(2016) 11 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No. 2285 of 2016 (S-KSRTC)

K. Mohan Kumar APPELLANT

Vs

Managing Director Karnataka State Road Transport Corporation RESPONDENT

Date of Decision : 11-11-2016

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2017) 1 AirKarR 424

Hon'ble Judges : Mr. A.N. Venugopala Gowda, J.

Bench : Single Bench

Advocate : Smt. H.R. Renuka, Advocate, for the Respondents; Sri. S. Venkateshwara Babu for M/s. A. Shivarama & Associates, for the Petitioner

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J. - This petition was filed to quash Annexure-E issued by the 2nd respondent and for issuing direction to reconsider the case of the petitioner for appointment on compassionate grounds in Karnataka State Road Transport Corporation.

2. Brief facts of the case are; that Sri. Kariappa, the father of the petitioner, a Junior Assistant in KSRTC, died on 27.09.2013, while in service. An application was submitted to provide appointment to the petitioner on compassionate grounds. The endorsement vide Annexure-E was issued and the request was turned down.

3. Sri. S. Venkateshwara Babu, learned advocate contended that as on the date of death of the petitioner''s father, salary income of petitioner''s mother being less than amount the deceased was earning by way of salary, the respondents are unjustified in issuing Annexure-E. He submitted that the salary income of the petitioner''s father during September, 2013 was Rs. 27,768/- and the salary income of the mother of the petitioner being less than the salary income of the

deceased and there being untimely death of bread-earner, the petitioner facing financial crisis, 2nd respondent has acted arbitrarily and illegally in turning down the just request.

4. Smt. H. R. Renuka, learned advocate, on the other hand contended that the claim of the petitioner was examined with reference to Circular No. 1213 dated 23.09.1999 of KSRTC. She submitted that the eligibility criteria for appointment on compassionate grounds have been laid down therein. She pointed out that appointment can be provided only to one member of the family of the deceased, if such family is in financial crisis or destitution i.e., if the recurring monthly income of the family from all the sources is less than the total emoluments of the deceased, as on the date of submission of application for compassionate appointment. She submitted that in case any member of the family of the deceased is employed in Government or any undertaking of the Government, monthly income of the family is required to be taken into consideration. She further submitted that the family of the deceased being not in financial crisis or destitution, as the petitioner''s mother is employed as a Teacher in a Government School and receiving monthly salary of Rs. 25,752/- during September, 2013 and onwards, there is additional income by way of the interest earned on the terminal benefits of the deceased received from the employer. She submitted that having regard to the factual matrix the claim of the petitioner has rightly been turned down and the endorsement as at Annexure-E is not liable to be quashed.

5. The point for consideration is, whether there is non-application of mind in the matter of consideration of the claim of the petitioner for providing of appointment on compassionate grounds and whether Annexure-E is liable to be quashed?

6. Compassionate appointment is not ail avenue for a regular employment as such. The appointment on compassionate grounds is an exception to Article 16 of the Constitution. In the matter of compassionate appointment what is basically required to be examined by the employer of the deceased is, whether the family of the deceased is in financial distress, on account of the death of the bread-earner.

7. In the present case, respondent No.2 having considered the fact that the petitioner''s mother is employed as a Teacher in a Government School and as she is drawing salary of Rs. 25,752/- from September, 2013 onwards has issued the endorsement vide Annexure-E. Concededly, the deceased has left behind his wife and the petitioner. The only non-earning person in the family of the deceased is the petitioner.

8. Learned advocate for the petitioner did not dispute the fact that the petitioner and his mother received the terminal benefits of the deceased. The said amount when invested in a Bank would fetch interest and the same would augment the income of the petitioner''s mother. Thus, there being monthly income which is

more than the sum contributed to the family i.e., by deduction of after personal maintenance expenditure of the deceased employee, it cannot be said that the petitioner, who was the sole non-earning person is facing any financial distress.

9. The Circular of KSRTC mandates the competent authority to take into consideration the financial condition of the family. Respondent No.2 by taking into consideration the employment and income of the petitioner''s mother has turned down the request. There being no dispute with regard to the payment of terminal benefits, which when invested in Bank would fetch additional income in the form of interest, the family of the deceased employee is not in financial distress. The precondition of indigence of the dependents of the deceased employee to provide appointment on compassionate grounds is not forthcoming.

10. Having examined the case and the employee having not died by leaving his family in penury, there is no justification to quash Annexure-E and direct respondent No.2 to consider the claim of the petitioner afresh, as the family members of a deceased employee cannot seek employment as a matter of right.

11. In Bhawani Prasad Sonkar v. Union of India and others, (2011) 4 SCC 209, Apex Court has held as follows:

"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee''s family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible."

12. In Umesh Kumar Nagpal v. State of Haryana and others, (1994) 4 SCC 138, Apex Court, as far as the question of nature and object of appointment on compassionate grounds, has held as follows:

"6.... the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

13. In Managing Director, MTC Ltd., New Delhi and another v. Pramoda Dei alias Nayak, (1997) 11 SCC 390, Apex Court has held that:

"4 As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment (See: Umesh

Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138)......"

14. As the respondent No. 2 has rightly taken into consideration the financial condition of the family of the deceased, as the petitioner''s mother is employed drawing salary of more than Rs. 25,000/- p.m., the precondition of indigence being absent there is no merit in the claim made by the petitioner for providing of job on compassionate grounds.

15. In the result, writ petition is dismissed but with no order as to costs.

