

(1990) 04 KAR CK 0024
In the Karnataka High Court
Case No : W.A. No. 371 of 1990

K. Raja

APPELLANT

Vs

Karnataka Electricity Board

RESPONDENT

Date of Decision : 18-04-1990

Acts Referred:

Citation : (1990) ILR (Kar) 1368 : (1990) 2 KarLJ 55

Hon'ble Judges : Venkatachala, J;N.D.V. Bhat, J

Bench : Division Bench

Judgement

Venkatachala, J.—If an employee of the Karnataka Electricity Board ("the Board") dies in harness, does such employee's widow or widower, as the case may be, or any other person who becomes entitled for appointment on compassionate ground in the Board under its Official Memorandum No. KEB/B5/721/80-81 dated April 16, 1986, become disentitled for such appointment by reason of such deceased employee's another son being already in the employment of the Board, is an important question which arises for our decision in this appeal.

2. Kanchaiah, an employee of the Board, who was its Lineman, died being electrocuted in the course of his employment. As he died in the course of employment and at the age of 50, his widow, as dependent of the deceased employee, made a claim before the Board under the workmen's Compensation Act, 1923. But, that claim for compensation came to be rejected by the Board on October 24, 1984. Later, she sought from the Board an employment to her son - K Raja - claiming the benefit of the Board's Official Memorandum No. KEB/B5/721/80-81 dated April 16, 1986. However, by Letter No. DCA/AAO/BCO. 6/F-151/8676 dated June 27, 1986 issued by the Superintending Engineer (Electrical), Bangalore Circle, to the Executive Engineer (Electrical), North Division, K.E. B., a copy of which was transmitted to the widow of the deceased employee by the Executive Engineer under his Memo dated October 15, 1986, she was intimated that her claim for appointment to her son - K. Raja cannot be considered since her another son was in employment of the Board as a Lineman.

3. The said K. Raj filed Writ Petition No. 11356 of 1988 before this Court and sought for the issue of a writ in the nature of Mandamus to the Board and its Executive Engineer to give him an appointment as provided for in the Official Memorandum (supra) of the Board. A learned Single Judge of this court, by his order dated August 4, 1988, dismissed that writ petition being of the view that the earlier employment of the deceased employee's son in the Board disentitled the petitioner - K. Raja to claim employment under the Official Memorandum (supra) and that the petition suffered from laches as it was filed two years after the date of the endorsement, to wit, June 27, 1986. Feeling aggrieved by that order, the petitioner has presented this appeal and seeks issue of a writ in the nature of mandamus to the Board for considering his claim for employment in the Board as provided for under its Official Memorandum (supra).

4. The principal argument of the learned Counsel for the appellant was that the view taken by the learned Single Judge of the Official Memorandum (supra) that it disentitled an appointment to any of the persons specified therein claiming appointment by reason of an employee of the board dying in harness because of such employee's another son being already in employment of the Board prior to such death, since overlooks the very purpose of such appointment, to wit, the compassion for the dependents of the deceased employee, cannot be sustained.

5. However, the view of the learned Single Judge was sought to be supported on behalf of the Board on the submission that the Official Memorandum (Supra) was not intended to provide appointment for the persons specified therein after the death of the employee in harness when any of such persons was already in employment of the Board.

6. We find substance in the argument advanced on behalf of the appellant and not in the submission made on behalf of the Board for the reasons which we shall presently state.

Power to make appointments by a State or by a State or by an Authority, like the Board, is subject to Constitutional limitations and cannot be exercised arbitrarily. Hence, such power to make appointments has to be exercised by the State or the other Authorities in accordance with Rules made in that regard conforming to the requirements of the Constitutional limitations and free from arbitrariness. But, exercise of power by the State or other Authorities in the matter of appointment of the depends of an employee dying in harness, is done in relaxation of such rules and whenever power to make appointment is so exercised, it will be a recognised exception to the ordinary Rules regulating appointments. The appointments to be so made are regarded as compassionate appointments or appointments made on the ground of compassion to the dependent members of the family of an employee of the Board who dies during the tenure of his office, so as to assuage the hardship, suffering or grief of such members arising on account of sudden and unexpected death of such employee. Such compassionate appointments are generally governed by Official Memorandum issued in that regard by the Government or the Authorities

concerned. Here, we are concerned with one such Official Memorandum No. KEB/B5/721/80-81 dated April 16, 1986 issued by the Board, which is already adverted to. The subject of the Official Memorandum is "compassionate appointment to be provided for the dependents of an employee who dies during the tenure of his employment" The first paragraph of that Memorandum adumbrates the consistent age-old policy adopted by the Board in the matter of providing employment for the dependents of its employee who dies in harness. Substance of the material provisions contained in Memorandum as to the making of compassionate appointment may be put thus :

(1) The eligible dependents of the deceased employee can seek appointment from the Board within one month from the date of death and if he does not so seek, the Officer concerned should bring to the notice of the dependent members of the deceased employee's family their right to obtain appointment from the Board. The Officer concerned with the making of the appointment should expedite the making of such appointment so as to assuage the hardship of the dependent members arising on account of sudden demise of the employee.

