
(2005) 11 AHC CK 0202

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 39428 of 2005

Jai Prakash Lal

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 08-11-2005

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 5 AWC 4719 : (2006) 108 FLR 648 : (2006) 1 UPLBEC 502

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Sudhir Kumar Srivastava, for the Appellant; K.C. Sinha and S.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties and perused the record.

2. The petitioner has prayed for quashing of the order dated 3.7.2003 passed by the Regional Director (Administration), Government of India, Central Under Ground Water Board, N.H.- IV, Faridabad, Haryana. The petitioner has further prayed for a writ in the nature of mandamus commanding the respondent to grant the petitioner an appointment on compassionate ground or issue any other writ, order or direction which this Court may deem fit and proper in the circumstances of the case.

3. The brief facts of the case are that Late Sri Brahm Deo Lal, father of the petitioner, was a Class IV employee in the Central Under-ground Water Board (C.G.W.B.) Division V at Ranchi. He died in harness on 16.8.1995 leaving behind his widow and the son (petitioner) who was minor at that time having been born on 20.6.1981.

4. The wife of late Sri Brahm Deo Lal/mother of the petitioner made an application dated 20.10.1997 for appointment of the petitioner on compassionate ground. At that time also the petitioner was under age. When he attained

majority, a fresh application dated 16.10.2001 was moved by the mother of the petitioner for appointment on compassionate ground giving reference to her earlier application dated 20.10.1997 with a prayer to consider the case of the petitioner. The petitioner also submitted an application in prescribed proforma for his appointment on compassionate ground on the same day, i.e., on 16.10.2001. He was informed by the Executive Engineer, C.G.W.B. Division V, Government of India, Ranchi-II vide letter dated 18.7.2002 that his request for compassionate appointment has not been considered by the Central Head Quarter, Faridabad. However, the office is again forwarding his case to the Central Head Quarter, Faridabad for reconsideration in the month of March, 2002.

5. The learned Counsel for the petitioner submits that when nothing was heard from the respondents after letter dated 8.7.2002 was submitted, reminders dated 10.6.2002 and 9.9.2002 were sent by him. Ultimately, the petitioner met the Director at Central Head Quarter, Faridabad some-times in the last days of November 2002 and was informed that his case will be taken up whenever a meeting of the Board of Directors is held. The learned Counsel further submits that when the petitioner again received no response, he filed Writ Petition No. 17343 of 2003 which was disposed of by the following order dated 23.4.2003:-

Heard learned Counsel for the petitioner. No one appears on behalf of Senior Standing Counsel, Government of India.

Petitioner claims appointment under the Dying-in-Harness Rules. From the perusal of the letter dated 8th July, 2002 issued by the Executive Engineer, Central Under Ground Water Board, it transpires that matter is pending before the competent authority at Central Head quarter, Faridabad.

As matter is pending before the competent authority, I issue an ad interim mandamus to the competent authority to decide the matter of appointment of petitioner on compassionate ground in accordance with Rules within a period of three weeks from the date of production of certified copy of this order before the opp. Party.

With these directions, writ petition is finally disposed of.

Sd/- S.N.Srivastava,J.

6. The petitioner submits that he communicated the aforesaid judgment dated 23.4.2003 to the respondent but when nothing was heard, he again sent a reminder dated 25.6.2003. In response the petitioner received letter dated 3.7.2003 from the Regional Director & Director (Administration) informing him that the Screening Committee has not found any merit in his case, as such, the petitioner has not been recommended for appointment on compassionate ground.

7. Aggrieved, the petitioner filed an appeal on 8.9.2003 before the respondent, inter alia, on the ground that half family pension was being paid to his mother from which amount survival was very difficult and as such the authorities must consider his appointment on compassionate ground in these circumstances.

8. It is vehemently urged by the learned Counsel for the petitioner that the action of the respondent is mala fide, arbitrary and liable to be interfered by this Court by directing them to offer appointment to the petitioner on compassionate ground. It is urged that: -

1. The petitioner has a right to get appointment on compassionate ground which has not been considered without any rhyme or reason.

2. The respondent has failed to exercise the jurisdiction vested in him and that the order impugned has been passed by the respondent without any application of mind causing substantial injury to the petitioner.

9. The learned Counsel for the petitioner has relied upon the decision of this Court rendered in Rupendra Singh Vs. Chief Engineer, Hydro Electric, U.P. Power Corporation Ltd. and Others, decision rendered in Smt. Padma Pathak Vs. Managing Director, Punjab National Bank and Another, .

10. It is informed by the Standing Counsel that so far as the judgment in the case of Smt. Padma Pathak is concerned, the same was challenged in Special Appeal wherein the judgment of learned Single Judge has been stayed. This is not disputed by the learned Counsel for the petitioner. The Standing Counsel submits that the case of Rupendra Singh (Supra) is not applicable to the facts and circumstances of this case in view of the admitted facts and the conduct of the petitioner.

