
(2013) 02 DEL CK 0133
In the Delhi High Court
Case No : WP (C) No. 2755 of 2011

Dinesh Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-02-2013

Acts Referred:

Citation : (2013) 02 DEL CK 0133

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Kedar Nath Tripathy with Mr. H.P. Sahu, for the Appellant; Manjusha Wadhwa, Advocate for Respondent No. 1 and Mr. S.K. Taneja with Mr. Puneet Taneja, Advocate for Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—By this writ petition, the petitioner who is the son of the late Sh. Basant Lal, an employee of the respondent Nos. 2 to 4/National Hydroelectric Power Corporation Ltd. (NHPC) seeks compassionate appointment on account of death of Sh. Basant Lal while still in service. The only averments which have been made in the writ petition are that late Sh. Basant Lal while returning back from duty died near Koti Bridge on account of a land slide, since he died when he was in employment with NHPC therefore, NHPC must grant compassionate appointment to the petitioner-son. It is further pleaded in the writ petition that late Sh. Basant Lal died leaving behind Smt. Savitri Devi, widow aged about 60 years; Sh. Dinesh Kumar, son aged about 25 years; Sh. Nilesh Kumar, son aged about 20 years and Ms. Sita Kumari, aged about 21 years. It is further pleaded in the writ petition that petitioner's family is getting a monthly pension of Rs. 13,75/- from NHPC but the same is meagre and therefore compassionate appointment should be granted to the petitioner who is one of the sons of late Sh. Basant Lal. Reliance is also placed by the petitioner upon the judgment of the Supreme Court in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and para 13 thereof which reads as under:-

13. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employee's family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees' Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family-This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

2. In response, on behalf of NHPC, it is stated that there is no scheme of compassionate appointment to the members of a family of a deceased employee and the family is at best entitled to terminal benefits and pension in accordance with the rules. The family of a deceased employee may also be entitled to lumpsum payment as per the applicable scheme of NHPC which is granted provided the family does not have income of more than Rs. 1 lakh per annum. It is also pleaded in the counter affidavit that the family of the petitioner has already received from NHPC a sum of Rs. 25.31 lacs being the terminal benefits which were payable to the legal heirs on account of death of late Sh. Basant Lal. NHPC therefore contends that neither there is any policy for compassionate appointment nor the petitioner will be entitled to any lumpsum payment because the family of the petitioner is already earning more than Rs. 1 lakh per annum.

3. In my opinion, the writ petition is bound to fail for the reason that the

judgment which is relied upon on behalf of the petitioner in the case of Balbir Kaur (supra) has no application to the facts of the present case. In the judgment in the case of Balbir Kaur (supra) as per a scheme of Steel Authority of India Limited, the employer was to retain the gratuity and provident fund of the deceased employee and instead was to give monthly payment to the family of the deceased which was to be equal to the basic pay plus dearness allowance that the deceased employee would have got had he been alive and retired on superannuation.

The family of the deceased was thus not to get a lumpsum benefit but only the monthly pay plus dearness allowance. It is in these circumstances that the Supreme Court said that once there is a death in the family, there is no reason that because of grant of monthly payments, the payments towards gratuity and provident fund should not be made, and which latter payments are statutory in nature. This is stated in paras 15 and 16 of the judgment which read as under:-

15. It is upon consideration of the above noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the Provident Fund but as regards the Gratuity amount, be it noted that there is a mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death-the introduction of Family Pension Scheme by which the employee is compelled to deposit the Gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the concerned employees but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not.

16. Adverting to the Provident Fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly be deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in lump-sum and availability of this amount is the only insulating factor in such a grief stricken family. The amount is payable in one lump and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family needs some lump-sum amount but in the event of deposit of the same with the employer; the heirs of the deceased

employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation could have been otherwise.

4. The Supreme Court in the case of Balbir Kaur (supra) gave directions to give compassionate appointment because there was a prevalent scheme under which compassionate appointment could have been granted, and which was the scheme reflected in the 1982 circular of Steel Authority of India Limited. The relevant aspects in this regard are contained in paras 11,12 and 17 of the judgment which read as under:-

11. Turning on to the factual aspects once again, it is not that compassionate appointments have never been effected Steel Authority of India was in fact providing compassionate employment to one dependant of an employee dying in harness or permanently disabled. As a matter of fact on 2nd September, 1982 the respondent-Steel Authority, further issued the Circular pertaining to appointments on compassionate grounds. The Circular however for the first time introduced categorisation of compassionate employment as First Priority Cases; Second Priority Cases and Third Priority Cases. The Circular reads as below: The system of compassionate appointments was reviewed in a meeting of the Advisory Committee recently. On the lines of the discussions, the system may be operated in future as given below:

1. First Priority Cases

(a) Employment of a dependant of an employee who dies owing to an accident arising out of and in the course of employment;

(b) Employment of a dependant of an employee who dies in a road accident while on duty or while coming to or going back from duty.

