
(1996) 01 KAR CK 0066
In the Karnataka High Court
Case No : W.A. No. 271 of 1994

India Trade Promotion Organisation and Another APPELLANT
Vs
Smt. M. Usha Ramaprasad RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Citation : (1996) ILR (Kar) 3474 : (1996) 7 KarLJ 619

Hon'ble Judges : Mohamed Anwar, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : D.V. Shylendra Kumar, CGSC, for the Appellant; Bhuvan, for C. Krishnaiah, for the Respondent

Judgement

Mohamed Anwar, J.—This appeal by M/s. India Trade Promotion Organisation, New Delhi is directed against the order dated October 14, 1993 of the Learned Single Judge passed in W.P. No. 2182/93 allowing the Writ Petition of respondent Smt. M. Usha Ramaprasad and directing appellant to consider her application for appointment on compassionate grounds to any suitable post within two months.

2. The argument of Learned Counsel on both sides are heard.

3. The appellant is a Public Undertaking under Ministry of Commerce. Indisputably, the respondent's husband was working as Deputy Regional Manager in the appellant organisation at Bangalore and he met with an accident and died on 31.12.1992 while in service. He left behind his respondent-widow and a son who was aged 13 years. The respondent, who is a Science Graduate, gave her representation to the appellant organisation seeking appointment on compassionate grounds on the death of her husband. Her said representation was rejected by appellant by its order dated 2.4.1993 produced at Annexure-A, as no suitable post was available.

4. The appellant's order at Annexure-A was challenged by the respondent in the said W.P.No. 2182 of 1993 and she prayed therein for a writ of mandamus directing the appellant to consider her case for appointment on compassionate

grounds. Appellant filed its statement of objections resisting her petition on the grounds that appellant was not under a legal duty to grant her appointment on compassionate grounds and that she had been paid by the appellant a substantial amount of Rs. 1,35,718/- towards monetary benefits payable on account of her husband's death while in service, and she is also getting the family pension of Rs. 2500A from January, 1993. Further objection of appellant was that apart from the above amount respondent also received the sum of Rs. 82,330/- towards retirement benefits on retirement of her husband from his earlier service in Coffee Board. In addition, she was also getting monthly rent for her husband's house in Bangalore City. Besides, she will inherit three valuable house sites of her husband which are all situate in Bangalore City.

5. The Learned Judge holding the affluent circumstance of respondent created by death of her husband, as stated by appellant, as of immaterial consequence, was pleased to pass the impugned order allowing her Writ Petition solely on the ground that her husband died while in service of the latter,

6. The legality of the order under appeal stands assailed before us by the Learned Counsel for the appellant, Sri Shylendra Kumar, on two grounds. Firstly, there being no statutory regulations or the Scheme framed by the appellant organisation governing appointment on compassionate grounds of a member of the family of its deceased employee dying in harness, the appellant was not under any legal obligation to appoint respondent as requested by her. Secondly, financially respondent was in such a sound and comfortable position at the time of her husband's death that the same did not warrant her appointment on compassionate grounds. In support of his contentions he placed reliance on recent decisions of Supreme Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, Supreme Court Cases 718 and Umesh Kumar Nagpal Vs. State of Haryana and Others,

7. Learned Counsel for respondent argued in support of the impugned order relying on the decision of Supreme Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, . She maintained that there was no sufficient justification for the appellant to reject respondent's request for appointment on compassionate grounds, more so, when her case for appointment was recommended by the concerned Regional Manager of the appellant organisation.

8. The reason given in the impugned order by the Learned Judge for allowing the respondent's Writ Petition is as follows:

"The idea behind appointment on compassionate grounds is to see that the dependents shall not feel the hardship created by the death of the bread-earner and also, that they do not feel that they are not secure.

xxx xxx xxx Particularly when the dependent is educated and unemployed, the void created by the death of any spouse will definitely affect the mind of the/ other and that can be avoided if such person is put in action and keeping such person busy. This can be done only by providing appointment."

As regards the aforementioned monetary benefits indisputably received by the respondent on the death of her husband, the Learned Judge was of the view that consideration of this financial condition of the deceased's family is of no relevance. He has observed:

"In my view, the contention that the petitioner has received the financial benefits which she is otherwise legitimately entitled to receive owing to her husband's death is not a ground to disentitle her to seek appointment on compassionate grounds."

For his above observations the Learned Judge has drawn support from the following dictum of Supreme Court in the case of *SUSHMA GOSAIN v. UNION OF INDIA*.

"We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

9. The material question, therefore, which arises for our consideration is:

Whether or not the impugned order passed by the Learned Judge on the strength of his above conclusions is sustainable in law in the facts and circumstances of the case?

10. Throwing light on the true import of its afore-stated observation made in the case of *Sushma Gosain, supra*, the Supreme Court in its later decision in *UMESH KUMAR NAGPAL v. STATE OF HARYANA AND ORS.* has expressed its concern thus:

"We are also dismayed to find that the decision of this Court in *Sushma Gosain and Ors. v. Union of India and Ors.* (1989) SLR 327 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 111 and IV."

In para 6 of its judgment, the Supreme Court has laid down:

"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."

At para 2 of its judgment in that very case, the Supreme Court has held:

"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."

(Underlining supplied)

It is decision in L.I.C. of INDIA v. ASHA RAMCHANDRA AMBEKAR, Supreme Court has observed to the effect that the monetary benefits received by the deceased's family on his death is a material factor to find the financial condition of his family for the purpose of consideration of compassionate employment to an eligible member thereof, and it cannot be brushed aside on the score that they were the legitimate dues payable to the family. It has said:

"To say, as a Court below has done, that the second respondent is at the prime of his life and youth and is aged 21 years and the dues that are paid by the Life Insurance Corporation to the family are the lawful dues that are earned by the deceased. Therefore, on facts, he would be entitled to appointment on compassionate grounds, is not the correct approach."

At para 10 of its judgment therein it has enunciated the proposition:

"The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration."

In para 11 it has struck a note of caution thus;

"Disregardful of law, however, hard the case may be, it should never be done."

11. Thus from the above stated authoritative pronouncements of Supreme Court in UMESH KUMAR NAGPAL v. STATE OF HARYANA and Ors. and L.I.C, OF INDIA v. ASHA RAMCHANDRA AMBEKAR, the settled position of law which emerges is that the Courts cannot order appointment on compassionate grounds dehors the statutory regulations and instructions formulated, if any, by the employer, and in the absence of penurious condition of the deceased's family justifying such appointment.

12. In the light of these legal tests, we find the impugned Order legally not sustainable. That on the death of her husband, respondent received the said monetary benefits of more than rupees two lakhs and that she has been receiving the monthly family pension of Rs. 2500/- from the appellant organisation, besides getting monthly rental, of the house premises of her husband, and she will inheriting his afore-mentioned valuable items of Immovable property, is a very material circumstance disclosing the family's sufficiently affluent state which certainly goes against her case for compassionate appointment. We further find that the absence of any regulations or the Scheme framed by the appellant governing employment on compassionate grounds of a member of its deceased employee also disentitles the respondent to claim any such appointment from the appellant. As such, the impugned order cannot be

upheld in law. Therefore, we find the same unsustainable.

13. In the result, for the reasons stated above, the appeal is allowed. The impugned order passed by the Learned Single Judge in W.P. 2182/93 is set aside. The Writ Petition of respondent therein stands dismissed.