

(2017) 05 OHC CK 0031

In the Orissa High Court

Case No : 21648 of 2015

Dipti Ranjan Mishra

APPELLANT

Vs

State of Orissa and others

RESPONDENT

Date of Decision : 02-05-2017

Acts Referred:

Constitution of India, Article 14, Article 16 -

Orissa Civil Services (Rehabilitation Assistance) Rules, 1990, Rule 11, Rule 8(1)(d)

Citation : (2017) 05 OHC CK 0031

Hon'ble Judges : B.R. Sarangi

Bench : SINGLE BENCH

Advocate : S.R. Mohapatra, D.N. Mishra, A.K. Pandey

Final Decision : Allowed

Judgement

1. The father of the petitioner, namely, Surendranath Mishra, while working as Assistant Teacher in Somanath Vidyapitha, Jahanpur, died prematurely on 31.10.1993. On obtaining death and legal heir certificates, as well as consent/no objection from other family members, the petitioner applied in the prescribed form for compassionate appointment under the provisions of Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 (hereinafter referred to as "Rules, 1990"). As per the provisions contained in Rule-11 of the Rules, 1990, which was amended by the G.A. Department, Government of Orissa vide resolution dated 14.10.1998 (published in the Orissa Gazette on 15.10.1998), wherein it has been clearly provided that the provisions laid down in Rules, 1990 as amended from time to time shall mutatis mutandis apply to the families of the employees of the teaching and non-teaching staff of the Aided Educational Institutions under the Education Department w.e.f. 24.09.1990, the petitioner's application was forwarded to the Collector for distress certificate. On receipt of distress certificate from the Collector, the case of the petitioner was processed, but due to ban imposed by the Finance Department in its letter dated 02.02.2000, the benefit of compassionate appointment could not be extended to the family of the deceased

employee.

2. However, the restriction imposed by the Finance Department was modified and the State Government in the School and Mass Education Department issued a circular on 21.06.2011 intimating that fact. Subsequent thereto, the State Government issued another circular on 11.04.2013 that prior to issuance of appointment order in respect of such type of applicants, the appointing authorities were required to obtain necessary approval of the concerned District Education Officers. Prior to issuance of circular dated 11.04.2013, the Director had forwarded the case of the petitioner, along with similarly situated applicants, for approval, as recommended by the District Education Officer, and the same was approved by the State Government vide order dated 04.02.2013, wherein the name of the petitioner was found place at sl.no.8. But, the Director, Secondary Education, Odisha, while forwarding the list approved by the State Government vide letter dated 20.05.2013, indicated that the appointment of the candidates would be made strictly as per their educational qualification, in the school, from where the deceased employee died, and in case vacancy did not exist in the school, as per the qualification, then he would have to wait till a suitable vacancy arose in the said school. Because of such stipulation in the letter dated 20.05.2013 of the Director, Secondary Education, Orissa, Bhubaneswar, the District Education Officer refused to appoint the petitioner.

3. Mr. S.R. Mohapatra, learned counsel for the petitioner urged that the stipulation made in the letter dated 20.05.2013 by the Director, Secondary Education, Orissa to the effect that the appointment would be made strictly as per the educational qualification, in the school, from where the deceased employee died, and in case vacancy did not exist in that school, as per the qualification, then he would have to wait till a suitable vacancy arose in the said school; run contrary to the provisions contained in Rule- 8(1)(d) of Rules, 1990. It is contended that when the vacancies are available under the jurisdiction of District Education Officer, the petitioner can be appointed either against Class-III and Class-IV post befitting his qualification, as the very objective of the said Rules, 1990 is to alleviate the hardship of the family of the deceased employee. It is further contended that even though the District Education Officer vide its letter dated 11.09.2013 sought for clarification from the Director, Secondary Education regarding appointment of the petitioner, no action has yet been taken by the authorities and, thereby, since the authorities are acting arbitrarily and unreasonably, interference of this Court is warranted.

4. Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department, in inviting attention of this Court to the counter affidavit filed by the District Education Officer, submitted that the petitioner was an applicant for compassionate appointment under Rules, 1990. The Director, Secondary Education, Orissa vide letter dated 20.05.2013 issued a select of list of seven eligible candidates to the District Education Officer, Jagatsinghpur for appointment under Rules, 1990 wherein the petitioner's name was found place

at sl.no.1, but in view of the condition stipulated in paragraph-1 of the said letter that the appointment of the candidates would be made strictly as per the educational qualification, in the school, from where the deceased employee died and in case vacancy did not exist in that school, as per the qualification, then he would have to wait till a suitable vacancy arose in the said school. Because of the said condition, even though the petitioner's name had been recommended by the Director, the District Education Officer could not have issued any appointment letter in favour of the petitioner, as no vacancy was available in the school, where the father of the petitioner was rendering service at the time of death. But, subsequently, the District Education Officer sought for clarification on 11.09.2013 from the Deputy Director, so far as the appointment of the petitioner is concerned, vide letter dated 10.12.2015, on receipt of which, the Director, Secondary Education, Orissa, instructed to the District Education Officer to follow the prevailing Government circular dated 03.08.2015. Consequentially the District Education Officer issued a letter of request to the petitioner to attend his office for verification of certificates and further follow up action. Subsequently, on 22.12.2015 the District Education Officer received clarification from the Director, Secondary Education Orissa, wherein it was stated that the petitioner would be engaged against Class-IV post on contractual basis in any aided High School as per the prevailing Rules following the instructions dated 31.12.2014 of the G.A. Department and letter dated 03.08.2015 of the School and Mass Education Department. But, the petitioner claimed for regular appointment against a Class-III post as per the prevailing Rules, as well as the instructions of the Director, Secondary Education, no steps could be taken for giving such appointment to the petitioner, though there was willingness to give contractual appointment to the petitioner against a Class-IV post.

