 3 KarLJ 60

**Hon'ble Judges :** H.N. Tilhari, J

**Bench :** Single Bench

**Advocate :** Sudhakar Pai and Ravi B. Sabhahit, for the Appellant; S.V. Jagannath, Adv., for the Respondent

**Final Decision :** Allowed

## Judgement

H.N. Tilhari, J.—By this Petition under Article 226 of the Constitution, the petitioner has sought the relief in the nature of Writ of Mandamus being issued in his favour directing the respondents to appoint, the petitioner on compassionate ground for the appropriate post in K.S.R.T.C., and for issuance of such other Writ, Order or Direction in the ends of Justice demand.

2. In this case appearance has been put on behalf of the respondents by Sri S.V. Jagannath, an Advocate of this Court. No counter affidavit has been filed in this case. The factual position appears to be admitted, which appears from the Writ Petition, According to the petitioner's case the father of the petitioner namely Sri Fakirappa Manvi was working as a Traffic Controller in K.S.R.T.C., Sirsi Division, Sirsi, Uttara Kannada District. According to the petitioner's case the above mentioned petitioner's father while in service had died on December 6, 1990, leaving behind him, his widow and 4 sons. The petitioner claims to be the eldest son of deceased Fakirappa Manvi and alleged that he has been shouldering the responsibility of looking after his widowed mother and two younger brothers that had fallen on his shoulders on the demise of his father Sri Fakirappa Manvi. Petitioner's case is that his father died while in service and as such he has been

entitled to claim and to get an appointment in K.S.R.T.C., on compassionate ground. The petitioner has stated that he has completed B.Com., Degree Course from Karnataka University in the year 1984-85. The petitioner further alleged to have completed Kannada and English Typing course and that he had also undergone Apprenticeship in D.M.E., Section of K.S.R.T.C., Sirsi Division. The petitioner has further averred that petitioner's mother i.e., the widow of Sri Fakirappa Manvi (deceased) made a representation to the respondents seeking appointment of the petitioner, being the eldest son of the deceased on compassionate ground. But the Regional Manager, K.S.R.T.C., Hubli Division, refused to grant appointment to the petitioner vide., endorsement date 24-6-1992 for the reason as mentioned in the endorsement that second son of the deceased i.e., the younger brother of the petitioner namely Ashok Fakirappa Manvi was in service though it is mentioned therein that Ashok Fakirappa Manvi had been appointed in the life time of the father Fakirappa Manvi on the basis of his selection on merits. The petitioner had annexed the copies of death certificate and the marks card for B.Com., Examination as Annexure-A and 8 to the Petition and the copy of the representation made by the mother of the petitioner has been annexed as Annexure-C to the Writ Petition. The endorsement of the respondent dated 24-6-92 has also been annexed as AnnexureD to the Writ Petition. According to the petitioner's case Ashok Fakirappa Manvi - the second son of the deceased employee had been appointed in the life time of deceased employee Fakirappa Manvi and on the ground of his merits or on the basis of his selection on merits. It has been averred that Ashok Fakirappa Manvi is living separately with his wife and children i.e., Ashok Fakirappa Manvi was major and was earning as an independent person standing on his own legs, at the time of the demise of his father Fakirappa Manvi. The petitioner has also annexed the copy of the Official Memorandum dealing with the subject of appointment on compassionate ground and it has also been stated that the petitioner and his mother have been making representations after representations to the respondents claiming petitioner's appointment on compassionate ground and it has also been mentioned that by communication letter dated 29-2-1992, the Minister for Transport and Wakf Board, of the State of Karnataka had directed the concerned official to take appropriate action, but the respondents failed to take any action and they were avoiding the claim of the petitioner on one pretext or other. The petitioner thereafter gave a legal notice to the respondents on 4-1-1994 and then by letter dated 8-3-1994 the respondents replied the petitioner and brought to the notice of the petitioner that since a younger brother of the petitioner had already been working in K.S.R.T.C., the petitioner's case under "Dying in Harness Scheme", could not be considered for appointment on compassionate ground, as appointment under such Scheme can be provided only once as to one member of the family of an employee dying in harness if no other member of his family is employed in Class-III or !V post. The copy of the letter dated 8-3-94 had been annexed by the petitioner as Annexure-G to the Writ Petition. The petitioner appears to have taken cause of action for filing this Petition on the basis of this letter dated 8-3-94, Annexure-G to the Writ Petition.

