

(2001) 03 AHC CK 0102

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38139 of 1997

Jagdish Ram

APPELLANT

Vs

Central Administrative Tribunal, Allahabad Bench and Others

RESPONDENT

Date of Decision : 16-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 2 UPLBEC 1075

Hon'ble Judges : S.R. Singh, J;D.R. Chaudhary, J

Bench : Division Bench

Final Decision : Allowed

Judgement

D.R. Chaudhary, J.—Petitioner's father T. No. 333 Mazdoor Sri Sahodar Harizan was employed in 222 ABCD based Ordinance Depot. C/o 99 APO (under Government of India), Ministry of Defence Installation since 15.4.1968. He expired on 1.5.1989 while in service leaving behind him his widow Smt. Dasi Devi, three daughters and the petitioner. The petitioner submitted an affidavit dated 30.9.1989 to the respondents claiming himself to be the son of the deceased and sought employment on compassionate ground. It appears that the petitioner's mother also made an application dated 8.1.1989 for appointment on some suitable post. The application of the petitioner's mother was rejected on the ground that she being a lady cannot be employed. The claim made by the petitioner for compassionate employment remained pending with the respondents. The petitioner came to be informed for the first time by means of letter dated 15.11.1996 (Annexure-5 to the writ petition) that : "As per guidelines received from Head Quarters belated request for employment in relaxation of normal rules may be considered in exceptional cases upto 5 years. Since your case is over 5 years old, your document held by this office are returned herewith." On further pursuit of the matter the petitioner was served with another letter dated 18.6.1997 whereby he was informed that his case was not considered by the Board of officers in the light of more deserving cases" and

now it cannot be entertained "because it is very old".

2. Aggrieved the petitioner approached the Central Administrative Tribunal by filing O.A. No. 843 of 1997. The Central Administrative Tribunal by its order dated 21.8.1997 rejected the O.A. in limine on the ground that it was a stale claim. Hence the petitioner has invoked the extraordinary jurisdiction of this Court under Article 226 of the Constitution, of India challenging the orders dated 15.11.1996, 18.6.1997 and judgment dated 2.8.1997 (Annexures 4, 5 and 6) to the writ petition. No counter affidavit has been filed by the respondents.

3. We have had heard learned Counsel for the petitioner and learned Counsel appearing for the respondents.

4. The petitioner, as it is born out from the judgment of Central Administrative Tribunal made the claim for compassionate employment by means of application/reminder dated 23.4.1990 which was rejected by the respondents and the rejection was communicated to the petitioner by means of the impugned letter dated 18.6.1997 which discloses that the claim of the petitioner was forwarded to Head Quarter by letter dated 23.4.1990. The application was given by the petitioner for the employment on compassionate ground within a reasonable time after the death of his father. The undisputed facts of the case are that the father of the petitioner died in harness on 1.5.1989 leaving behind him the petitioner and three daughters besides the widow who had applied for the compassionate employment within three months but the same was rejected on the ground that a female cannot be employed. It is not the case of the respondents that the petitioner had other source of income to cope with the odds caused due to death of the sole earning member of the family or the hardships stood diluted by efflux of time. Admittedly the father of the petitioner was employed as Majdoor drawing poor wages salary having no other source of earning. The Government of India have illegally refused to provide employment to one member of the destitute family of the deceased employee by taking advantage of their own lapse in responding to the demand of the petitioner promptly. Denial of appointment in the instant case on ground of being a "stall e" case is tantamount to taking advantage of one's own default inasmuch as the application was moved within a reasonable time. In *Kish v. Taylor* (1911) 1 KB 628, the general principle of avoiding injustice and absurdity in a situation like the one in hand has been stated thus : "A man may not take advantage of his own wrong. He may not plead in his own interest a self- created necessity" (see Maxwell on the Interpreting of Statutes, 12th Ed., p. 212).

5. A similar controversy came up before the Division Bench of this Court in *Hari Krishna Tripathi v. State of U.P. and Ors.* (1994) 1 UPLBEC 172. In that case the petitioner challenged the cancellation of his appointment on the post of lecturer Geography inter alia on the ground that this appointment was made in accordance with law and cannot be cancelled by the respondent taking advantage of his own wrongs. The Division Bench while allowing the writ petition observed thus :

"Moreover, the petitioner had been selected and appointed by a duly constituted committee in accordance with Regulations, he had no control over the action of any of the authorities committing error in performing their duties. In that situation, the petitioner who was fully qualified and who had been selected for appointment could not be penalised for the errors committed by any other authority."

In *Umesh Kumar Nagpal v. State of Haryana and Ors.*, reported in 1994 (4) SCC 136 the Hon''ble Supreme Court observed as under :

"The whole object of granting compassionate employment is to enable the family to tide over the sudden crisis, the object is not to give a member of such family a post muchless a post held by the deceased. What is further, mere death of an employee in harness does not entitle any member of the family to such source of livelihood. The Government or the authority concerned has to examine the financial condition of the family of the deceased, and it is only if it satisfied that but for the provision of employment, the family will not be able to meet the crisis that a job is to offered to the eligible member of the family. The post in classes III and IV are the lowest posts in non-manual and a 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. Hon''ble Supreme Court has expressed a view that compassionate employment cannot be granted after lapse of a reasonable period which must be specified in the Rules. The consideration of such employment is not a vested right which can be exercised at any time in future. The object being to enable the financial crisis which be faced at the time of death of the sole breadwinner. The compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

6. Applying the ratio of the decision in *Umesh Kumar Nagpal (supra)* this Court in case of *Syed Shujaat Hasan v. District Judge, Lakhimpur Kheri and Ors.* 1999 ACJ 279 on the question of belated claim by the dependent of the deceased, observed thus :

"The son may apply when he becomes major, may be after one, two or more years. In such a situation it cannot be said that the application was not preferred by the petitioner or any member of the family, hence no compassionate appointment should be given. This will be an absurd proposition, which Hon''ble Court never intended."

