
(2002) 05 MP CK 0085
In the Madhya Pradesh High Court
Case No : Writ Petition No. 5148 of 2001

Beni Lal Bamney

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 02-05-2002

Acts Referred:

Citation : (2003) 1 MPLJ 342

Hon'ble Judges : Uma Nath Singh, J; Dipak Misra, J

Bench : Division Bench

Advocate : P.S. Das, for the Appellant; K. Menon, for the Respondent

Final Decision : Dismissed

Judgement

In this writ petition the petitioner Beni Lal Bamni, calls in question the propriety of the order dated 12-7-1999, wherein the functionaries of the Union of India have refused to entertain the prayer of the petitioner for grant of appointment on compassionate ground.

The facts as have been depicted are that the father of the petitioner died in harness on 11-2-1982. At that time the petitioner was a minor and though a job was offered to his eldest brother, he did not accept the same as he was living separately. After the petitioner attained majority he filed an application for seeking appointment, which was not acceded to by the concerned authority. Being dissatisfied he approached the Tribunal which negated the prayer by the impugned order.

We have heard Mr. P.S. Das learned counsel for the petitioner. Submission of Mr. Das is that the petitioner could not have availed the benefit or privilege of compassionate appointment at the time of his father's death but he immediately applied when he became a major and, therefore, the Tribunal has grossly erred in law by negating the prayer. The learned counsel further submitted that the petitioner has grown up in age and if an appointment is not given on the ground of belated approach it would be totally harsh.

We have perused the order passed by the Tribunal. The Tribunal has rejected the application on the ground of limitation. It is not disputed that at the time of death of the father of the petitioner he was hardly four years old. The question that arises for consideration whether the employees can be directed at this stage to confer the privilege of compassionate appointment to him. In this context we may profitably refer to the decision rendered in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, wherein the Apex Court while dealing with the object of compassionate appointment held as under:

....As a rule, appointments 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 Governments 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 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...

(Emphasis supplied)

4-A. Similar view was expressed in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, in following terms:

9. It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jadish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased

employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decisions of the High Court therefore cannot be sustained.

In the case of *Managing Director, MMTC Ltd., New Delhi v. Pramoda Dei alias Nayak*, (1997) 11 SCC 390, the Apex Court ruled thus:

...the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment, (see : *Umesh Kumar Nagpal vs. State of Haryana*). Ineligibility, incapacity or unsuitability of the person seeking employment are no doubt relevant considerations but they cannot be regarded as exhaustive. There may be other circumstances which may be relevant and can be taken into account by the competent authority for considering whether rehabilitation appointment should be given under Rule 18 of the Rules.

Yet in another decision, *Haryana State Electricity Board and another Vs. Hakim Singh*, their Lordships observed as under:

We are of the view that the High Court has erred in overstretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that the High Court would have treated the provision as a lien created by the Board for a dependant of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succour to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member.

In the case of *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, their Lordships expressed thus:

The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular

procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee. In *Umesh Kumar Nagpal vs. State of Haryana* this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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.

In view of the aforesaid pronouncement of Law, we are of the considered opinion, no relief can be granted to the petitioner. Accordingly the Writ Petition, being devoid of substance, stands dismissed without any order as to the cost.