
(2003) 08 JH CK 0046
In the Jharkhand High Court
Case No : Writ Petition (S) No. 3982 of 2003

Jagdish Ganjhu

APPELLANT

Vs

Jharkhand State Electricity Board and Others

RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 BLJR 2173 : (2003) 4 JCR 192

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : Banani Verma and G.S. Verma, for the Appellant; A.K. Jha and I. Sen Choudhary, for the Respondent

Final Decision : Dismissed

Judgement

S.J. Mukhopadhaya, J

1. This application has been preferred by the petitioner against the order dated 10th June, 2002, whereby and whereunder, the respondents rejected the petitioner's claim for compassionate appointment. Further prayer has been made to direct the respondents to reconsider his case for appointment on compassionate ground and to pay the balance amount of Group Saving Scheme.

2. The brief fact of the case is that the father of the petitioner Late Tulsi Ganju who was in the services of the Bihar State Electricity Board (for short B.S.E.B.) in its Patratu Thermal Power Station, Patratu, district Hazaribagh (for short P.T.P.S.) now under the control of the Jharkhand State Electricity Board (J.S.E.B. for short), died in harness of 12th May, 1989, The petitioner was about five years old at that time (See Annexure 1).

The mother of petitioner, Kabilasha Devi, who was a Class IV employee in P.T.P.S. also died in harness on 6th September, 1991. Much after such death, the B.S.E.B. came out with a Scheme for compassionate appointment, vide Permanent Order No. 756/18/DEM-3014/93, Patna dated 18th February, 1994,

wherein five year's limitation period was prescribed for a dependent of a deceased workman to apply for compassionate appointment.

3. According to the petitioner, he applied for compassionate appointment on 26th March, 1995 (vide Annexure 4) followed by representation dated 1st March, 2002. The Deputy Director, Personal of P.T.P.S, rejected the claim on the ground of delay/barred by limitation, vide impugned letter No. 2641 dated 10th June, 2002.

4. The counsel for the petitioner relied on second part of Clause (CHHA) of Scheme dated 18th February, 1994. It was submitted that though five years limitation period was prescribed, but in respect to minors, it was specifically mentioned that their cases will be considered, as and when they will attain majority, if application is preferred in time.

5. The counsel for the respondents placed reliance on one or other decisions of Patna High Court and the Supreme Court to suggest that compassionate appointment cannot be made long after the death of an employee.

6. Counsel for the petitioner relied on the Supreme Court decision in the case of Sanjay Kumar Vs. The State of Bihar and Others, to suggest that the application of a minor can be considered after attaining majority if there is a specific provision under the Scheme.

7. Almost similar question fell for consideration before a Bench of Patna High Court in the case of Arun Kumar v. State of Bihar and Ors., reported in 1998 (1) PLJR 48, wherein the Court after taking into consideration a number of decisions of Supreme Court and High Court, held as follows :

"4. The matter relating to compassionate appointment fell for consideration from time to time before this Court, as well as. Supreme Court. The general view is to reject the claim of compassionate appointment after a long delay.

However, in individual cases. Supreme Court, as well as, this Court allowed to prayer for compassionate appointment, even after a long delay, taking into note that there was no laches on the part of the claimant.

Supreme Court in the case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , allowed the appeal after about seven years of death of deceased employee. The Court held that delay in appointment and rejection of application in view of ban subsequently imposed on appointment is arbitrary.

In Pinki Jymari case 1997 (1) PLJR 617 a Division Bench of this Court ordered to reconsider the case of appellant Pinki Kumari for compassionate appointment after about eight years taking into note that the appellant applied in time in terms with amended guideline made by Resolution dated 25.5.1989.

This Court in Chandra Bhushan Singh case 1997 (1) PLJR 626, while allowed application for compassionate appointment after ten years, held that the applicant's right cannot be defeated on the ground of delay caused by the

authorities which was beyond the control of the applicant.

The case of Anil Kumar Singh and other analogous cases fell for consideration before Division Bench of this Court 1993 (1) PLJR 414. Therein the minor son applied on attaining majority after the prescribed period of limitation. This Court held that the aforesaid act would frustrate the very object and purpose of policy decision. What is material for , consideration is the time when the relief is to be granted to a family in distress and not to reserve a job for one of the dependants.

In PremS Narayan and analogous cases 1995 (1) PLJR 216. a Division Bench of this Court held that the compassionate appointment is to be made at the earliest, otherwise not only the object would be frustrated but the very reason or basis on which compassionate appointments have been upheld by Courts will disappear and expose to challenge as being violative of Article 16 of the Constitution of India.

In Umesh Kumar Nagpal Vs. State of Haryana and Others, , the Supreme Court held that the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment. It further held that the grant of compassionate appointment after a lapse of reasonable period is impermissible. In the words of Supreme Court, the compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. The consideration on such employment is not 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 death of the sole breadwinner, the compassionate employment cannot to claimed and offer whatever the lapse of time and after the crisis is over.