7. In case of *Manoj Kumar Saxena Vs. District Magistrate and Others*, the father of the petitioner in that case died in 1987. The petitioner made a claim for compassionate employment in 1993 when he attained eligible age. The Court, after having considered the decision of Hon''ble Supreme Court in *Jagdish Prasad v. State of Bihar* 1996 (1) SLR 7 and taking into account the observations made by the, Court in Special Appeal No. 1265 of 1995. *Pushpendra Singh Vs. Regional Manager, U.P.S.R.T.C., Aligarh and another*, and also considering the proviso to

Rule 5 (1) of the U.P. Recruitment of Dependent of Government Servant Dying in Harness Rules, 1974 as inserted by the notification dated 13.10.1993, held that moving of application after attaining the eligible age in 1993 cannot be said to be belated.

8. Learned Counsel for the petitioner has relied upon the decision of Supreme Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, In the aforesaid case the husband of the applicant was working as Store Keeper in the department of Director General Border Road. He died in 1982. Soon thereafter the dependent sought appointment as LDC on compassionate ground. She passed trade test but she was not appointed and was rather being told that her case was under consideration. Her application was rejected in 1985 when ban on appointment of ladies was imposed. The Hon''ble Supreme Court, in that case, was of the view that:

"It can be stated unequivocally that in all claims for appointment on compassionate grounds, there should 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. I similar case of Director of Education (Secondary) and Ors. v. Pushpendra Kumar and Ors. Judgment Today 1998 IV SC 155 the Hon''ble Supreme Court issued direction to create supernumerary post in order to provide compassionate employment to the claimant to overcome the hardship caused due to sudden death of bread earner of the family. In another case Smt. Phoolwati Vs. Union of India and Others, the Hon''ble Supreme Court considered the case of the claimant who lost her husband while in service and made an application to the authorities to permit her to live in Government quarter alongwith her three sons as well as to employ one of her three sons, specially the second son who was literate. Considering the facts and circumstances of that case and the law laid down in case of Smt. Sushma Gosain (supra) the Apex Court directed the Union of India to take steps to give appropriate employment according to her educational qualification within one month from the date of his order and to permit her to stay where she was residing with the members of "her family.

10. The Central Administrative Tribunal has, in our opinion fell into error in holding that the cause of action arose on 4.10.1990. In fact the cause of action for the purpose of approaching the Tribunal arose after the order rejecting his claim vide the impugned letter dated 18.6.1997 was received by the petitioner. From the peaisal of the judgment of the Tribunal it appears that the Tribunal has not gone into this aspect of the matter and wrongly dismissed O.A. in limine. The claim for compassionate employment of the petitioner, in our view was protected by departmental Rules providing limitation of 5 years and it also cannot be said

that the claim, which was made within a year from the date the father of the petitioner died, was belated.

11. The objective consideration of the, scheme of compassionate employment underlines the need to tide over the sudden financial crisis due to demise of the only earning member of the family. The question that the delay in providing immediate relief by the employer or making a belated claim for the same by the member of the bereaved family, has redeemed the crisis or has increased it, depends upon the facts and circumstances of the each case. In the present case the father of the petitioner was a Majdoor who died leaving behind him 5 members in the family without any earning. It was also not the case of the respondents that any financial aid was provided nor the impugned order contained any finding that the financial crisis stood diluted during the pendency of the claim of the petitioner for compassionate employment. There is nothing on record to show that the financial crisis stood solved due to delayed decision of the respondents on the claim of the petitioner. It can, therefore, be presumed that the financial destitution continued, may be, in its increased dimension. In Phoolwati's case (supra) the Apex Court following the decision in Sushma Gosain's case wherein it was held that all claims for appointment on compassionate ground, there should not be any delay in appointment so as to mitigate the hardships due to death of bread earner in the family. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant, directed the employer, the Union of India, to take immediate steps for employing second son of the appellant on a suitable post In the case in hand the respondents, as it appears, passed the impugned order which is not in consonance with the law laid down by the Hon''ble Supreme Court in its decisions referred to above.

12. The other ground for rejecting the claim of the petitioner is that more deserving candidates for employment are available. This ground of rejecting the claim of the petitioner, cannot be sustained in view of the underlying object of the compassionate employment of Wards of the Government Servant which has been considered by the Apex Court in several cases, particularly in case of Smt. Sushma Gosain, Phoolwati (Smt.) and the Director of Education (Secondary) and other referred to above. The observation of the Apex Court in Umesh Kumar Nagpal's case (supra) further strengthened the case of the petitioner whose father was employed as Majdoor which is the lowest post in manual categories under the mightily Government of India (respondents).

13. In view of the above discussions we are of the view that the impugned orders dated 15.11.1996 and 18.6.1997 (Annexures 4 and 5 respectively) and the judgment of the Central Administrative Tribunal dated 21.8.1997 cannot be sustained in the eyes of law.

14. In the result the writ petition succeeds and is allowed. The orders impugned dated 15.11.1996 and 18.6.1997 and the judgment of the Tribunal dated 21.8.1997 are quashed. The respondents are directed to grant suitable

employment to the petitioner within a period of one month from the date of production of a certified copy of the order. In the circumstances there shall be no order as to cost.