

(2023) 08 CAL CK 0036
In the Calcutta High Court
Case No : WP.ST No. 281 Of 2013

Bina Kar & Anr.

APPELLANT

Vs

State Of West Bengal & Ors.

RESPONDENT

Date of Decision : 14-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 16(2)
Hindu Adoption and Maintenance Act, 1956 — Section 4, 5

Citation : (2023) 08 CAL CK 0036

Hon'ble Judges : Debangsu Basak, J;Md. Shabbar Rashidi, J

Bench : Division Bench

Advocate : Satyajit Mondal, Malay Dhar, Amar Nath Sen, Amit Bikram Mehata,
Tapan Kumar Mukherjee, Somnath Naskarr

Final Decision : Disposed Of

Judgement

Debangsu Basak, J

1. The issue that has fallen for consideration in the present writ petition is whether a stepson of a police personnel of Kolkata Police is entitled to compassionate appointment in the died in harness category.

2. Learned advocate appearing for the petitioners has submitted that, the mother of the petitioner No. 2 had married one Ganesh Chandra Saha and out of such wedlock, the petitioner No. 2 and his sister were born on January 23, 1981. Ganesh Chandra Saha had died on January 31, 1989. The mother of the petitioner No. 2 had married Bhola Nath Kar on June 15, 1992. The petitioner No. 2 along with his mother and sister were residing with Bhola Nath Kar till his death on August 27, 2003. Bhola Nath Kar had died in harness as a Traffic Constable under the Kolkata Traffic Police. The petitioner No. 2 had applied for compassionate appointment.

3. Learned advocate appearing for the petitioners has submitted that, the Reserve Officer, Traffic Department by letters dated December 28, 2005 and

August 6, 2008 requested the petitioner No. 2 to change his surname from "Saha" to "Kar" for the competent authority to consider the prayer for appointment on compassionate grounds. The petitioner No. 2 had applied before the West Bengal Board of Secondary Education for change of name. The petitioner No. 2 had filed a writ petition being WP No. 1617 (W) of 2009 which was disposed of on February 18, 2010 directing the President of the West Bengal Board of Secondary Education to pass appropriate decision on the application of the petitioner No. 2 dated September 4, 2008. The Secretary, West Bengal Board of Secondary Education had corrected all educational qualification certificates of the petitioner No. 2. Such corrected educational testimonials had been submitted with the authorities.

4. Learned advocate appearing for the petitioners has submitted that, the authorities had enquired as to whether the deceased employee adopted the petitioner No. 2 or not, to which the mother of the petitioner No. 2 responded. By a letter dated October 20, 2011, the authorities informed petitioner No. 2 that they regretted the inability to accede to the proposal of employment of the petitioner No. 2 on compassionate grounds without assigning any reasons in respect thereof. The petitioners had approached the Tribunal for redressal. By the impugned order dated May 16, 2013, the Tribunal had declined to grant relief to the petitioners.

5. Learned advocate appearing for the petitioners has submitted that, in the context of a state government employee, the word 'son' would include a stepson. In support of such contention, he has drawn the attention of the court to the West Bengal Service Rules, Part II (Compensatory Allowance Rules) and in particular to Rule 4 (7) thereof. He has contended that, in the Compensatory Allowance Rules, stepchildren were included in the definition of a family of a government employee. He has drawn the attention of the court to the notification bearing No. 276 (100)-EMP dated April 18, 1988 and contended that, the state government acknowledged that there was no precise definition of the terms "near relations" and 'dependants' as appearing in the department circular dated October 17, 1977 and June 19, 1978.

6. Learned advocate appearing for the petitioners has drawn the attention of the court to the notification bearing No. 97-EMP dated June 6, 2005 and the notification bearing No. 114-EMP dated August 14, 2008. He has also referred to the West Bengal Scheme for Compassionate Appointment, 2013 and to 2022 SCC OnLine SC 229 (Mukesh Kumar and another versus the Union of India and others) and contended that, a stepson cannot be denied compassionate appointment.

