
(1999) 03 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petitions No's. 629, 1589, 3225 and 3529 of 1998

Jaya Bhaduri and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 18-03-1999

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 3 RLW 1695 : (1999) 3 WLC 723 : (1999) 1 WLN 478

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—In all these cases, the validity of the provision of Rule 5 of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996 (for short, "the Rules") has been challenged as being unconstitutional, ultra-vires and arbitrary.

2. The relevant rules, for determination of the controversy, read as under:

2 (c) "Dependent" means a spouse, son, unmarried or widowed daughter, adopted son/daughter legally adopted by the deceased government servant during his/her life-time and who were wholly dependent on the deceased government servant at the time of his/her death.

Rule-5 Appointment subject to certain condition—When a government servant dies while in service, one of his/her dependents may be considered for appointment in government service subject to the condition that employment under these Rules shall not be admissible in cases where the spouse or atleast one of the sons, unmarried daughters, adopted son/daughter of the deceased government servant is already employed on regular basis under the Central Government/State Government or Statutory Board, Organisation or Corporation owned or controlled by the Central/State Government at the time of death of the Government servant.

Provided that this condition shall not apply where the widow seeks employment for herself.

3. Learned Counsel for the petitioners in these cases have vehemently submitted that the Rules have been framed to provide employment to one of the dependents of the deceased government servant to redeem the family immediately from the hardship suffered by it as it has lost its bread-earner. Thus, imposing the condition that in case the spouse or one of the sons or unmarried daughter is already in employment of the Government or any statutory corporation etc., the dependent shall not be eligible to get the employment. The said proviso is arbitrary, unreasonable, unconstitutional and invalid as it creates hinderance in serving the purpose, for which the Rules have been enacted, for the reason that in a given case, son or daughter who is in service, may not be financially supporting the family of the deceased employee and in such a case the family may face starvation.

4. On the other hand, learned Counsel appearing for the respondents have submitted that the Rules are constitutionally valid and even in case where a son or unmarried daughter who is in government service, is financially supporting the family, the widow is entitled for seeking employment. Therefore, the Rules are valid and sufficiently achieve the purpose for which the same have been enacted.

5. The law provides for presumption in favour of Constitutional validity of the Statute. In *Municipal Corporation of the City of Ahmedabad and Others Vs. Jan Mohammed Usmanbhai and Another*, , the Constitution Bench of the Supreme Court has observed as under:

There is always a presumption in favour of constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear violation of the constitutional principles. The Courts must presume that the Legislature understands and correctly appreciate the claim of its own people that its laws are directed against the problems made manifestly by experience and that its discriminations are based on adequate ground. It must be borne in mind that the Legislature is free to recognise degrees of harm and may confine its restrictions to those cases where the need is deemed to be a clearest and finally that in order to sustain the presumption of constitutionality, the Court may take into consideration the matters of common knowledge, matters of rapport, history of the times and may assume every set of facts which can be conceived to be existing at the time of legislation.

6. In *K. Anjaiah and Others Vs. K. Chandraiah and Others*, the Court has observed that it is the cardinal principle of construction that the statute and the rules or the regulations must be held to be constitutionally valid unless and until it is established that they violate any specific provision of the Constitution and the Court is under solemn duty to scrutinize the provisions of the Act, Rules or the Regulations within the set para-meters if the validity of the statutory provisions is challenged. Same view has been taken in *Smt. Parayankandiyal*

Eravath Kanapraavan Kalliani Amma and others Vs. K. Devi and others, ; Dr. K. R. Lakshmanan Vs. State of Tamil Nadu and another, ; and New Delhi Municipal Committee Vs. State of Punjab, etc. etc., .

7. In adjudging the validity of the provision, the existing conditions in which the law is to be applied, cannot be ignored for the reason that it is relatable to the object to be achieved by the legislation. Vide Anukul Chandra Pradhan, Advocate, Supreme Court Vs. Union of India and others, . To attract the concept of arbitrariness enshrined in Article 14 of the Constitution of India, it is necessary to show that the provision is so unreasonable or arbitrary that it does not have any regard to the object which is sought to be achieved. For striking down the rules, it is necessary that the rule should be found to be intrinsically arbitrary or otherwise repugnant to the Constitutional principle. Unless there is a clear transgression of Constitutional principle which is discernable from the object and scheme, the case will not fall within the ambit of Constitutional inhibition of Article 14.