5. Heard Mr. S.R. Mohapatra, learned counsel for the petitioner and Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department, and perused the records. Pleadings between the parties having been exchanged, with the consent of learned counsel for the parties, this writ petition is disposed of finally at the stage of admission.

6. The undisputed fact being that the petitioner submitted application in prescribed form for compassionate appointment as per Rules, 1990 due to premature death of his father while in employment. The application of the petitioner was considered, but the benefit of compassionate appointment could not be extended to him in view of the instruction issued by the Director, Secondary Education to the District Education Officer vide letter dated 20.05.2013 that the appointment of the petitioner would be made strictly as per the educational qualification, in the school, from where his father died and in case vacancy did not exist in that school, as per the qualification, then the petitioner would have to wait till a suitable vacancy arose in the said school. Due to non-availability of vacancy, correspondences were made and ultimately instruction was issued by the Director that the case of the petitioner would be considered as per the prevailing Government Rules. Accordingly, the case of the

petitioner was taken up for consideration and he was called upon to join against a Class-IV post on contractual basis, which was not befitting to his qualification. As there was delay on the part of the authorities in giving regular appointment to the petitioner in consonance with Rules, 1990, finding no other way out, he approached this Court by filing the present petition.

7. No doubt, compassionate appointment is an exception to the general rule that appointment to public service should be on merits and through open invitation. In such cases, the appointment is given to a member of the family of the deceased employee by accommodating him in a suitable vacancy. Compassionate appointment must be in consonance with the constitutional scheme of equality enshrined in Articles 14 and 16 of Constitution of India.

8. In *Haryana State Electricity Board v. Hakim Singh*, (1997) 8 SCC 85, the apex Court explained the rationale of the rule relating to compassionate appointment, which is reproduced below: "The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succor to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment." Similar view has also been taken by the apex Court in *State of U.P. v. Paras Nath*, (1998) 2 SCC 412, and *Commissioner of Public Instructions v. K.R. Vishwanath*, (2005) 7 SCC 206.

9. In *Sushma Gosain v. Union of India*, (1989) 4 SCC 468, the apex Court pointed out that the purpose of providing appointment on compassionate grounds is to mitigate the hardship due to death of the bread earner in the family and that such appointment should, therefore, be provided immediately to redeem the family in distress.

10. In *Director of Education v. Pushpendra Kumar*, (1998) 5 SCC 192, the apex Court explained the purpose of compassionate appointment and pointed out its exceptional nature and the need to take care that its application did not interfere with the right of other persons who are eligible to seek employment.

11. In *Balbir Kaur and another v. Steel Authority of India Ltd. and others*, AIR 2000 SC 1596 it is categorically held that 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. This being the reasons assigned, compassionate appointment can be granted to a member of the deceased family.

12. In *Umesh Kumar Nagpal v. State of Haryana*, (1994) 4 SCC 138, the apex Court laid down the principles relating to compassionate appointment in clear and emphatic language, which is reproduced below:-

"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 dependents 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 dependents 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 Class 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 favourable treatment given to such dependent 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."

13. In *Govind Prakash Verma v. LIC of India*, (2005) 10 SCC 289, the apex Court held that compassionate appointment is recompense over and above whatever is admissible to the legal representatives of deceased employee as benefits of service which they get on death of the employee.

14. Keeping in view the law laid down by the apex Court, as discussed above, and applying the same to the present context, it can be said that non-extension of benefit to the petitioner was in gross violation of the mandate of law, and the conditions imposed that, unless the vacancy was available in the school where the father of the petitioner was rendering service, the benefit could not be extended, is absolutely misconceived restriction imposed by the authority concerned, which cannot sustain in the eye of law.

15. It is of relevance to note that vide order dated 15.03.2016 this Court directed the petitioner to file an affidavit indicating the vacancy available in Class-III post, which was befitting to his qualification. In compliance thereof, the petitioner on 18.03.2016 filed an affidavit, wherein it has been specifically indicated that there was vacancy of a Class-III post in Uttareswar High School at Podaruan in the district of Jagatsinghpur. Mr. A.K. Pandey, learned Standing Counsel for the School and Mass Education Department, on having obtained instruction, also produced letter no.2902 dated 16.03.2016 addressed to the Sr. Standing Counsel by the District Education Officer, wherein it has been specifically stated that one post of Class-III is lying vacant in Uttareswar High School at Podaruan, and two Class-IV posts are lying vacant in HMT, Vidyapitha, Chikinia and Gopabandhu Utkalmani B.P. Naharana each. Thus, on the face of the above information, it cannot be said that there was no vacancy available under the District Education Officer, Jagatsinghpur.

16. In such view of the matter, since there is vacancy available in Class-III post in Uttareswar High School at Podaruan, there will be no impediment on the part of the authority concerned to consider the case of the petitioner for compassionate appointment as against such post, which will be befitting to the qualification of the petitioner. Therefore, this Court is of the considered view that against the vacancy available in Class-III post under the District Education Officer, Jagatsinghpur, the case of the petitioner for compassionate appointment under Rules, 1990, should be considered favourably and he should be given employment in order to meet the hardship of his family caused on account of death of the sole bread earner of the family. Such consideration and consequential appointment thereof shall be made within a period of three months from the date of communication of this judgment and order.

17. The writ petition is accordingly allowed to the extent indicated above. No order to cost.