7. Learned senior advocate appearing for the State has contended that, the petitioner No. 2 is not the biological son of the deceased employee. The deceased employee had, during his lifetime, not adopted the petitioner No. 2 as his son. He has referred to the provisions of the Hindu Adoption and Maintenance Act, 1956 and in particular Sections 4 and 5 thereof. He has contended that, the

provisions of the Hindu Adoption and Maintenance Act, 1956 overrides other provisions of statute.

8. Learned senior advocate appearing for the State has contended that, on the death of the deceased employee, the right to sue of the deceased employee does not devolve upon the petitioner No. 2. The petitioner No. 2 cannot be construed to be an heir of the deceased employee capable of succeeding to his estate upon the death of the deceased employee.

9. Learned senior advocate appearing for the State has submitted that, the right of the petitioner No. 2 if any, can be traced from the scheme for compassionate appointment as laid down in the notification bearing No. 114-EMP dated August 14, 2008. Such scheme does not contemplate a stepson being included as a dependant member of the deceased government employee.

10. Learned senior advocate appearing for the State has referred to the contents of the impugned order of the Tribunal and contended that, there being no infirmity therein, no interference is called for.

11. The petitioner No. 2 had applied for compassionate appointment which was denied by the authorities and such decision of the authorities was upheld by the Tribunal, through the impugned order dated May 16, 2013. Compassionate appointments are exception to the general rule that, appointments in public service should be made strictly on the basis of open invitation of applications and through a transparent and declared selection process, having regard to Articles 14 and 16 of the Constitution. Compassionate appointments cannot be granted as a matter of right unless the rules governing the service of the deceased employee permit such appointments. Claim for compassionate appointment is not a hereditary right and compassionate appointment purely on the basis of descent is not permissible.

12. Existence of scheme of compassionate appointment governing the deceased employee, in the facts and circumstances of the present case, has not been disputed. Reference has been made to notification bearing No. 276 (100)-EMP dated April 18, 1988, notification bearing No. 97-EMP dated June 6, 2005, notification No. 114-EMP dated August 14, 2008 and to the West Bengal Scheme for Compassionate Appointment, 2013 with regard to entitlement for compassionate appointment. All the notifications alluded to above, have prescribed grant of compassionate appointment to the dependants of the deceased employee on fulfilment of the criteria specified.

13. The notification bearing No. 276 (100)-EMP dated April 18, 1988 has taken note of previous circulars governing the field of compassionate appointment to a son/daughter or a near relation of a government servant who died in harness or was disabled permanently or otherwise incapacitated rendering him unfit to continue to be in service any further. It had noted that, there was no precise definition of the terms "near relations" and 'dependant' as appearing in the earlier circulars. It had prescribed that each case has to be decided on its individual

merit.

14. The notification bearing No. 97-EMP dated June 6, 2005 had been issued in exercise of the powers conferred by Section 3 (c) of the West Bengal Regulation of Recruitment in State Government Establishment and Establishment of Public Undertakings, Statutory Bodies, Government Companies and Local Authorities Act, 1999. It has prescribed that for the purpose of appointment and compassionate ground in terms of the notification, a dependant shall mean spouse, a son or an unmarried daughter who was solely dependant on the earnings of the deceased or the retired employee.

15. The notification bearing No. 114-EMP dated August 14, 2008 has noted the notification No. 97-EMP dated June 6, 2005 and subsequent corrigendum and notifications issued on the subject and rescinded the same. It has restored the position which was prevailing prior to the notification bearing No. 97-EMP dated June 6, 2005, subject to the modifications and clarifications mentioned therein.