8. In Union of India v. S.K. Sareen 1987 (1) SCC 177, the Hon"ble Apex Court has held that in such a case where the person pleads such an issue, the burden to substantiate the claim raised on arbitrary/bias/discrimination lies on the person who challenges it. P 15.

9. Thus, it is just to be seen as what has been the purpose of enacting the Rules. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court has observed as under:

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.

10. This view has further been reiterated and followed in Smt. Phoolwati v. Union of India and Ors. 1991 SC 469.

11. In Umesh Kumar Nagpal Vs. State of Haryana and Others, , the Hon"ble Apex Court has considered the nature of the right which a dependent can claim while seeking employment on compassionate ground. The Court has observed as under:

It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian

consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who maybe eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The Object is not to give a member of such family a post much less a post for post held by the deceased. 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....

...The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more desitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased.

...The decision does not justify compassionate employment either as a matter of course....

...The only ground which can justify compassionate employment is the penurious conditions of the deceased's family.

The consideration for such employment is not a vested right...the object being to enable the family to get over the financial crisis.

(Emphasis added).

12. The same view has been reiterated in Jagdish Prasad Vs. State of Bihar and Another, ; State of Bihar and others etc. Vs. Samsuz Zoha etc., ; Himachal Road Transport Corporation Vs. Dinesh Kumar, ; and Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai, . It has categorically be held that compassionate employment cannot be claimed as a matter of course not being a vested right.

13. The concept of vested right has been explained by the Apex Court in Masammatt Bibi Sayeeda and Others etc. Vs. State of Bihar and Others, ; wherein it has been described as under:

The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as "vested", Fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not

subject to be defeated by a condition precedent." Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary, {International Edition} at page 1397, "vested" is defined as {L}aw held by tenure subject to no contingency; complete; established by law as a permanent right; vested interests.

14. In Haryana State Electricity Board and Anr. v. Hakim Singh 1997 (8) JT 332, the Hon"ble Apex Court placed reliance upon the judgments referred to above and observed that the object of providing for compassionate employment is only to relieve the family from financial hardship, therefore, as "emolumentary relief should not be taken as opening an alternative mode of recruitment to public employment." (Emphasis added).

15. Similarly, in Haryana State Electricity Board v. Naresh Tanwar and Anr. 1996 (1) SCC 23, the Hon"ble Apex Court reiterated and followed the law laid down in Umesh Nagpal's case (supra) and directed the applicants involved therein to apply for employment on compassionate ground "by giving full details of the family circumstances and the economic conditions."

16. In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , the Court has observed as under:

The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both the ends meet, a provision is made for giving gainful appointment to one of the dependents of the deceased who maybe eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provision, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds for the dependent of a deceased employee.

(Emphasis added).

17. A Division Bench of this Court in Norendra Singh v. State of Rajasthan and

Ors. RLW 1998 (1) 666, while dealing with the issue observed that the object and purpose of providing the employment on compassionate ground is to redeem the family which has lost its bread-earner and not to create any new mode of recruitment for dependent of the government servant and it cannot be claimed as a vested right.

18. Undoubtedly, legislation by judiciary is not permissible and the Court cannot read something which is not in the provision. Vide *Suresh Lohiya Vs. State of Maharashtra and Another*, . But the text and context of the entire provisions must be looked into while interpreting any of the provision of the Statute. The Court must look to the object which the Statute seeks to achieve while interpreting the provisions of the Act/Rules/Regulations. A purposive approach for interpreting the provision is necessary. Vide *S. Gopal Reddy v. State of Andhra Pradesh* AIR 1966 SC 2184; and *Durga Oil Company and Another Vs. State of U.P. and Others*, .

19. In *Pannalal Bansilal Patil and others etc. Vs. State of Andhra Pradesh and another*, , the Supreme Court observed that reading down the provisions of the Act is a settled principle of interpretation so as to sustain their constitutionality, as well as for effectuation of the purpose of the Statute.

20. It is also settled principle of interpretation of law that any interpretation which leads to hardship and complication, should be avoided. In *Administrator Municipal Corporation, Bilaspur Vs. Dattatraya Dahankar and another*, , the Hon"ble Apex Court has held that "the mechanical approach to construction is altogether out of play with the modern positive approach. The modern positive i.e., to effectuate the object and purpose of the Act."

