
(2016) 07 BOM CK 0071
In the Bombay High Court
Case No : Writ Petition No. 7206 of 2015

Kalpana

APPELLANT

Vs

Chief General Manager, Bharat Sanchar Nigam Limited

RESPONDENT

Date of Decision : 07-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 ALLMR 835 : (2017) 1 BCR 543 : (2016) 3 LLJ 367 : (2016) 5 MhLJ 182 : (2016) 5 SLR 771

Hon'ble Judges : S.S. Shinde and Sangitrao S. Patil, JJ.

Bench : Division Bench

Advocate : Mr. Sachin S. Deshmukh, Advocate, for the Appellant; Mr. S.B. Deshpande, Additional Solicitor General of India, for the Respondent

Final Decision : Allowed

Judgement

Mr. Sangitrao S. Patil, J.—Rule. Rule made returnable forthwith. With consent of the learned counsel for the petitioner and learned Additional Solicitor General of India, heard finally.

2. The husband of the petitioner, namely, Vinayak Tryambak Bachhav was working as T.M. with the respondents. He died on 18th January, 2008 in harness leaving behind him the petitioner (the widow) and two daughters. The petitioner being indigent applied for her appointment to some suitable post on compassionate ground. The said application came to be rejected as per the impugned order dated 20th May, 2014 on the ground that the family of the petitioner is not living in penury.

3. The learned counsel for the petitioner, relying on the guidelines dated 27th June, 2007, issued by the Assistant Director General (Pers.IV) of the Bharat Sanchar Nigam Limited ("BSNL", for short) wherein the assessment criteria for determining indigent condition has been given and further it has been mentioned that the cases with Net Points 55 or more, shall be prima facie treated as eligible

for consideration by Corporate Office High Power Committee for compassionate ground appointment. He submits that as per the criteria for assessment of indigent condition, the petitioner was given 66 points. Therefore, her claim for appointment on compassionate ground should have been considered positively by the respondents. He submits that the impugned order passed by respondent No. 2 in breach of the above referred guidelines is not legal and sustainable. He, therefore, prays that the impugned order may be quashed and set aside and the respondents may be directed to consider the petitioner for being appointed to any suitable post on compassionate ground.

4. The learned Additional Solicitor General of India opposed the petition on the ground that the family of the petitioner was not found to be living in penury since family pension of Rs. 4440/+ IDA and another terminal benefits amounting to Rs. 4,34,398/- were paid/being paid to the petitioner. He supports the impugned order and prays that the writ petition may be dismissed.

5. There is a reference in the last paragraph of the impugned order about the scheme contained in the Office Memorandum dated 9th October, 1998 for compassionate appointment under the Central Government ? Revised consolidated instructions published by the Director (Establishment), Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training), New Delhi. As per the said Scheme, the petitioner is entitled to seek appointment on compassionate ground due to the untimely death of her husband who was serving with the respondents. In clause 16 (c) of the said Scheme, it is specifically mentioned that an application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. It is further mentioned that while considering the request for appointment on compassionate ground, a balanced and objective assessment of the financial condition of the family has to be made, taking into account its assets and liabilities (including the benefits received under the various welfare schemes) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.

6. In order to bring uniformity in assessment of indigent condition of the family for offering compassionate ground appointment, the guidelines dated 27th June, 2007, have been addressed to all Heads of Telecom Circles for being followed scrupulously. Guideline No. 2.0, which is relevant for deciding this writ petition, reads as under:

2.0. Accordingly, the High Power Committee of the Corporate Office for considering the compassionate ground appointment cases, Headed by Director (HRD), recommended for introduction of a weightage point system, within DOPT guidelines, to bring uniformity in assessment of indigent condition of the family, which has subsequently been approved by the Management Committee of BSNL as per the following :

(I) To continue with the policy guidelines on compassionate ground appointment, issued by DOPT vide OM NO. 14014/6/94Estt (D) dated October 9, 1998 and to introduce the weightage point system, as per details given at Annexure I.

(II) The assessment criteria for recommendation of the indigent condition of the family by the Circle High Power Committee shall be ? (a) Cases with 55 or more Net Points shall be prima facie treated as eligible for consideration by Corporate Office High Power Committee for compassionate ground appointment and (b) Cases with Net Points below 55 (i.e. 54 or less) shall be treated as non-indigent and rejected.

7. Annexure-I to the letter dated 27th June, 2007 contains Weightage Point System for assessment of Indigent Condition. It mentions the items with positive as well as negative points. At the bottom of the said Weightage Point System, the assessment criteria has been given in the following words :

I. Cases with 55 or more Net Points shall be prima facie treated as eligible for consideration by Corporate Office High Power Committee for compassionate ground appointment II. Cases with Net Points below 55 (i.e. 54 or less) shall be treated as non-indigent and rejected.

8. In the present case, the petitioner has produced the checklist with reference to Weightage Point System in respect of her own case at page No. 17 of the compilation annexed to the petition, wherein her Net Points are 66. Since the Net Points are more than 55, the petitioner was liable to be treated as eligible for consideration for appointment on compassionate ground in view of the assessment criteria given at the bottom of Annexure-I to the letter dated 27th June, 2007. There is nothing in the Office Memorandum dated 9th October, 1998 or the letter dated 27th June, 2007 to show that the dependent of the deceased employee getting family pension over and above certain amount or the terminal benefits over and above certain limit, would not be held to be indigent and would not be considered for being appointed on compassionate ground. Respondent No. 2 seems to have totally ignored the assessment criteria for holding the petitioner indigent and wrongly opined that the family of deceased Vinayak Tryambak Bachhav was not living in penury. The office of respondent No. 2 itself assigned 66 Net Points considering all the items in the checklist at page No. 17 of the compilation annexed to the petition. The decision of respondent No. 2 to reject the request of the petitioner for her appointment on compassionate ground is in total breach of the guidelines given in the letter dated 27th June, 2007. In the circumstances, the impugned order cannot be said to be legal, proper and correct. It is liable to be quashed and set aside.

9. Respondent No. 2 will have to be ordered to reconsider the case of the petitioner for her appointment on compassionate ground on the basis of the Net Points 66 assigned to her in the checklist (Annexure II at page 17 of the compilation of the petition). In the result, we pass the following order :

(i) The writ petition is allowed.

- (ii) The impugned order dated 28th May, 2014, passed by respondent No. 2 is set aside.
- (iii) The respondents are directed to reconsider the application of the petitioner for her appointment on compassionate ground, on its own merits, considering 66 Net Points assigned to her as per the assessment criteria as per the guidelines given in the letter dated 27th June, 2007.
- (iv) Respondent No. 2 shall take decision on the application of the petitioner afresh as expeditiously as possible and in any case, within three months from today and communicate the same to the petitioner.
- (v) Rule is made absolute in the above terms.
- (vi) No costs.