

(2014) 03 JH CK 0085
In the Jharkhand High Court
Case No : L.P.A. No. 160 of 2013

Harendra Narayan Verma

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-03-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 2 JLJR 177

Hon'ble Judges : R. Banumathi, C.J;S. Chandrashekhar, J

Bench : Division Bench

Advocate : Manoj Tandon, Advocate for the Appellant; Nehala Sharmin, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Being aggrieved by order dated 15.3.2013 passed in Civil Review No. 12 of 2012 alongwith Contempt Case (Civil) No. 765 of 2011, the appellant has approached this Court. The brief facts of the case are that, the mother of the appellant died-in-harness on 10.5.2010 and his father superannuated from service on 31.8.2010. The appellant submitted an application dated 22.9.2010 seeking appointment on compassionate ground. The application of the appellant was forwarded on 30.12.2010 and finally recommendation for appointment of appellant on Class-III post was made in the meeting held on 28.2.2011 of District Compassionate Committee. The said decision was communicated to all concerned on 11.3.2011. However, when no offer of appointment was made to the appellant, the appellant approached this Court by filing W.P. (S) No. 5100 of 2011, which was disposed of by order dated 21.9.2011 directing the authorities to appoint the appellant on a Class-III post. Thereafter, the State of Jharkhand preferred Civil. Review No. 12 of 2012 challenging the order passed by learned Single Judge in W.P. (S) No. 5100 Of 2011. In the meantime, the appellant preferred a contempt petition, being Cont. Case (Civil) No. 765 of 2011. Both the cases, Civil Review No. 12 of 2012 and Cont. Case (Civil) No. 765 of 2011, were

heard together and disposed of by common order dated 15.3.2013.

2. Learned counsel for the appellant submitted that on perusal of circular dated 5.10.1991 indicates that dependent of a person who died-in-harness would be entitled for appointment on compassionate ground. Clause 1(d) of the circular dated 5.10.1991 though provides that no compassionate appointment of a dependent in case both the parents were in Government service would be made. The learned counsel for the appellant submitted that the circular dated 5.10.1991 does not indicate the relevant date on which applications seeking appointment on compassionate ground has to be considered more particularly, when in the present case as on the date when the application seeking compassionate appointment was preferred by the appellant on 22.9.2010, the mother of the appellant had died and the father of the appellant had also superannuated from service.

3. Learned counsel for the respondent-State of Jharkhand submitted that at the time when appellant submitted application seeking appointment on compassionate ground, the appellant did not disclose that his father was in Government service and therefore, in the proceedings of District Compassionate Committee, held on 28.2.2011, his name was recommended. However, when this fact came to the knowledge of the authorities, in the proceeding held on 24.5.2011, a decision was taken to get the matter inquired into and in the proceeding held on 28.6.2011 the claim of the appellant for appointment was rejected. Learned counsel for the respondent-State of Jharkhand has thus submitted that as on the date when the mother of the appellant died, since the father of the appellant was in service, the appellant was not entitled for compassionate appointment in terms of circular dated 5.10.1991.

4. We have heard Mr. Manoj Tandon, learned counsel appearing for the appellant and Ms. Nehala Sharmin, learned counsel for the respondent-State.

5. Clause 1(d) of the circular dated 5.10.1991 reads as under:--

6. From perusal of clause 1(d) above, on which learned counsel for both the parties placed reliance, it appears that the benefit under circular dated 5.10.1991 for compassionate appointment would not be extended to the dependents of a family, in which, both husband and wife, were in Government Service, even though one has died-in-harness. Learned counsel for the appellant submitted that the said clause does not indicate that claim of the dependent would not be considered even if one of the parents had retired. In the present case, the date on which the application was submitted by the appellant neither his mother nor his father was in Government service.

7. On a plain reading of clause 1(d) it appears that the said clause intended not to extend the benefit to a dependent in the family in case both the spouses were in Government service. Moreover, the cause of action for claiming compassionate appointment arose in the present case, on 10.5.2010 when mother of the appellant died-in-harness and as on 10.5.2010, the father of the appellant was in

service and accordingly, the appellant was not entitled for benefit for compassionate appointment under Circular dated 5.10.1991.

8. It is well settled that the compassionate appointment is an exception to Articles 14 and 16 of the Constitution of India and it is not a mode of appointment. The Hon''ble Supreme Court in the case of State of Haryana and Another Vs. Ankur Gupta, held as under:--

6. As was observed in State of Haryana v. Rani Devi it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent on the deceased employee. Strictly, this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in-Harness Scheme cannot be made applicable to all/oil types of posts irrespective of the nature of service rendered by the deceased employee....

9. In this regard, the Hon''ble Supreme Court in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, has further held as under:--

15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

10. From the counter affidavit filed on behalf of respondent-State of Jharkhand we find that on reconsideration the claim of the appellant seeking compassionate appointment has already been rejected by the District Appointment Committee proceeding dated 28.6.2011. In view of circular dated 5.10.1991, the learned Single Judge has rightly reviewed the order, passed in W.P. (S) No. 5100 of 2011, as the said order passed in W.P. (S) No. 5100 of 2011 did not take notice of the circular as well as proceeding dated 28.6.2011. We find no infirmity in the order passed by the learned Single Judge reviewing the order passed in W.P. (S) No.

5100 of 2011. Therefore, this Letters Patent Appeal is dismissed.