
(2002) 08 RAJ CK 0091
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1540 of 2001

Jyoti Prakash

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 09-08-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 RLW 1241 : (2003) 1 WLC 108 : (2002) 4 WLN 717

Hon'ble Judges : Sunil Kumar Garg, J

Bench : Single Bench

Advocate : G.K. Vyas, for the Appellant; B.M. Bohra, for the Respondent

Final Decision : Dismissed

Judgement

Sunil Kumar Garg, J.—This writ petition under Article 226 of the Constitution of India has been filed by the petitioner on 29.3.2001 against the respondents with the prayer that by an appropriate writ, order of direction, the respondents be directed to prove appointment to the petitioner on compassionate ground under the provisions of the Rajasthan Compassionate Appointment on Dependents of Deceased Government Servants Rules, 1996 (hereinafter referred to as "the Rules of 1996"), on the death of his mother, that took place on 20.12.1998.

2. The case of the petitioner as put forward by him in this writ petition is as follows:-

The petitioner's father late Shri Asu Lal was employed in the respondent-Department and he died on 20.2.1988. The petitioner's mother Mohan Kaur was also working on the post of Class IV in the respondent-Department and she died on 20.12.1998 while in service.

The case of the petitioner is that after death of his mother, he moved an application before the respondents for providing him appointment on compassionate ground, but that application was not decided by the respondents and therefore, he served a notice for demand of justice, a copy of which is

marked as Annex. 1.

The further case of the petitioner is that thereafter, the District Education officer (Secondary), Jodhpur (respondent No.3) sent a letter to the Joint Director (Admn.), Directorate (Secondary) Education, Bikaner (respondent No.2) and that letter is dated 6.6.2000, which is marked as annex.2.

The further case of the petitioner is that the information was gathered by the respondents that there was a criminal case for the offence under Sections 323, 341 IPC pending against the petitioner in the Court of Judicial Magistrate, Jodhpur and the respondent No. 3 District Education Officer, Jodhpur submitted the information through letter/communication Annex.2 dated 6.6.2000 to the Joint Director (Admn.), Directorate (Secondary) Education, Bikaner (respondent No. 2) to the effect that the case against the petitioner was of trivial nature and would not directly affect him. Hence, pendency of criminal case for the offence under Sections 323, 341 IPC would not be sufficient for denying appointment to the petitioner on compassionate ground, as the pendency of criminal case for the offence under Sections 323, 341 IPC itself does not involve moral turpitude in any manner and it also does not involve misconduct. Hence, this writ petition with the prayer as stated above.

3. A reply to the writ petition was filed by the respondents and in that reply, it has been submitted by the respondents that this writ petition should be dismissed merely on the ground that the purpose of providing compassionate appointment is to mitigate immediate hardship caused to the family of an employee on account of his unexpected death while in service and since in the present case, the death of the petitioner's mother took place in 1998 and this writ petition has been filed in 2001, therefore, that hardship came to an end and thus, the petitioner is not entitled to appointment on compassionate ground as no vested right has accrued to him.

4. Apart from this, the other ground taken by the respondents for not granting compassionate appointment to the petitioner is that the petitioner has concealed certain material facts on point that the petitioner was facing trial for the offence under Sections 323, 341 and 307 IPC and the learned Sessions Judge, Jodhpur through order dated 1.12.1998 (Annex.R/1) though discharged the petitioner of the charge for the offence u/s 307 IPC, but directed the learned Chief Judicial Magistrate, Jodhpur to proceed with the trial for the offence under Sections 323 and 341 IPC against the petitioner. Therefore, because of pendency of criminal case against the petitioner, he is not entitled to compassionate appointment. Apart from this, there was also a criminal case pending against the petitioner in the court of Judicial Magistrate First Class No. 1, Jodhpur for the offence under Sections 323, 341 IPC, but that fact was also concealed by the petitioner, though he was acquitted by the learned Judicial Magistrate First Class No. 1, Jodhpur through judgment and order dated 8th October, 1999 (Annex.R/2), hence, the petitioner has suppressed the material facts and, therefore, from this point of view also, the petitioner is not entitled to any relief and this writ petition be

dismissed.

5. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondents and gone through the materials available on record.

6. Before proceedings further, it may be stated here that so far as the propose and object of providing appointment on compassionate ground is concerned, the Hon"ble Supreme Court in so many cases has held that:-

(1) 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.

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

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

7. In the present case, the death of the petitioner's mother took place on 20.12.1998.

8. From perusing para No. 6 of the writ petition, it appears that the respondents while examining the application of the petitioner for appointment on compassionate ground also gathered information from the Court and after perusing record, the District Education Officer (respondent No. 3) sent the letter/communication Annex.2 dated 6.6.2000 to the Joint Director (Admn.), Directorate (Secondary) Education, Bikaner (respondent No. 2).

9. From perusing letter/communication Annex.2 dated 6.6.2000, it appears that there was a criminal case being No. 32/98 pending against the petitioner for the offence u/s 323, 341 IPC and in that case, the petitioner was acquitted of the said charges by the learned Judicial Magistrate First Class No. 1, Jodhpur vide judgment and order dated 8.10.1999 (Annex.R/2) meaning thereby on the date when the application for compassionate appointment would have been made by the petitioner before the respondents, that case was pending against the petitioner. This is one of the aspects of the matter.

10. The other aspect of the matter is that there was also a sessions case being No. 161/98 pending against the petitioner for the offence u/s 307, 323, 341 IPC and in that case, the learned Sessions Judge, Jodhpur vide order Annex.R/1 dated 1.12.1998 discharged the petitioner of the charge for the offence u/s 307/307 IPC, but u/s 228 Cr.P.C., the learned Sessions Judge sent the file to the Chief Judicial Magistrate for proceeding with the trial against the petitioner for the offence under Sections 323 and 341 IPC, meaning thereby another criminal case was also pending against the petitioner.

11. In the letter/communication Annex.2 dated 6.6.2000, therefore is a clear

mention of the above two criminal cases pending against the petitioner.

12. The copy of the application filed by the petitioner before the respondents seeking appointment on compassionate ground has not been produced by the petitioner alongwith this writ petition and the petitioner has himself mentioned in para No. 6 of the writ petition that information was gathered by the respondents meaning thereby the petitioner himself did not mention the facts of pendency of criminal cases against him, in the application for grant of compassionate appointment.

13. Thus, in these circumstances, it can reasonably be inferred that the petitioner suppressed the material facts and he did not mention the facts about pendency of criminal cases against him while submitting application before the respondents for giving of appointment on compassionate ground. An application under Article 226 of the Constitution of India can be refused even without hearing on merits, it appears to the Court that the applicant has made deliberate concealment of material facts. In the present case, the fact of pendency of two criminal cases against the petitioner on the date of application for compassionate appointment would certainly amount to material fact and non-mentioning of that fact in the application seeking appointment on compassionate ground would come under the purview of concealment of material fact deliberately. Hence, on this ground alone, this writ petition is liable to be dismissed.

14. No doubt the offence under Sections 323 and 341 1PC are of trivial nature, but since the petitioner has suppressed this aspect, therefore, he is not entitled to any relief.

15. Hence, the ruling relied upon by the learned counsel appearing for the petitioner in *Ashok Gaur v. State of Rajasthan and Anr.* (1), would not be helpful to the petitioner as in that case, the question of suppression of material fact was not there.

16. Apart from this, as stated above, the purpose of giving appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family and such appointment should, therefore, be provided immediately to redeem the family in distress. In the present case, the death of the petitioner's mother took place on 20.12.1998 and now more than 3-1/2 year have elapsed and, therefore, from this point of view also, the petitioner is not entitled to any relief.

17. For the reasons stated above, there is no merit in this writ petition and the same is liable to be dismissed.

Accordingly, this writ petition filed by the petitioner is dismissed. No order as to costs.