21. In *Colour-Chem. Ltd. v. A.L. Alaspurkar* (1998) 3 SCC 198, the Court held that the provisions of welfare legislation should be construed in a way to give benefit to the persons for whose benefit the Rules have been enacted and the Court must examine the policy and object of the Act and must advance the cause of enactment.

22. In *Durga Oil Company and Another Vs. State of U.P. and Others*, , the Hon"ble Supreme Court held that while interpreting the provisions of a Statute or Rules, the purposive interpretation should always be borne in mind. Similar view has been taken by the Hon"ble Supreme Court in *Forest Range Officer v. P. Mohd. Ali* (1993) Suppl. 3 SCC 627 . In *The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.*, , the Court has observed as under:

The language of a statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It is elementary that law does not operate in a vacuum. It is not an antique to be taken down, dusted, admired and

put back on the shelf, but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions which arise by reason of clash between conflicting interest. It is, therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate.

23. In *S.P. Jain Vs. Krishna Mohan Gupta and Others*, , the Hon''ble Supreme Court had held that law should take a pragmatic view of the matter and response to the purpose for which it was made and also take cognizance of the current capabilities and life-style of the community. It is well settled that the purpose of law provides a good guide to the interpretation of meaning of the Act. The legislative futility is to be ruled-out so long as the legislative policy permits. In *The Daily Partap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh*, , the Hon''ble Supreme Court held that the Court must always keep in view the beneficial and social welfare aspect of the statute. Same view has been taken by the Hon''ble Supreme Court in *Dinkar Anna Patil and Others Vs. State of Maharashtra and Others*, ; *Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others*, ; and *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General Kamgar Union and Ors*, . In *Vaijanath and Others Vs. Guramma and Another*, , the Hon''ble Supreme Court held that remedial Act should be given beneficial interpretation.

24. However, in *Employees State Insurance Corporation Vs. M/s. M.M. Suri and Associates (P) Ltd.*, , the Hon''ble Supreme Court held that even if the statute is beneficial, the Courts should not stretch it too far. The Supreme Court relied upon its earlier judgments in *Regional Director, Employees'' State Insurance Corporation, Trichur Vs. Ramanuja Match Industries*, , wherein the Court observed as under:

Counsel for the appellant emphasised on the feature that the statute is a beneficial one and the Court should not interpret a provision occurring therein in such a way that the benefit would be withheld from the employees. We do not doubt that the beneficial legislation should have liberal construction with a view to implement the legislative intent but where such beneficial legislation has a scheme of its own, there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme.

(Emphasis added).

25. An employment on compassionate ground should be provided strictly in accordance with the Rules and the Court cannot take a view as to make it violative of Articles 14 and 16 of the Constitution of India. (Vide *Cochin Dock Labour Board Vs. Leenamma Samuel and Others*,). The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Vide *U.P.S.R.T.C. Vs. Pukhraj Singh and Others*, : and *A.P.S.R.T.C.*

represented by Depot Manager Vs. K. Pochaiah and Another, .

26. The issue involved herein requires consideration in the light of the settled legal principles discussed hereinabove. The Rules have been carved out as an exception to the Service Jurisprudence which mandatorily require that any appointment in public office is to be made in consonance with the mandate of Article 14 and 16 of the Constitution as any appointment, even on temporary or ad-hoc basis, if found to be violative of the said provisions of the Constitution would remain unenforceable being invalid. Vide *State of Haryana v. Piara Singh* AIR 1992 SC 2030 *Prabhat Kumar Sharma and others Vs. State of U.P. and others*, ; and *Thomas Chandy v. Rajasthan Financial Corporation* 1998 (2) RLW 1356 . However, the Rules have been framed to mitigate the financial hardship of the grieved family which has lost its bread-earner, as an exception to the provisions of Articles 14 and 16 of the Constitution of India. It is settled principle of law that an exceptional Clause/rule has to be construed strictly. Vide *Satnam Singh and others Vs. Punjab and Haryana High Court and others*, ; *State Level Committee and another Vs. M/s. Morgardshammar India Ltd.*, ; and *Puri Municipal Council and others Vs. Indian Tobacco Co. Ltd.*, .

