
(1994) 08 MP CK 0007

In the Madhya Pradesh High Court

Case No : Writ Petition No. 467 of 1993

Bijli Karmachari Sangh and Others

APPELLANT

Vs

M.P. Electricity Board and Others

RESPONDENT

Date of Decision : 31-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1995) 70 FLR 304 : (1995) 2 LLJ 395

Hon'ble Judges : T.S. Doabia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

T.S. Doabia, J.—This order shall govern disposal of W.P. No.932 of 1993 (Udai Wacha Sunder v. M.P. Electricity Board and W.P. No. 1003/92 (Smt Sita Devi v. M.P. Electricity Board and Ors.) also. Facts have been taken from W.P. No. 467 of 1993.

2. This is a petition under Article 226 of the Constitution of India. One Laxman Das, father of petitioner No. 3. was in the employment of the M.P. Electricity Board. While in service, he died. The death took place on May 17, 1979. Even though the petition has been filed by three petitioners, the claim to appointment on compassionate grounds is made by the petitioner No. 3 alone. This claim is being denied by the Board on the ground that as per the policy of the Board, the benefit of appointment on compassionate grounds can be granted only to that legal heir where the deceased employee had rendered less than 15 years of service.

3. The learned counsel for the petitioners has argued that this cut off period of 15 years has no relation with the ultimate object sought to be achieved. This cut off criterion of 15 years is violative of Articles 14 and 16 of the Constitution of India.

4. The learned counsel for the respondents has tried to support the policy on the

ground that the criterion has been adopted because after an employee has rendered 15 years of service he becomes entitled to several benefits which give sufficient relief to the family of the deceased. These benefits have been described as payment made by way of ex-gratia payment and annuity etc. It is stated that the pay of an employee reaches to such a scale which is enough to sustain the family of the deceased for all times to come.

5. The contention of the learned counsel for the petitioner is that his client is to be governed by the policy as in existence at the time when the death took place and the policy coming into force after the date of death is not to govern the case of the petitioner.

6. It may be seen that the Supreme Court has laid down the conditions to be fulfilled to pass the test of permissible classification in *D.S. Nakara and Others Vs. Union of India (UOI)*, The conditions are:-

"(1) that the classification must be founded on an intelligible differential which distinguished persons or things that are grouped together from those that are left out of the group, and (ii) that the differentia must have a rational relation to the object sought to be achieved by the Statute in question."

The question as to whether this artificial distinction can be created, was considered by the Kerala High Court in *G. S. Suresh Kumar v. State of Kerala* 1992 LIC 2349. It was observed as under:-

"The objects sought to be achieved by introducing the scheme is to give employment assistance to dependants of Government servants who died in harness. Dependants of Government servants who died in harness are therefore equals in the matter of consideration for employment assistance. By classification of such persons into different categories discriminatory treatment is accorded to them."

7. Again the Allahabad High Court in *Sunil Kumar Shrivastava v. Collector/District Magistrate, Sultanpur and Ors.* 1994 (68) FLR 29, it was held as under "Dying in Harness Rule has been framed to provide employment at least to one of the dependents of the deceased public servant. The question as to whether the said Rule would be operative only w.e.f. a particular date or not can also be judged on the scale of. . Article 14 of the Constitution of India. Although the nexus of that particular date has not been challenged in the writ petition, hence I am not inclined to interfere into that field in this particular case, but I confine myself, by observing that social legislation and rule should be read in the light of its preamble and object. The object is to provide employment to dependent of a deceased employee, hence that rule should not be strictly construed if the deceased Public servant expired prior to the cut off date."

8. Apart from the fact that the cut off date fixed is violative of equality clause contained in Articles 14 and 16 of the Constitution of India, as it has no nexus with the object sought to be achieved, and the circular in question came into

existence after the death of the employee i.e., father of petitioner No. 3 in W.P. No. 463 of 1993. As such, the circular in question would not apply to the case of the petitioner No. 3.

9. Again in W.P. No. 1403/92, the employee has not completed 15 years of regular service. This is apparent from Annexure P/2. The employee was regularised with effect from March 14, 1989. As such, it cannot be said that he had completed a period of 15 years of service. As such, even on reading of the policy as it is, the petitioner in the afore-mentioned writ petition cannot be deprived of the benefit of the policy.

10. In view of the finding recorded above, that the criterion of 15 years fixed by the Board is not reasonable, the petitions are allowed and a direction is given to the respondent Board to consider the cases of the petitioners for appointment on compassionate grounds. No order as to costs. Security, if paid, be refunded.