16. The notification dated August 14, 2008 has restored the position prevailing prior to the notification No. 97-EMP dated August 14, 2005, subject to such modifications and clarifications as specifically mentioned therein. The notification dated August 14, 2008 has specified that, for the purpose of appointment on compassionate grounds, a dependant of a government employee shall mean wife/husband/unmarried daughter of the government employee, who is/was solely dependant on the government employee.

17. The issue as to whether, a married daughter of the government employee was entitled to compassionate appointment in view of the various notifications and the Scheme of 2013 including the provision of the notification bearing No. 114-EMP dated August 14, 2008 has been considered by a special bench of this Hon'ble Court in 2017 Volume 4 Calcutta High Court Notes 362 (The State of West Bengal and Ors. versus Purnima Das & Ors.). It has struck down the adjective "unmarried" before the word "daughter" appearing in clause 2 (2) of the notification dated April 2, 2008. It has held that, a married daughter, dependant upon the income of the government employee, is entitled to compassionate appointment, subject to fulfilment of other criteria.

18. Clause 2 (2) of the notification dated August 14, 2008 is the same as that of clause 2 (2) of the notification dated April 2, 2008. Clause 2 (2) of the notification dated August 14, 2008 is as follows: –

"2 (2) For the purpose of appointment on compassionate ground, a dependant of a government employee shall mean wife/husband/son/unmarried daughter of the employee, who is/was solely dependant on the government employee."

19. In the facts of the present case, the petitioner No. 2 has been denied compassionate appointment on the ground that he was the stepson of the deceased employee. Clause 2 (2) of the notification dated August 14, 2008 has delineated the persons constituting the dependant of the government employee.

Wife/husband/son/daughter solely dependant on the government employee has been prescribed as persons who can be considered for the purpose of compassionate appointment.

20. In Mukesh Kumar (supra), the Hon'ble Supreme Court has considered the issue as to whether the condition imposed by the Railway Board circular that compassionate appointment cannot be granted to children born from the 2nd wife of a deceased employee was legally sustainable or not. The Hon'ble Supreme Court has noted a decision of the Calcutta High Court rendered in 2010 Volume 1 Calcutta Law Journal 464 (Namita Goldar and another versus Union of India and others) and an decision of the Supreme Court reported at 2019 Volume 14 Supreme Court Cases 646 (Union of India and Ors. versus V. R. Tripathi). It has held that, while compassionate appointment is an exception to the constitutional guarantee under Article 16, a policy for compassionate appointment must be consistent with the mandates of Articles 14 and 16. A policy for compassionate appointment, which has the force of law, must not discriminate on any of the grounds mentioned in Article 16 (2), including that of descent. It has construed the word "descent" to encompass the familial origins of a person. It has observed that, familial origins include the validity of the marriage of the parents of a claimant of compassionate appointment and the claimant's legitimacy as their child.

21. Clause 2 (2) of the notification dated August 14, 2008 has to pass the test of Article 16 (2) of the Constitution when it is used to deny the step son of a Government employee the benefit of compassionate appointment. Whether the word 'son' as used in Clause 2 (2) of the notification dated August 14, 2008 also includes a step son has to be considered.

22. Various dictionaries have described the word 'son' as follows :-

Webster's Dictionary, 1999 Edition

"1 A male child considered with reference to either parent or to both parents. 2 Any male descendant. 3 One who occupies the place of a son, as by adoption, marriage, or regard. 4 A person regarded as native of a particular country or place. 5 A male person who is characterized or influenced by some quality or thing or by a being representing some quality or character"

Black's Law Dictionary, Ninth Edition

"1. A person's male child, whether natural or adopted; a male of whom one is the parent. 2. An immediate male descendant. 3. Slang. Any young male person."

Concise Oxford English Dictionary, Eleventh Edition

"1. a boy or man in relation to his parents. A male descendant. A man regarded as the product of a particular influence or environment. 2 (the son) (in Christian belief) the second person of the Trinity; Christ. 3 (also my son) used as a form of address for a boy or younger man."

