
(2014) 04 KAR CK 0121
In the Karnataka High Court
Case No : Writ Petition No. 48971/2013 (S-RES)

Jyothi S.

APPELLANT

Vs

Mangalore Electricity Supply Company Limited (MESCOM)

RESPONDENT

Date of Decision : 15-04-2014

Acts Referred:

Constitution of India, 1950 — Article 309

Citation : (2014) 3 AKR 383 : (2014) 3 KCCR 2454

Hon'ble Judges : A.N. Venugopal Gowda, J

Bench : Single Bench

Advocate : K.N. Subba Reddy, Advocate for the Appellant

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Father of the petitioner, one Sannaiah, was a lineman in employment of the respondent company. He died on 05.05.1999 in harness, leaving behind his widow and children. Petitioner's mother, who was receiving the family pension, died on 04.05.2010. The petitioner, fourth daughter of Sannaiah, born on 03.09.1985, was aged about 14 years, when her father died. She has two elder sisters, an elder brother and two younger brothers. About 14 years after the death of Sannaiah, petitioner applied during 2013 for providing her employment in the respondent company on compassionate grounds. The application having been returned on 03.08.2013 vide Annexure-G, on the ground that the claim cannot be considered, since, within one year of death of the employee, the application was not submitted, this writ petition was filed on 28.10.2013, to quash Annexure-G and a mandamus to the respondents to provide her appointment on compassionate grounds.

2. Learned advocate contended that, when Sannaiah died in harness, petitioner was a minor and family pension paid to the petitioner's mother having been stopped on account of her death on 04.05.2010, compassionate grounds having continued to subsist, petitioner applied during 2013 and the decision of the respondents vide Annexure-G, virtually rejecting the claim on the ground that

the appointment was not sought within one year of death of Sannaiah is irrational, capricious, illegal and therefore, there is a need in this case to examine, whether the appointment of the petitioner should be made on compassionate grounds.

3. The object of appointment of a dependent of a deceased employee, who died in harness, is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of an earning member of the family and not to confer a status on the family. Appointment on compassionate grounds has to be made in accordance with the Rules, Regulations, Scheme or administrative instructions, by also taking into consideration the financial condition of the family of the deceased. Appointment on compassionate grounds cannot be sought/granted at any time in future, since it is not a vested right and must be made in accordance with the Scheme or the administrative instructions, in as much as the object of providing employment on compassionate grounds is to enable the family to get over financial crisis, which it faced, at the time of death of sole bread earner.

4. Undeniably, neither the petitioner's mother, nor her two elder sisters much less the elder brother sought employment on compassionate grounds, even though Sannaiah died on 05.05.1999. Petitioner, who was aged about 14 years at the time of her father's death, did not seek employment immediately after she attaining majority, but made application only during 2013.

5. In Jagdish Prasad Vs. State of Bihar and Another, , the case of the applicant who was four years old, when his father, an employee, died in harness, was considered with reference to a contention that, since the claimant was a minor, when father died in harness, the compassionate circumstances having continued till the date he filed an application for appointment was entitled to be appointed on compassionate grounds. The contention was not accepted and while upholding the rejection of such a claim for appointment, it has been held by the Apex Court as follows:

3.The very object of appointment of a dependent 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.

(emphasis supplied)

6. In Union of India (UOI) and Others Vs. Bhagwan Singh, , a railway servant died on 12.09.1972. He left behind his wife, two major sons and the respondent, a minor son aged 12 years. The claimant attained majority in 1980-81. Applications filed by him seeking appointment on compassionate grounds was

dismissed on 21.09.1987, 19.06.1990 and 11.06.1991. The age of the claimant when he made the last application was 33 years, filed nearly 20 years after the death of the railway servant. Decision of the railway administration refusing to grant appointment on compassionate ground, when assailed in the Administrative Tribunal, was held as unjustified and the application was directed to be reconsidered and appointment on compassionate grounds be provided, if the applicant is otherwise qualified. In the appeal filed by the railway administration, after noticing the facts and circumstances of the case and the rival contentions, while holding that the application is patently barred, Apex Court has held as follows:

8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on 12-9-1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated 22-2-1993. The appeal is allowed. There shall be no order as to costs.

(emphasis supplied)

7. In Haryana State Electricity Board and another Vs. Hakim Singh, , request for appointment on compassionate grounds was made after a lapse of 14 years i.e., when deceased employee's son attained the majority and the request having been rejected by the employer, on the ground that the departmental circular prescribed maximum three years for making such request and the decision when assailed in a writ petition before the High Court, the same having been allowed by holding that the period of three years would be applicable from the date the claimant becomes major, when challenged by the Board before the Apex Court, by observing that, if the family members of the deceased employee can manage 14 years after the employee's death, one of the legal heirs cannot be allowed to make a claim as though it is a line of succession by virtue of right of inheritance, the appeal filed by the Board was allowed.