11. The facts which are not in dispute are that the father of the petitioner died in harness and at that time his mother was eligible for appointment on compassionate ground under Dying in Harness Rules. However, she moved an application that she will not be able to take up the job due to her ill health and did not fill up the requisite form for appointment on compassionate ground.

This is evident from Annexures 1 and 2 to the writ petition wherein it has been averred: -

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12. It is also not in dispute that the petitioner was minor at that time being aged about 14 years and in the circumstances the application of the petitioner was not considered by the Central Head Quarter, Faridabad. It appears that in pursuance of the directions given by the High Court vide judgment dated 23.4.2003 in Civil Misc. Writ Petition No. 17343 Of 2003 and application dated 16.10.2001 that the matter regarding compassionate appointment of the petitioner was considered by the Screening Committee on 27.6.2003. The details given by the petitioner as per his application dated 22.4.1997 were examined by the Board. The petitioner was informed by letter dated 20.10.1997 issued by the office of the Regional Director & Director (Administration), Government of India, Central Ground Water Board, Faridabad that he was below the age of 18 years. Thereafter he kept

silence till 15.10.2001 and re-submitted another application for compassionate appointment on 16.10.2001 wherein the details of the family were given as under:-

Name Age Relationship 1. Smt. Shail Kumari Devi 52 years Wife of deceased Govt. Servant 2. Sri Ram Avtar Lal 31 years Son of deceased Govt. Servant 3. Sri Jai Prakash Lal 20 years Son of deceased Govt. Servant 13. The Board considered the case of the petitioner and rejected the same on the following grounds:-

(III) It is noticed that instead of submitting an application for compassionate appointment of the spouse of the deceased Government servant of elder son (namely Sh. Ram Avtar Lal) in the event of yourself being a minor below 18 years, the family preferred to wait till you (applicant) to attain the age of 20 years and re-submitted the application for compassionate appointment on 16th October 2001.

It is further noticed that family member/yourself waited till you attain the age of 20 years instead of 18 years for submission of application for compassionate appointment.

This shows that the family/yourself were not in hurry to seek compassionate appointment and was able to meet with the livelihood all these years.

(IV) As mentioned and accepted by you in the Writ Petition (Para 11), the family is receiving family pension amounting to Rs. 3,000/- per month. Besides family pension, as per details given by you in your application dated 16th October 2001, the family has also received a lump sum amount of Rs. 1,91,911/- as pensionary benefit accrued to the deceased Government servant.

(V) As per details given by you in the application dated 16th October 2001, the spouse and two sons (aged 31 and 20 years as on 16th October 2001) are in the family of the deceased Government servant. The name of the daughter, which was shown in the earlier application dated 22nd April 1997 has not been shown now. This inter-alia means that the daughter has either been married or employed during these years. There are no liabilities of the family/spouse as mentioned by you in your aforesaid application. Both the sons of the deceased Government servant are major aged now 33 years and 22 years respectively and there is no liability, the family of the deceased Government servant can meet the livelihood from the family pension.

(VI) As the Government servant had died on 16th August 1995 and since then the family of the deceased has been able to manage somehow all these years and as per guidelines of the scheme this can be taken as adequate proof that the family has some dependable means of subsistence.

Taking into account all the factors as mentioned above & guidelines of the scheme, the screening committee has not found any merit in this case and have not recommended your case for appointment on compassionate grounds.

14. It is apparent from the reasons given that the plea of family being in cold penury is not correct and the application for compassionate appointment was re-submitted by the petitioner by concealment of facts. The object of the scheme for compassionate appointment is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness thereby leaving his family in penury and without any means of livelihood, to relieve the family of the Government servant concerned from financial destitution and to help it to get over the emergency. The concept of compassionate appointment is largely related to the need for immediate assistance to the family of the deceased Government servant in order to relieve it from economic distress. The very fact that the family has been able to manage somehow for about eight years should be taken as adequate proof that the family has some dependable means of subsistence. The compassionate appointment under the scheme are made on means-cum-merit basis.

15. It is settled law that the dependants of a deceased Government servant have no legal right for compassionate appointment. They only have a right for consideration. The Board has considered the case of the petitioner for compassionate appointment and has rejected the claim by a reasoned order giving cogent reasons. The petitioner had concealed the correct facts in his subsequent application for compassionate appointment after attaining majority. This appears to have been done by him with ulterior motive to get appointment in Government service. The petitioner in the circumstances is not to get any sympathy from the Court. It cannot be said in the facts and circumstances detailed above, that the authorities failed to exercise jurisdiction vested in him and that the impugned order has been passed without application of mind causing a substantial injury to the petitioner.

16. I do not find any illegality or infirmity in the order. Appointment on compassionate ground is not legally enforceable right. The authorities have used their discretion judiciously and have considered all the relevant facts.

17. For the aforesaid reasons this is not a case for interference under Article 226 of the Constitution.

18. The writ petition is dismissed. No order as to cost.