23. The word "step son" has been described in various Dictionaries are as follows :-

Webster's Dictionary, 1999 Edition

"step - combining form Related through the previous marriage of a parent or spouse, but not by blood:"

Concise Oxford English Dictionary, Eleventh Edition

"step - comb. form denoting a relationship resulting from a remarriage:"

24. Essentially, the dictionaries have described the word 'son' to be a male child of either of the parents, whether natural or adopted. One has to note that, a male child of any of the parent whether natural or adopted, finds place in the word 'son' as described by the dictionaries noted above. The dictionaries noted above have used the prefix 'step' to the word 'son' to distinguish a blood male child of a parent from one on remarriage.

25. Learned Senior Advocate for the State has accepted that an adopted son of the Government employee would come within the meaning of the word 'son' as used in Clause 2 (2) of the notification dated August 14, 2008 by virtue of the provisions of the Hindu Adoption and Maintenance Act, 1956.

26. Compassionate appointment is not a hereditary right. Therefore, recourse to the Hindu Succession Act, 1956 to determine whether the word 'son' encompasses a step son, in Clause 2 (2) of the notification dated August 14, 2008 would be inapposite.

27. The word 'dependant' of a Government employee in the context of the notification dated August 14, 2008 requires consideration. The word 'dependant' may not be limited by the contours of succession prescribed by the Hindu Succession Act, 1956 or circumscribed by the provisions of Hindu Adoption and Maintenance Act, 1956. Path of succession prescribed under the Hindu Succession Act, 1956 may not be correct index for the purpose of considering a dependant of a Government employee. Supreme Court recognized in Mukesh Kumar (supra) that, descent under Article 16 of the Constitution encompasses familial origin of a person. On the parity of such reasoning also, Hindu Adoption and Maintenance Act, 1956 should not restrict the word "dependant". Moreover, compassionate appointment is not a hereditary right. Therefore, reference to the laws of succession to construe the word 'dependant' or the word 'son' would be futile. In common parlance, son would also refer to an adopted son, an illegitimate son or a step son. It can be said, therefore that limiting the meaning of the word 'son' only to biological or adopted would be incorrect. It can be said that, of the genus 'son', 'step son' is a specie just as biological son, adopted son and illegitimate son are. In other words, the word 'son' would include step son as much as it would include biological/adopted/illegitimate son.

28. Article 16 (2) of the Constitution has enshrined that, no citizen shall on

ground only of descent, amongst others, be ineligible for or discriminated against in respect of, any employment or office under the State. The impugned memo, if construed to mean that a word 'son' is limited to the biological son of the deceased employee, then, on a given plane, such an interpretation can be said to offend Article 16 (2). Such an interpretation would limit the arena of descent through biological means only. Hindu Adoption and Maintenance Act, 1956 has recognized that, descent can also be by way of adoption and is not circumscribed by blood. The word 'son' used in Clause 2 (2) of the notification dated August 14, 2008 would therefore accommodate an adopted son who obviously may not have anything to do with biological descent. On the parity of the same reasoning therefore, the word "son' used in the notification dated August 14, 2008 would also include a step son.

29. In such circumstances, the issue that has fallen for consideration is answered in the affirmative and in favour of the writ petitioners. A step son of a Government employee would also be entitled to compassionate appointment subject to the fulfilment of other criteria.

30. The authorities had on enquiry, by a report sent under cover of a letter dated July 16, 2004 found the writ petitioner No. 2 to be in need of financial assistance and solely dependant upon the earning of the deceased employee. Petitioner No. 2 had met the financial criteria. 31. The impugned order of the Tribunal dated May 13, 2013 is set aside. The order of rejection of compassionate appointment dated October 20, 2011 is also set aside.

32. In such circumstances, the authorities will grant compassionate appointment to the petitioner No. 2 within 4 weeks from the date of communication of this order to them.

33. WP.ST 281 of 2013 is disposed of accordingly without any order as to cost.

34. I agree.