(2) The order of priority for the dependents of the deceased employee to obtain appointment shall be -

(a) widow or widower of the deceased employee;

(b) son of the deceased employee (if the widow is unwilling for appointment or has pre-deceased the deceased employee);

(c) unmarried daughter of the deceased employee (if the widow or the son is unwilling to take appointment or ineligible for such appointment);

(d) brother of the widow of the deceased employee (if the widow, son and the daughter of the deceased employee are not willing to take appointment or ineligible for such appointment).

(3) & (4)

(5) Application for compassionate appointment shall be made within the period of five years from the date of death of the employee. But, in the case of minors, within three years from the date he or she attains the age of majority.

(6) The compassionate appointments shall be for direct recruitment vacancies of Group C and D posts.

(7)

(8) The Official Memorandum does not apply to the case of death of husband or wife where both of them are in the Board's employment. Yet the Board is empowered to make compassionate appointment to a son or unmarried daughter of the deceased wife or husband where the posts held by the husband and wife belong to Group-D.

(9) to (12)

Admittedly, there is no express provision in the said Official memorandum which excludes compassionate to a son of the Board's employee who dies in harness because of his another son being already in employment of the Board. If such was the intention, as is now sought to be made out on behalf of the Board, it would not have been difficult for the Board to make such son ineligible for compassionate appointment as has been done with reference to a wife or husband when both of them are in the Board's employment (vide Paragraph 8). The submission made on behalf of the Board that the entitlement of a dependent of a deceased employee for a compassionate appointment from the Board should depend upon the deceased employee's family utter poverty, which can not be attributed to it because of the employment of another son of the deceased employee in the Board, will have the effect of defeating the very object of the Official Memorandum providing compassionate appointment to the dependent of a deceased employee during the tenure of his employment in the Board. What is sought to be achieved by making provisions for the compassionate appointments under the Official Memorandum is, in some way, assuaging the monetary loss suffered by the dependents of the deceased employee by reason of the latter's sudden and unexpected demise. The employment of a son of the deceased employee existing on the date of death of such employee cannot, on any account or by any imagination, be regarded as that which makes good or mitigates such loss in as much as there may exist no nexus between the loss suffered by the depends of the deceased employee on his sudden demise and the earlier appointment of the deceased employee's son, who having regard to the present conditions of such a family, would be outside the family of the deceased employee being an adult with independent employment. Moreover, even common sense should tell a family of a Lineman in the Board can never be regarded as an affluent family as would disentitle the dependents of the deceased Lineman to the benefit of compassionate appointment provided for in the Official Memorandum. Exception made under Paragraph (8) of the Official Memorandum (Supra) empowering the Board to give an appointment to a son or unmarried daughter of a a deceased employee belonging to D Group even where surviving wife or husband is in employment of the Board, is a clear indication that a person who is entitled to compassionate appointment under the Official Memorandum cannot be denied on any one of such persons being already in the employment of the Board. Hence, our considered view in the matter is that under the Official Memorandum of the Board (supra), the widow, the son, the unmarried daughter, brother of the widow, as the case may be, of a deceased D Group employee of the Board, as in the Present case, becomes entitled to compassionate appointment provided for there notwithstanding the former employment of the son of the deceased employee in the Board. Consequently, with respect to the learned single Judge, we disagree with his views as to the policy underlying the Official Memorandum and hold that if an employee of the Board dies in harness, such employee's widow or widower, as the case may be, or any other person who becomes entitled for appointment on compassionate ground in the Board under its Official Memorandum (Supra) becomes entitled for such

appointment despite the deceased employee's another son being already in the employment of the Board.

7. We shall now turn to the view taken by the learned single Judge of laches which is made a ground for dismissal of the writ petition.

According to the learned single Judge, as there is a lapse of two years between the date of endorsement questioned in the writ petition, to wit, June 27 1986, and the date of filing of the writ, August, 2. 1988 such lapse has to be regarded as laches on the part of the petitioner in filling the writ petition and therefore the writ petition was unmaintainable on that account. As seen from the memo in the endorsement, a copy of the endorsement to the widow of the deceased employee only on October, 15, 1986. If so, there is time-lag of two years between the communication of the endorsement to the widow of deceased employee and the filing of the writ petition by the son of the deceased employees, as has been held by the learned single Judge. This apart, when under the provisions of the very Official Memorandum, compassionate appointment could be sought within a period of five years from the date of death of the employee and when such five years had not elapsed between the date of death of the employee, that is March 4, 1984 and the date of filing of the writ petition that is August 2, 1988, the writ petition could not be held to be unmaintainable by reason of laches. Hence, we find no justification for the writ petition being dismissed on the ground on the of laches.

8. In the result, we allow this appeal, reserve the order of the learned single Judge, allow the writ petition, quash the endorsement (Annexure-C) impugned in the writ petition and issue writ in the nature of Mandamus to the respondents to consider the application of the appellant-petitioner for compassionate sought from the Board, in the light of this Judgment, within a period of a eight weeks from the date of receipt of this Judgment.