8. In Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, , the death of employee took place on 31.12.1981 and his widow sought appointment and subsequently, a daughter also put forth her claim on 07.03.1983. Thereafter, there was an understanding between the family members and second daughter's husband, who was nominated for seeking appointment, claim having been made, compassionate appointment on provisional basis was given to the nominee on 10.05.1993, but the competent authority which was to grant post-facto approval cancelled the proposal on the ground that the appointment could not be given 12

years after the death of employee. The decision, when assailed, writ petition was allowed and the appeal filed before the Division Bench having been rejected and the employer having approached the Apex Court, after survey of the decisions on the subject and by keeping in view the object and burden of providing the appointment on compassionate grounds and the delay of nearly 12 years from the date of death of an employee, the orders passed in the writ petition and the writ appeal were set aside and the decision of the employer was upheld.

9. In *Smt. Sulochana Duttargi Vs. The Manager, National Insurance Co. Ltd. and Others*, , the employee having died on 08.04.1994 leaving behind his wife and a son, who was aged about five years, after nearly about 16 years, the widow of the deceased employee made an application to provide employment to her son, asked for a mandamus, by alleging inaction. While rejecting the writ petition, it was held that the compassionate appointment cannot be claimed after a long lapse of time and after crisis in the family is over.

10. In *Commissioner of Public Instructions and Others Vs. K.R. Vishwanath*, , respondent's father, who was a Government servant died on 21.12.1977. Respondent was born on 20.10.1977 and was about two months old at the time his father died. Having attained majority on 20.10.1995, he submitted an application on 02.12.1996, seeking appointment on compassionate grounds, under the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996. The said application was rejected on 13.11.1997, on the ground that it had not been filed within one year of attaining the majority. Another application was made on 22.04.1998 and the same was not entertained. Certain amendments having been made to the 1996 Rules, which were operative with effect from 01.04.1999 the respondent filed another application on 29.11.1999 and the same was rejected on 09.06.2000 by stating that no application was pending when the amended Rules came into force and therefore, Rules as amended, has no application to his case. The decision having been assailed in the Karnataka Administrative Tribunal, by an order dated 19.09.2001, the application was allowed and the Government was directed to consider the case for appointment on compassionate grounds, without regard being had to any period of limitation referred to in the order of rejection dated 09.06.2000. The said order having been upheld by this Court, when Apex Court was approached by the Government, it was held that the Tribunal and the High Court were not justified in directing the respondent's case for consideration of the appointment in terms of the Rules without taking note of the limitation prescribed.

11. In *State Bank of India and Another Vs. Raj Kumar*, , Apex Court has held as follows:

8.....The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by

the employer for such employment and there is no right whatsoever outside such scheme.....

(emphasis supplied)

12. In Local Administration Department and Another Vs. M. Selvanayagam @ Kumaravelu, , the respondent's father died on 22.11.1988 leaving behind a widowed wife and two sons including the respondent, who was 11 years old at that time. The wife of the deceased, whose age at the time of death of her husband was 39 years, did not make any request for appointment on compassionate grounds. After about 5? years of his father's death, the respondent passed SSLC in 1993 and then, on 29.07.1993, his mother made an application for his appointment on compassionate grounds. Another application was made by the respondent for his appointment on compassionate ground after seven years and six months of death of his father. Failing to get a response to his application, the respondent filed writ petition seeking appropriate directions. The matter having reached the Apex Court, it has been held as follows:

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In terms of Circular dated 2nd May, 1997 of the respondents, an application seeking appointment on compassionate grounds is required to be filed within one year from the date of death of an employee. Regard being had to the aforesaid enunciation of law on the subject, the claim of the petitioner when examined, it becomes clear that Sannaiah died on 05.05.1999 and neither his widow nor his two elder daughters much less the elder son sought appointment on compassionate grounds. Petitioner's mother, who was in receipt of family pension died on 04.05.2010. Nearly, after 14 years of death of Sannaiah, petitioner sought appointment on compassionate grounds. That in view of the limitation of one year prescribed in the said circular, the decision taken by the respondents on 03.08.2013 is justified and the petitioner should compete for employment along with others, when a recruitment notification is issued by the respondents inviting applications to fill the vacant posts.

14. The Courts do not have the power to issue a direction to make appointment by way of granting relaxation of eligibility or in contravention of the scheme, which becomes clear from the ratio of decision of the Apex Court in State of Madhya Pradesh and Another Vs. Dharam Bir, , wherein, it was held as follows:

31.....The courts as also the tribunal have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not

possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.

(emphasis supplied)

15. Keeping in view the facts and circumstances of the case and the well settled principles of law in the matter of consideration of the claim for appointment on compassionate grounds, no exception can be taken to the impugned decision vide Annexure-G of the respondents.

In the result, there being no grounds to issue Rule Nisi, writ petition is rejected.