The existing practice will continue.

2. Second Priority Cases i.e. employment of a dependant of an employee whose services are terminated in accordance with order 23 of the Standing Orders, i.e. on his being found permanently medically unfit for his job by the Director M & HS.

(a) Dependant of only those employees would be considered for employment on compassionate grounds whose services are terminated on the ground of being declared permanently unfit for their job before they enter 56th year of age, that is, they have a balance of at least three years of service.

(b) The minimum period of service of the employer, whose dependent is to be considered for employment, will be 10 years, as against 5 years under the existing rules.

3. Third Priority Cases i.e., Cases of death for reasons not covered under (I) above. The existing rules will continue.

The above will be subject to the following general conditions:

(i) The eligible dependants for consideration for such employment would continue to be wife/husband/son/daughter.

(ii) No employment would be provided to a second dependent, i.e., if the husband/wife or a son/daughter of the deceased or of the employee whose services are terminated on his being found medically unfit is already in employment of RSP, no employment will be provided to another dependent.

(iii) The employee covered under the 2nd and 3rd priorities-

(a) should not have been awarded a major punishment during the last 5 years of their service and

(b) should have at least good grading in the CCR for the last 3 years This has the approval of the Managing Director.

12. The requirement of such an insertion in the body of the judgment was felt expedient by reason of the introduction of the priorities and in any event special reference may be made to Clause 7.16 of the Circular which expressly records cases of death for reasons not covered under (I) above and in that event the existing rules will continue. The existing rules as a matter of fact were not prohibition of such compassionate appointments but lend affirmation to such appointments.

17. In any event as appears in the contextual facts, the NJCS Agreement being a Tripartite Agreement expressly preserves the 1982 circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and on the wake of the same we do not see any reason to deny the petitioner the relief sought for in the writ petition.

5. Therefore, the Supreme Court in the case of Balbir Kaur (supra) was concerned with grant of lumpsum amount to the family of the deceased instead of the monthly amounts which the family of the deceased would have got, and the Supreme Court also granted compassionate appointment because there was a prevalent scheme in operation for grant of compassionate appointment. In the facts of the present case however there is no scheme of the NHPC to grant compassionate appointment. The only scheme is to grant a particular lumpsum benefit, and that too if the family of the deceased does not earn more than Rs. 1 lakh per annum, and which benefit also the petitioner's family did not get because the income of the family was more than Rs. 1 lakh per annum.

6. Learned senior counsel for the respondent Nos. 2 to 4 has referred to me the letters dated 26.12.2006 & 28.12.2007 which are filed alongwith counter affidavit to show that earlier the mother of the petitioner Smt. Savitri Devi had applied for compassionate appointment, and which was denied way back in the year 2006. The petitioner was also informed the issue of denial of compassionate appointment by the letter dated 13.5.2010. The letter dated 28.12.2007 refers to the petitioner's family having received a sum of Rs. 25,31,474/- on account of terminal benefits payable on the death of late Sh. Basant Lal and also the fact as

to why neither compassionate appointment nor the lumpsum payment can be made to the petitioner or his family.

7. In my opinion, learned senior counsel for the respondent Nos. 2 to 4 has correctly referred to the judgment of the Supreme Court which is applicable to the facts of the present case and which is the case of State Bank of India and Another Vs. Raj Kumar, . The relevant paras of this judgment are paras 6 to 8 which read as under:-

6. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

7. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply. On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the Scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

8. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be

considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

(underlining added)

8. The aforesaid paras of the judgment in the case of State Bank of India (supra) show that compassionate appointment can only be granted if there is an existing policy for grant of compassionate appointment. Admittedly, there is no existing policy of NHPC for compassionate appointment. The judgment in the case of State Bank of India (supra) also makes it clear that the compassionate appointment are exceptions to general rules of appointment through the regular recruitment process. The Supreme Court has further clarified that besides the entitlement of compassionate appointment which is necessarily to be as per the scheme, the person claiming compassionate appointment must fulfil the eligibility criteria and there must be availability of posts. As already stated above, in the facts of the present case, besides the fact that there is no policy of NHPC for the compassionate appointment petitioner's family has already received Rs. 25.31 lacs as terminal benefits and is also receiving family pension in accordance with rules. Merely because in accordance with the rules the pension amount may be less cannot mean that any further benefits or reliefs can be granted to the petitioner or his family because surely pension amount is dependent on the pay scale of the deceased employee. In view of the above, since the petitioner & his family is unnecessarily seeking the course of litigation although knowing since 2006 that there is no available policy for grant of compassionate appointment, and huge amount of Rs. 25.31 lacs has been received by the family on account of death of late Sh. Basant Lal besides also receiving monthly pension, the writ petition is dismissed with costs of Rs. 15,000/-. NHPC can recover the costs in accordance with law.