27. In *Ravindra Singh v. State of Rajasthan and Ors.* 1997 RLW (1) 139, this Court has observed as under:

The appointments offered on compassionate ground, in exercise of the powers of these Rules, are extraordinary appointments given for a specific purpose and therefore, amount to a reasonable restriction on the mandate of the Constitution given by Article 16 thereof that there shall be an equality of opportunity in the matter of public appointment. A preferential appointment, without competition or consideration of other eligible candidate would normally vitiate the mandate of Article 16 and would, therefore, be unconstitutional.... It will, therefore, be seen that a provision made for giving appointment to a dependent of deceased Government servant in preference to others who enjoy equal right of consideration for appointment to a Government service is protected merely by reason of being exception to Article 16. So viewed, the rules providing for compassionate appointment will have to be construed strictly and cannot be construed widely and as benoalent legislation....

A careful consideration of Article 16 and the principles embodied therein, demonstrate the desire of the Constitution - Makers to create equality in the matter of public employment and then equal right is, therefore, given to the citizens. These Rules, which do away with this right of equality, therefore, form an exception to the General Rule enshrined in Article 16. Being an exception, therefore, the Canons of Interpretation requires that it should be construed strictly according to the Rules of Interpretation. Therefore, the provisions will have to be construed strictly. I have, therefore, to consider the scope and extent of Rule 5 of the Rules applying these Canons of Interpretation. The interpretation given to Rule 5 will have to be such as it does not conflict with the Principles of Article 16 of the Constitution. A scrutiny of Rule 5 will further fortify

this contention...since the rules providing for compassionate appointment are based on humanitarian consideration and giving immediate employment to a bereaved family are liable to be considered as rules putting reasonable restriction on the fundamental right provided by Article 16. To give a wider interpretation to these rules may result in the rules becoming unreasonably restricting and such restriction is, therefore, not permissible in law.

(Emphasis added).

28. In *State of H.P. and Another Vs. Jafli Devi (Smt.)*, , the Hon''ble Apex Court considered the provisions of Clause 5(c) of the Office Memorandum dated 18-1-1990 issued by the Government of Himachal Pradesh, Department of Personnel (AP-II), which reads as under:

5 (c) Eligibility - In all cases where one or more members of the family are already in government service or in employment of Autonomous Bodies/Boards/Corporations etc. of the State/Central Government, employment assistance should not under any circumstances be provided to the second or third member of the family. In cases, however, where the widow of the deceased government servant represents or claims that her employed sons/daughters are not supporting her, the request of employment assistance should be considered only in respect of the widow....

29. The Hon''ble Supreme Court, in the aforesaid judgment, has held that as it was a policy decision taken by the State, the High Court should not have interfered and directed to give appointment to other son or unmarried daughter of the deceased government employee. While deciding the said case, the Supreme Court placed reliance upon its earlier judgment in *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, .

30. The Rules take care of all problems by making it free that widow of the deceased employee can apply for job and the condition that one of her sons or unmarried daughters is in service of the Government/Corporation etc. would not make her ineligible. There is no force in the submissions made by the learned Counsel for petitioners that mere exemption in favour of the widow may not serve purpose as she may not be of a proper/eligible age and may not possess the requisite qualification for the post, for the reason that Rule 6 clearly stipulates that recruitment will be for subordinate/ministerial services or Class IV service as per the qualification of the applicant. Sub-rule (2) of Rule 6 further empowers the Government to dispense with the educational qualification in case of Class IV employment. Rule 8(1)(i) provides that there shall be no age limit for the widow. Rule 9 provides for various relaxations in her favour if she does not possess the requisite training or not able to pass the departmental examination or typing test etc. and she may do it within the period of three years from the date of joining the service. Thus, there are enough safe-guards to effectuate the purpose of rules and to look-after the over-all interest and welfare of the entire family particularly its minor members. The Rules do not require the exercise of

reading down its provisions to achieve the goal.

31. In view of the above, I am of the considered opinion that the provision of Rule 5 of the said Rules is valid and serve the purpose for which the Rules have been framed. Few freak cases of hardship cannot be a determining factor for examining the Constitutional validity of the Rules.

32. The petitions are devoid of any merit and are accordingly dismissed. No order as to costs.