

(2015) 08 JH CK 0049
In the Jharkhand High Court
Case No : LPA No. 517 of 2014

Dinesh Kumar Mahto and Others

APPELLANT

Vs

Bharat Coking Coal Limited and Others

RESPONDENT

Date of Decision : 10-08-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Evidence Act, 1872 — Section 108

Citation : (2015) 4 JLJR 473

Hon'ble Judges : Dhirubhai Naranbhai Patel and Ratnaker Bhengra, JJ.

Bench : Division Bench

Advocate : Rajendra Ram Ravi Das, for the Appellant; Indrajit Sinha and Arpan Mishra, for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This Letters Patent Appeal has been preferred by the original petitioners against the judgment and order delivered by the learned Single Judge in W.P.(S) No. 4632 of 2013 dated 10th November, 2014 whereby, the petition preferred by these appellants was dismissed and the prayer for compassionate appointment was not allowed and hence, the original petitioners have preferred this Letters Patent Appeal. Counsel for the appellants submitted that Dinesh Kumar Mahto is son of the deceased employee viz. Madhusudan Mahto, who was declared medically unfit by the opinion of Medical Board in the year 2004. He was working as Electrician in Mahuda Coal Washery Plant. It is submitted by the counsel for the appellants that he is son of second wife of the deceased employee and therefore, he applied for compassionate appointment. His father was expired on 2nd September, 2010. It is submitted by the counsel for the appellants that Madhusudan Mahto was (sic--had?) two wives viz. appellant No. 2 and appellant No. 3. Appellant No. 2 is first wife whereas, appellant No. 3 is second wife of the deceased Madhusudan Mahto and appellant No. 1 is son of late Madhusudan Mahto and appellant No. 3 and because of fact that his father was declared medically unfit in the year 2004 and later on expired

in the year 2010, appellant No. 1 should have been appointed on compassionate appointment. These aspects of the matter have not been properly appreciated by the learned Single Judge and hence, the judgment and order passed by the learned Single Judge deserves to be quashed and set aside.

2. Counsel for the respondents submitted that as per National Coal Wage Agreement, the dependent of an employee viz. Husband/wife/unmarried daughter/son/legally adopted son can get the compassionate appointment. Moreover, this appellant No. 1 is not son of first wife, he is son of second wife and therefore, he is not covered by the National Coal Wage Agreement. It is further submitted by the counsel for the respondents that the father of this appellant No. 1 was declared medically unfit in the year 2004 whereas, the petition was preferred in the year 2013 i.e. after approximately 9 years. The very purpose of compassionate appointment has been frustrated by now. Similarly, after the death of the father of the appellant No. 1, which took place in the year 2010, this petition has been preferred after three years and this aspect of the matter has been properly appreciated by the learned Single Judge and hence, this Letters Patent Appeal may not be entertained by this Court.

3. Having heard counsels for both the sides and looking to the facts and circumstances of the case, we see no reason to entertain this Letters Patent Appeal mainly for the following facts and reasons:--

(i) Appellant No. 1 is seeking compassionate appointment because of the fact that his father was declared medically unfit in the year 2004, who was serving with the respondents, and who expired in the year 2010.

(ii) It appears that appellant No. 1 is son of 2nd wife of the deceased employee, who married during the lifetime of his first wife.

(iii) It further appears that as per the National Coal Wage Agreement the dependent under the scheme is husband/wife/unmarried daughter/son/legally adopted son. Appellant No. 1 (original petitioner) is not covered by any of the categories of the dependents.

(iv) It further appears from the facts of the case that the father of appellant No. 1 was declared as medically unfit in the year 2004 and the writ petition was preferred in the year 2013 i.e. after lapse of 9 years. The death of the father of appellant No. 1 is taken place in the year 2010 and thereafter also much time has been lapsed. Thus, it appears that the very purpose of compassionate appointment has been frustrated by now. Compassionate appointment is not to be given to the dependents of the deceased employee or the employee (sic--dependants?) of the medically unfit employee at any time. The purposes of the compassionate appointment is to give immediate support to the family of the deceased employee or to the family of medically declared unfit employee. Such type of appointments viz. compassionate appointment are exception to the general rule that there ought to be a public advertisement and public at large must be allowed to compete for the public post under Article 16 to the

Constitution of India. Compassionate appointments are exception to Article 16 to the Constitution of India. When this appellant No. 1 could survive himself for 9 years after his father was declared medically unfit and also appellant No. 1 can survive for three years after the death of his father now he cannot be appointed on compassionate basis. In fact there is no legitimate right vested in the dependents to get themselves appointed on public post.

(v) It has been held by Hon"ble Supreme Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, in paragraphs 2 to 6, which read as under:--

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favorable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the

services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes-III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes-III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain vs. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes-III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class-II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class-II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class-III and Class-IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class-I Officer, should be offered appointment against a Class-III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class-I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments."

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes-III

and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

(Emphasis supplied)

(vi) It has been held by the Hon"ble Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, in paragraph 3, which reads as under:--

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education vs. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

(Emphasis supplied)

(vii) It has been held by the Hon"ble Supreme Court in the case of Santosh Kumar Dubey Vs. State of U.P. and Others, in paragraphs 10 to 13, which read as under:--

"10. Admittedly, the father of the appellant was untraceable from 1981. Without entering into and deciding the issue as to whether employment on compassionate grounds could be asked for in a case of deemed death under Section 108 of the Evidence Act, even if we assume for the sake of argument that it can be so demanded and asked for, such a right should and could have been exercised in the year 1988 and computing the period of five years therefrom the period of limitation for making an application for employment in the case of the appellant expired in the year 1993.

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death

of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died-in-harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service.

13. In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed."

(Emphasis supplied)

(viii) It has been held by the Hon"ble Supreme Court in the case of MGB Gramin Bank vs. Chakrawarti Singh, reported in (2014) 10 SCC 583 in paragraphs 6 to 9, which read as under:--

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread earner. Mere death of a government employee in-harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In Umesh Kumar Nagpal vs. State of Haryana this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under: (SCC pp. 140-41, paras 2, 4 & 6)

"2. ... 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 the post held by the deceased. ... The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

4. ... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

* * *

6. ... The consideration for such employment is not a vested right.... The object being to enable the family to get over the financial crisis"

8. An "ameliorating relief" should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The courts and the tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments."

(Emphasis supplied)

Thus, in view of the aforesaid decisions, the very purpose of the compassionate appointment has been frustrated by now because the father of this appellant No. 1 was declared medically unfit in the year 2004 whereas, the petition was preferred in the year 2013 i.e. after approximately 9 years.

(ix) Moreover, appellant No. 1 is son of 2nd wife of the deceased employee. He is not covered by the scheme floated by the respondents for compassionate appointment. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition preferred by these appellants.

As a cumulative effect of the aforesaid afore said facts, reasons and judicial pronouncements, no error has been committed by the learned Single Judge while dismissing the writ petition preferred by these appellants being W.P.(S) No. 4632 of 2013 vide order dated 10th November, 2014. We see no reason to take any other view than what is taken by the learned Single Judge. There is no substance in this Letters Patent Appeal and hence, the same is hereby, dismissed.