3. I have heard Sri M. Sudhakar Pai, learned Counsel for the petitioner as well as Sri S.V. Jagannath, Counsel for respondents at some length.

4. The document Annexure-D is in Kannada language. But learned Counsel for both sides indicated that by this document it was provided that no appointment on compassionate ground under the Rule could be given to the petitioner as his brother i.e., one of the sons of the deceased Fakirappa Manvi is already in appointment. So I have proceeded to decide the Petition on the basis of exposition in English Trade, by the learned Counsel for the parties about the nature and contents of the document, as agreed and undisputed amongst them.

5. Annexure-G which is dated 8-3-1994 and which is a communication from the Karnataka State Road Transport Corporation in reply to the legal notice received by it from the petitioner's Counsel dated 4-1-94. This document which is in English clearly provides that the petitioner cannot be granted appointment on compassionate ground, simply because of the death of his father, as on compassionate ground such appointment can only be provided once and to one of the member of the family only and since another son of Fakirappa Manvi - deceased, is already in the appointment of the K.S.R.T.C., and that the petitioner has been issued an endorsement dated 24-6-92 duly informing him about the reason why he cannot be appointed on compassionate ground. So this document per se reveals the contents of the endorsement dated 24-6-92 and there appears to be no difference in what is communicated by the learned Counsel for the parties as to the contents of Annexure-D dated 24-6-92.

6. Sri Sudhakar Pai, learned Counsel for the petitioner submitted that the petitioner has been illegally refused appointment on compassionate ground. He has submitted that there is no such provision to the effect that if a son, of a deceased employee has been appointed and had secured employment on the basis of selection on merits, during the life time of such deceased, in the Transport Corporation, the dependents of the deceased cannot claim appointment on the ground of Dying in Harness Scheme. He further submitted emphatically that the authorities i.e., respondents have illegally refused to grant the petitioner's claim. On behalf of the respondents Sri S.V. Jagannath, learned Counsel for the respondents submitted that the Dying in Harness Scheme and appointment under such Scheme on compassionate ground is the Social Welfare Legislation and its purpose is to distribute the benefits of the Scheme to the needy persons and to help the family or dependants whose Kartha or bread feeder dies all of a sudden. But in the present case one of the sons of Fakirappa Manvi had been employed at the time of the death of Fakirappa Manvi and therefore, the petitioner's family cannot be said to be one of losing a bread feeder. So if the authorities refused to grant the benefit of appointment on compassionate ground to the petitioner under Dying in Harness Scheme, the authorities did not commit any error of law or error of jurisdiction and therefore, the petitioner is not entitled to the relief claimed. Sri S.V. Jagannath further submitted that the Petition is delayed one, as the petitioner's father had died on

6-12-90 and the application filed by the mother of the applicant for appointment of the petitioner on compassionate ground has been rejected on 24-6-92, While the present petition has been filed on April 6, 1994 i.e., almost two years from the date of rejection of the application and as such on the simple ground of laches and delay the Petition should be dismissed as well.

