
(2015) 01 JH CK 0104
In the Jharkhand High Court
Case No : Writ Petition (S) No. 2700 of 2007

Imtiaz Ahmad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-01-2015

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2015) 2 JLJR 195

Hon'ble Judges : Sujit Narayan Prasad, J.

Bench : Single Bench

Advocate : Gautam Kr. Singh and Sheo Prasad Mahato, for the Appellant

Final Decision : Disposed off

Judgement

Sujit Narayan Prasad, J.—The petitioner has approached this Court to appoint him on Class-III posts on the basis of the recommendation of District Compassionate Appointment Committee.

2. Heard the parties.

3. It has been submitted on behalf of the Counsel for the petitioner that the father of the petitioner was employee of the State Government and while working as Assistant Teacher at Middle School, Sahibganj died in harness on 28.9.2000. After death of his father, the petitioner made an application for appointment on compassionate ground before the respondents. The case of the petitioner had been placed before the District Compassionate Appointment Committee, a meeting was held on 25.8.2004 under the Chairmanship, Deputy Commissioner, Sahibganj wherein case of the petitioner along with others had been considered and the recommendation was made to appoint the petitioner on Class III posts but the petitioner was not appointed on Class III posts rather he was appointed on Class IV posts.

4. The submission has been made on behalf of the petitioner that the petitioner after immediate death of his father having no option, has accepted the offer of

the appointment for which necessary formalities were fulfilled by the petitioner.

5. The grievance of the petitioner is that the case of the petitioner along with other candidates had been considered and all have been appointed as per the recommendation of the District Compassionate Appointment Committee, Sahebganj but the petitioner has been appointed on Class IV Posts.

6. The submission has been made by the petitioner that the case of the petitioner has been discriminated and action of the authorities are in the teeth of Article 14 of the constitution of India.

7. On the other hand, respondents have contested by way of filing counter-affidavit wherein the submission has been made that the appointment on compassionate ground is not a legal right rather it is very weak right in order to provide immediate relief to the bereaved family of the deceased employee. The Government formulated the case of the petitioner in terms of the said scheme. The case of the petitioner has been considered and accordingly the Government has fulfilled its obligation by offering to the petitioner on Class-IV posts.

8. Learned counsel for the respondents has placed reliance upon the circular dated 5.10.1991 wherein the condition has been given that after appointment on compassionate ground no benefit of promotion or cadre conversion will be given. Referring to the said condition, it has been submitted by learned counsel for the respondents that since the petitioner was appointed on Class-IV posts and as such he cannot claim to be appointed on Class-III posts.

9. From perusal at length, it is an admitted position that the father of the petitioner died while in service. The Government of Jharkhand formulated scheme for providing appointment on compassionate ground. The case of the petitioner along with others has been considered and on perusal of the minutes of meeting dated 5.7.2005, it transpires that the case of the petitioner along with others candidates has been considered and have been recommended to be appointed in Class-III posts. The petitioner although has been appointed on Class-IV posts but there is recommendation in favour of the petitioner to make appointment in Class-III posts. Although it is right of the respondent not to give appointment in Class-III posts with the specified reason but under what circumstances the petitioner was discriminated to all other candidates, who have been appointed on compassionate ground living apart the petitioner who has been appointed in Class-IV posts.

10. Although this court cannot interfere for issuance of appropriate direction on compassionate ground considering the fact that compassionate appointment is very a weak right but considering the fact that the respondent authorities have acted strictly in pursuance to the recommendation of the District Establishment Committee and accordingly all have been offered appointment in Class-III posts but the petitioner has been offered in Class-IV posts, which needs reconsideration of the authorities.

11. So far as the contention of the learned counsel for the respondent that since the petitioner was offered appointment on Class-IV post, no objection was raised at the time of appointment. I find that this will not help to the respondent because at the relevant time petitioner was very much in need of appointment so that the bereaved family of the deceased employee may survive but certainly they cannot be said to be right if any discrimination had been made by the respondents.

12. Reliance can be placed in this regard upon a decision rendered by the Division Bench of this Court reported in 2012(2) JCR 30(Jhr) in case of Anil Kumar v. State of Jharkhand and Ors. wherein this Court held at paragraph Nos. 5, 6 and 7, which is quoted hereinbelow:--

"5. Learned counsel for the respondent-State relied upon the judgment of the Hon''ble Supreme Court in the case of State of Rajasthan Vs. Umrao Singh, . In the said case, respondent's father died while he was serving as a Sub-Inspector, CID (Special Branch). The respondent applied for appointment on compassionate ground as Sub-Inspector or LDC and was consequently appointed as LDC. After accepting that appointment he sought appointment as Sub-Inspector. That was denied. A Single Judge of the High Court of Rajasthan directed consideration of his candidature for appointment to the post of Sub-Inspector in accordance with the proviso to Rule 5 of the Rajasthan Recruitment of Dependents of the Government Servants (Dying while in Service) Rules, 1975. An appeal against the said decision was dismissed by a Division Bench of the High Court on the ground of delay. The Hon''ble Supreme Court in appeal against the said order observed that:

"Having accepted the appointment as LDC, the respondent's right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate would ever arise. Otherwise, it would be case of "endless compassion". Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case. 6. Hon''ble Supreme Court was also of the view that judgment of the Single Judge directing the employer to consider the case of appointment of the petitioner-applicant of being considered on second compassionate cannot be accepted.

7. We considered the ratio of the judgment referred above and it was a case where the petitioner applied for the post either of Sub-Inspector or LDC and he was given appointment on the post of LDC. He accepted that post whereas here the fact situation is totally different. The petitioner applied for the post of Class III and he never sought appointment on Class IV post. The petitioner's eligibility was considered and his case was recommended to be appointed on the post of Class III post. Therefore, it is not a case where the employer had any point of time take a decision that in spite of eligibility of the writ petitioner on the Class

III post he can be given appointment on class IV post. Rather to say the State has not accepted the recommendation only for the petitioner wherein it has been recommended that petitioner be offered Class III post. Therefore, the judgment referred above has no application in the present case. In that case one of the prayer of the applicant was accepted by the State Government and that was accepted by the applicant by accepting the appointment on the post of LDC, therefore, the Hon"ble Supreme Court observed that if such practice will permitted it will be case of "endless compassion". Here we have already observed that arbitrary denial of the appointment of the petitioner on the post of Class III post and giving appointment to other persons who also have been recommended to be appointed on Class III post by the same recommendatory committee is clearly in violation of Article 14 of the Constitution of India and, therefore, the order passed by learned Single Judge cannot be sustained and liable to be set aside and hence set aside."

13. On the basis of observation laid down by this Court and also considering the recommendation of the District Superintendent Education, Sahebganj which has been annexed by the Annexure B to the Counter-affidavit who has also made recommendation in favour of the petitioner to appoint the petitioner on Class-III posts which is based upon the recommendation of the District Compassionate Committee, I find that the case of the petitioner needs to be reconsidered.

14. In such view of the matter, this writ petition is disposed of giving liberty to the petitioner to approach the respondent No. 2 by filing representation giving details of claims along with the supporting documents within three weeks from the date of receipt/production of a copy of this order. On receipt of such representation, the concerned authority shall take decision in this regard and pass appropriate order in accordance with law within a period of six weeks from the date of receipt of the representation.

15. If any of the claims of the petitioner will be disputed or rejected, the same shall be communicated by passing speaking order.