
(2014) 10 CHH CK 0021
In the Chhattisgarh High Court
Case No : Writ Petition (S) No. 2025 of 2013

Deonarayan

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 08-10-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2015) LabIC 1561

Hon'ble Judges : Navin Sinha, J;Pritinker Diwaker, J.

Bench : Division Bench

Advocate : B.P. Rao, for the Appellant; Abhishek Sinha, for the Respondent

Final Decision : Dismissed

Judgement

1. The petitioner assails order dated 29.11.2012 passed by the Central Administrative Tribunal, Jabalpur Bench, in OA No. 258 of 2012. The Tribunal declined to interfere with the order dated 25.01.2012 passed by Senior Divisional Personnel Officer, S.E.C.R., Raipur declining to grant compassionate appointment to the petitioner. The father of the petitioner was a Gangman in the Railways. He expired in harness on 19.12.2000. The petitioner applied for compassionate appointment on 10.07.2006. It was rejected on 18.12.2006. The petitioner did not challenge the same and the rejection attained finality inter parties. His cause was subsequently sought to be espoused by the All India SC/ST Railways Employees Association, Raipur. The Welfare Inspector by his file notings recommended for consideration of his case. On that basis, the Tribunal on the previous occasion in O.A. No. 681 of 2010 directed respondent No. 2 to take a final decision leading to the order dated 25.01.2012.

2. Learned counsel for the petitioner sought to persuade us that the order under challenge required interference as it relates to compassionate appointment which was a necessity and that the policy of the Railways also provided for appointment on compassionate grounds.

3. Counsel for the respondent/Railways submits that any appointment on compassionate ground can be made strictly in the terms of policy regulating the same. The order dated 25.01.2012 was well reasoned that the appointment was impermissible under the policy. The order of the Tribunal called for no interference.

4. Compassionate appointment in government service is an exception to the mandate of Article 14 of the Constitution which postulates that any appointment in government service has to be made through open advertisement selection by competition on the basis of merit. A limited exception has been carved out by compassionate appointment in case of sudden death of the bread winner, making appointment a compelling necessity with urgency to prevent the family of the deceased employee being left destitute and in penury. Any appointment on compassionate ground has therefore strictly to be in terms of the policy regulating the same. No claim for compassionate appointment can be considered contrary to the policy or even on grounds of sympathy.

5. The petitioner was born from the second marriage solemnized by the deceased during the subsistence of his first marriage, and that too without the permission of the employer or any disclosure to the employer. This act of the deceased itself amounts to a misconduct as noticed with order dated 25.01.2012. We fail to understand how a claim for compassionate appointment can be founded on an illegality and sought to be enforced by invoking the extraordinary jurisdiction of the Court under Article 226 of the Constitution of India.

6. The order dated 27.01.2012 also reveals that the first wife of the deceased made no claim for death-cum-retiral benefit and the entire payment has been made to the, petitioner's mother who is consequently receiving family pension also. It cannot be said that the petitioner was a destitute in penury and had no source of survival. Naturally, for that reason he did not consider it necessary to challenge the rejection of his application as far back as in 2006. That alone, to our mind, is sufficient to hold that appointment on compassionate ground was not a necessity for him. The fact that he survived without having to pursue matters from 2006 to 2011, when he moved the Tribunal for the first time reinforces our opinion. The order of rejection attained finality. It was a personal cause of action to the petitioner. We fail to understand how the petitioner can found a cause of action against an order which he accepted without demur merely because someone else sought to espouse his cause even while the original rejection remained in existence. The order further notices that there was no provision for reconsideration of a rejected claim.

7. The order dated 25.01.2012 rightly holds that the notings of the Welfare Inspector do not create a legally enforceable right in favour of the petitioner for fresh consideration of his case for compassionate appointment contrary to the policy framed by the Railways regulating the same.

8. There is no infirmity in the order passed by the Tribunal dated 29.11.2012

warranting interference. The writ petition being devoid of merit is dismissed.