7. Submitting the rejoinder, the petitioner's Counsel submitted that there have been no laches and they had been approaching the authorities time and again with hopes and expectations that good sense may prevail and particularly in view of the fact that the Minister for Transport had also directed the concerned authorities to take appropriate action in the matter of appointment of petitioner on compassionate ground. The petitioner's Counsel stated in. his rejoinder that the petitioner gave a registered notice to the authorities as a last resort for removing the petitioner's grievance and for getting the employment on compassionate ground under Dying in Harness Scheme. This notice was given on January 4, 1994 and that the respondents gave reply vide - its letter dated 8-3-94, that since younger brother of the petitioner i.e., younger son of deceased employee Fakirappa Manvi has already been in employment on the date of the death of Fakirappa Manvi, the petitioner's appointment on compassionate ground could not be considered and he could not be appointed, under Dying in Harness Scheme on compassionate ground. When this claim had been rejected finally by a reply dated 8-3- 94, the petitioner approached this Court by filing the Writ Petition under Article 226 of the Constitution of India. The petitioner's Counsel further submitted that in the matter of social welfare legislation and matters coming for enforcement of social welfare legislation and Policies as well as Schemes enunciated by the State, technicalities should not be allowed in the ordinary course to hamper the course of Social Justice to the weaker section and to the needy person.

8. I have considered the contentions of the learned Counsel for the parties and have applied my mind to the material on record. Delay in filing the Writ Petition in the circumstances of the case cannot be considered to be delay or the facts indicate that the petitioner nor the mother of the petitioner had gone to slumber, instead have been active in pressing the demand for petitioner being given the benefit of the Scheme. Lastly a legal notice in consultation with the Counsel had been given on 4-1-94 and the final reply thereto was given by the respondents as is contained in Annexure-G, which is dated 8th March, 1994. The petitioner thereafter having been advised, filed this Petition. Keeping in view the Social Welfare Scheme or the benefits thereof extended to meet the social problems created by the calamities, such as the death of an employee during harness, the benefits thereof, in my opinion, should not be denied to the heir if he is otherwise eligible and should not be refused on the ground that there has been some delay and particularly when it appears that the petitioner had not gone to slumber instead he has been active, otherwise technicalities may frustrate the course of Social Justice. We have to take note of constitution of Social Welfare Schemes and the Preamble of the Constitution which provides and assures and ordains to

secure to all its citizens Justice - social, economic and political. In my view, technicalities should not be allowed to hamper the course of the flow of Justice or to frustrate the very objectives of the socialistic society and the course of Social Justice. When I so opine, I find support from the provisions of Part-IV, of the Constitution that are contained under the Head "Directive Principles of State Policy". No doubt Directive Principles of State Policy may not have been enforceable by issuance of Writ, Orders or Directions in the nature of various Writs, but are of importance in governance of Country and play important role in revealing and explaining the objectives, goals, modes and means to attain the same in the light of other provisions of Constitution, in particular those contained in Parts III and IVA as well have to be kept in view. Article 39A of the Constitution of India, deals with the question of Justice and provides as under :-

"39A. Equal justice and free legal aid. - The State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

9. Keeping this provision of the Directive Principles of State Policy, if delay has not been on account of slumber or negligence of applicant and if some delay has taken place due to the reason of adopting even wrong or mistaken course if making representations after representations, in the absence of due and proper advice, the citizens are not to be deprived of the Justice, social or economic or otherwise, they are entitled or found to be entitled to get and in such a case none should be denied the relief, unless laches are unexorable and unexplained by facts. Thus in my opinion, the objection of the learned Counsel for the respondent to the effect that there has been some delay and the Petition has to be dismissed on account of delay is without substance, because here it is not a case where it can be said that the petitioner had been negligent in pursuing his case.

10. After having disposed of the preliminary objection, which was the second point of argument in defence on behalf of the respondents, I proceeded to consider, whether the petitioner is entitled to get the relief as claimed on the basis of the social or Employees Welfare Scheme of Dying in Harness. Annexure-E to the Writ Petition is the Official Memorandum issued by the Government of Karnataka on August 22, 1985. I have got it read over by the learned Counsel for the petitioner entirely. The Scheme is for providing employment or appointment to the wife or son or a daughter or a near relative of a Government servant who dies while in service. It has got objectives. The objective of the Scheme is to provide the family, particularly the dependants of the deceased employee or deceased servant economic assistance to the dependants of a deceased employee to meet the calamity that is caused by the sudden death of the bread earner of the family, I may quote from the Memorandum a portion which reads.-

"Government would like to impress on all the authorities concerned that in most

cases the family of the deceased Government servant needs some immediate economic assistance after the sudden death of the Government servant while in service and therefore unless prompt action is taken on the application, the objective of rendering immediate economic assistance when the family needs it most is defeated. It should therefore, be the endeavour of all concerned to issue appointment orders within 3 months from the date of receipt of the application, if the applicant fulfills the conditions of eligibility under the rules of recruitment."