5. From the aforesaid decisions of this Court and the Supreme Court, the matter can be summarized as follows :

- (a) the compassionate appointment cannot be granted after a lapse of reasonable period which must be specified in the rules,
- (b) the compassionate appointment cannot be claimed after lapse of time,
- (c) the compassionate appointment cannot be offered after the crisis is over, and
- (d) the provision for compassionate appointment is necessarily to be made by the rules or by the executive instruction issued by the Government or the public authority concerned."

8. In the case of Jagdish Prasad Vs. State of Bihar and Another, , the dependent was about four years old at the time of father's death and claimed for appointment long after the employee's death.

In the said case, the Supreme Court held as follows :

"It is contended for the appellant that when his father died in harness, the

appellant was minor; the compassionate circumstances continue to subsist even till date, and that, therefore, the Court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted. It amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules."

9. In the case of Haryana State Electricity Board and another Vs. Hakim Singh, the Supreme Court noticed that the dependent was a minor child applied for compassionate appointment on attaining majority on the ground that the dependant applied beyond the prescribed period of three years. The High Court allowed the application of, the dependent, but it was set aside by the Supreme Court. The Supreme Court held that if the family members of the deceased employee can manage for fourteen years after his death, one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provision is to give succour to the family to tide over the sudden financial crises be fallen the dependants on account of the untimely demise of its sole earning member.

10. Similar was the view taken by the Supreme Court in the case of State of U.P. and Others Vs. Paras Nath, In the said case, the deceased employee left behind two years old son. The rule provide for compassionate appointment came into effect some time 4-1/2 years later. The son made the application for compassionate appointment after 17 years of the death of the employee.

The Supreme Court in the said case held, as follows :

5. The purpose of providing employment to a dependant of a government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are rules providing for such appointment. The purpose is to provide immediate financial assistance to the family of a deceased government servant. None of these circumstances can operate when the application is made after a long period of time such as seventeen years in the present case.

6. We may, in this connection, refer to only one Judgment of this Court in the case of Union of India v. Bhagwan Singh. In that case, the application for appointment on similar compassionate grounds was made twenty years after the railway servant's death. This Court observed :

"The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a government servant who dies in harness, when there is no other earning member in the family."

11. In the case of Sanjay Kumar Vs. The State of Bihar and Others, , as referred to by the counsel for the petitioner, the dependant (son) was about ten years old when the employee died, but he immediately applied for compassionate appointment. After attaining majority, the dependant agitated the matter and his claim was rejected. The High Court upheld such rejection order. The Supreme Court while upholding the High Court's order observed, as follows :

"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 a deceased employee to tide over sudden crisis resulting due to death of the breadearner 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 v. 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 contended 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."

12. The observations of the Supreme Court "unless there are some specific provisions" is to be read harmoniously with the other part of the observations made in the case of Sanjay Kumar (supra) and the other decisions pronounced by the Supreme Court, as referred above. If the compassionate appointment is impermissible after lapse of reasonable period, as held by the Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, , by administrative instructions, it cannot be made permissible. Therefore, the rules/guidelines is to be read harmoniously. The consideration of the case on attaining majority will rise only if the majority is attained within the period of limitation, if prescribed under the rules or a reasonable period, say about five years from the date of death.

13. Admittedly, in the present case the petitioner was a minor five years old on the date of death of the employee i.e. 12th May, 1989. The Scheme came into effect in the year 1994. Therefore, the petitioner cannot claim benefit of compassionate appointment, on the death of his father.

14. It is stated that the mother of the petitioner died on 6th September, 1991 and petitioner applied within five years on 26th March, 1995. But there is some doubt relating to first application dated 26th March, 1995, for the following reasons :

"(a) The petitioner was about 11 (eleven) years old in March, 1995 when he was

not eligible;

(b) Though the application shown to have been addressed to the Joint Secretary, B.S.E.B., Patna, in the postal receipt, as printed, later on, it has been to be addressed to the Secretary, B.S.E.B., Patna without any date."

The petitioner also cannot claim for compassionate appointment, the Scheme for compassionate appointment having come into effect much after the death of the mother on 18th February, 1994 and he having not attained the majority even within five years from the date of death of his mother, Le. by 6th September, 1996.

15. Further, now more than 12 (twelve) years having passed after the death of the mother, it is not desirable to direct the respondents to appoint the petitioner on compassionate ground.

16. In this background, there being no merit, the prayer of the petitioner for compassionate appointment is rejected.

17. So far as G.S.S. amount is concerned, the petitioner may move separately before the authority/or a Court of competent jurisdiction.

18. The writ petition is dismissed.