11. As I have mentioned earlier, it has nowhere been provided that if one of the sons of the deceased had been in employment at the time of the death of the Government employee, the dependants of the deceased or those who have been depending on the deceased at the time of his death or atleast one of them should not be provided with the benefit of the Dying in Harness Scheme. Merely because one of the sons of the deceased had been in employment under the Transport Corporation and had been employed because of selection on merits, during the life time of said deceased employee, independently the dependents of an employee dying in harness or atleast one of such dependants should be deprived of assistance on that ground does not stand to reason. In my opinion the opposite parties have wrongly deprived the dependants of their right, which they were entitled to under the Scheme known as Dying in Harness Scheme. "Family" expression under Service Law has been defined ordinarily to mean and include a unit as consisting of the Government servant, his wife and the dependant children, including dependant daughters. If a son who is major, who is employed is earning his bread having his small family separately, particularly an independent son cannot be considered to be a member of the family and the employee dying in harness the question has got to be considered in the light of the situation prevailing in the family, that the dependants i.e., the widow and the dependant children definitely would require economic assistance to meet the calamity which is caused by the sudden death of the bread earner. A perusal of para-2 of the Scheme Annexure-E fortifies my opinion as well.

12. Having thus considered i am of the opinion that in the present case, the ground on which the petitioner's representation has been rejected that one of the sons had been in employment at the time of the death of Sri Fakirappa Manvi, the petitioner is not entitled to get the benefit of the Scheme known as Dying in Harness Scheme, the same is based on misconstruction and misapplication of the Scheme or it is the result of failure to understand the Scheme and the Rule and therefore opposite parties committed jurisdictional error and error of law in depriving the petitioner of the benefit of the Scheme has illegally refused to discharge the obligation.

13. I may point out at this stage that the opposite party has complained the petitioner coming in delay to this Court. But I am unable to understand as to why they took 11/2 years time to dispose of that application dated 18-12-80 by rejecting the prayer for appointment in June, 1992, by Annexure-D to the Writ Petition and particularly when death had taken place on 6-12-1990, therefore if

the petitioner had been approaching making representations after representations, why they did not apply their mind to the object of the same. Anyway as has been emphasised above by that Memorandum and also Their Lordships of the Supreme Court have emphasised that delay in the disposal of the claim for appointment on compassionate ground is improper, which results in failure of the very object of the Scheme. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread earner in the family - See : Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others,

14. Thus considering the matter as mentioned above, In my opinion, the petitioner's claim deserves to be allowed and the Writ Petition deserves to be allowed. Before parting with this case, t may point out that there should be no excuse for the Department to say that there are no posts available now. It will not be open to the opposite parties to say that no posts are available for which the petitioner may be said to be qualified. According to the Official Memorandum appointments for the posts commensurate with the merits have to be given and only in the lowest grade of "C" grade posts or in posts under "C" group and if necessary supernumerary post for the time being may be created for that purpose in view of the law laid down in Sushma Gosain's case supra. Thus considered as above the Petition is allowed.

Let a Mandamus be issued to the opposite parties to consider the petitioner's case for appointment - keeping pace with his qualifications, merits and the Official Memorandum Annexure-E, for "C" grade post within a period of 6 weeks" from the date of service of the copy of the Order. As I have mentioned earlier, if necessary supernumerary post need be created in view of the principle of law laid down by the Supreme Court in Smt Sushma Gosain's case.