

(2008) 05 CAL CK 0045
In the Calcutta High Court
Case No : W.P.S.T. No. 40 of 2002

Kamalesh Adgiri

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Citation : (2008) 118 FLR 777

Hon'ble Judges : Prasenjit Mandal, J;K.J. Sengupta, J

Bench : Division Bench

Advocate : Dipak Banerjee and Ram Krishna Bhattacharya, for the Appellant;Saibal Acharya, for the Respondent

Final Decision : Allowed

Judgement

K.J. Sengupta, J.—This matter was heard on 4th March, 2008 and again on 11th March, 2008. On 4th March, 2008 learned lawyer for the State Mr. Saibal Acharya appeared. However, on 11th March, 2008 none appears on behalf of the State. This application is against an order of the learned Tribunal dated 19th October, 2001 by which the applicant's challenge against departmental order of rejection of claim for appointment on compassionate ground was dismissed. The fact is recorded in short as follows:

One Nalini Ranjan Adgiri, since deceased is the father of the present petitioner and he was working before his death as Foreman, Industrial Training Institute, Haldia in the District of East Midnapore under the Director of Industrial, Training, West Bengal. He died-in-harness on 27th May, 1996. The petitioner, being science graduate and also having obtained a diploma certificate in information technology from the Government of West Bengal immediately after the death of his father made his application on 23rd July, 1996 for appointment on compassionate ground. The said Nalini Ranjan. Adgiri died leaving him surviving his sole widow Indu Rani Adgiri, Sri Kamalesh Adgiri, the applicant herein, his son, and Smt. Sarbani Adgiri, his daughter. The petitioner's prayer for compassionate appointment was for the post of Lower Division Clods and after

receiving representation the Assistant Director of the Industrial Training informed that the [appropriate post is available and his appointment may be considered. Despite such recommendation by. letter dated 24th September, 1997, the State respondent, turned down prayer of the petitioner for appointment on compassionate ground. The applicant challenging the aforesaid order filed an application in the State Administrative Tribunal being O.A. No. 1593 of 1998 and the same was disposed of by an order dated 25th August, 1998 directing the respondent Secretary, Department of Technical Education and Training to treat the application of the petitioner as representation and dispose of the same in accordance with the law after giving the applicant an opportunity of hearing. In terms of the above order, the Secretary of the concerned Department by an order dated 17th November, 1998 after hearing the petitioner disposed of the matter observing that the claim for compassionate appointment was not entertainable as there was no immediate need of the family since the said family of the deceased has received a sum of Rs. 5 lacs as death gratuity, group insurance etc. besides family pension. The family consists of wife and son, so the above amount is sufficient for their sustenance which is the prime consideration of the spirit of the policy regarding the employment on compassionate ground.

2. The applicant challenged the above order by filing a subsequent application being O.A. No. 54 of 1999 on which the impugned judgment and order was passed. The learned Tribunal by an interim order dated 11th February, 1999 with a reasoned order admitted the said application and passed the initial order to keep one vacant post till further orders of the Tribunal.

Thereafter the matter was heard finally by the learned Tribunal who passed the impugned order and upheld the order with reasons, passed by the Secretary as above.

3. In the above facts and circumstances, the learned Counsel Mr. Dipak Banerjee, appearing for the petitioners, submits that both the orders are contrary to the scheme and policy of the compassionate appointment. In the scheme operating at the time of making application does not provide for any condition for granting compassionate appointment rather it provides for appointment in precedence over any other case. The aforesaid scheme was not even considered or looked into by the department. It is also submitted that it is incorrect to say that the deceased family consists of only widow and son. Actually, the deceased left an unmarried daughter. Immediately after his death the said family had fallen in real financial trouble for which immediate application was made for appointment but the department concerned did not take any step for appointment flouting the scheme promoted by it. He further submits that the receipt of terminal benefit viz. gratuity, family pension and also provident fund are not germane nor relevant factor for refusing on compassionate appointment. Compassionate appointment is a separate and welfare scheme to bail out the family from crisis which had been fallen due to sudden death. In support of his submission he cited the decisions of the Supreme Court in the case of Balbir Kaur and Another Vs.

Steel Authority of India Ltd. and Others, and also another decision of the Division Bench judgment of the Kerala High Court rendered in case of Canara Bank v. Priya Jayarajan.

Mr. Banerjee is fair enough to draw our attention to the subsequent decision of the Supreme Court on appointment of compassionate ground rendered in case of Union Bank of India and Others Vs. M.T. Latheesh,).

4. We do not have the benefit of listening argument of learned lawyer for the State. It has now to be considered whether the order passed by the Secretary of the Department concerned while rejecting claim of the applicant is sustainable in the eye of law or not. The learned Tribunal by its earlier order dated 25th August, 1998 has decided the matter.. The learned Tribunal directed to consider claims and contentions as made in the earlier application treating the same as being a substantive representation. Therefore, it was incumbent on part of the Secretary to look into the relevant scheme and provision-for the compassionate appointment framed by the Government, which was prevailing. At that point of time we find following was the criteria in terms of the scheme for considering prayer for compassionate appointment:

...However, while considering a particular petition for compassionate employment in the events above-mentioned, the appointing authority has to be satisfied as to whether the petitioner concerned was solely dependent on earnings of the deceased or incapacitated employee and whether the purpose of meeting the immediate need of assistance to the family will actually be served by offering employment to the petitioner, i.e. the dependent near relation concerned. Then again, it has also to be ensured that a person belonging to completely separate family is not normally treated as a "near relation" or "dependant" for this purpose. The entire matter should be judged on the basis of the economic relationship prevalent between the ex-employee concerned and the petitioner as also from the point of a normal family ambit.

5. While summarising above scheme following conditions in substance, emerge:

(1) Whether the petitioner concerned was solely dependent on the earnings of the deceased or incapacitated employee.

(2) Whether the purpose of giving assistance to the family will actually be served by offering employment to the petitioner, i.e. the near relation or dependant concerned.

6. By a subsequent Notification No. 133 Emp. dated 1st October, 2007 the Government has made it clear pending case of compassionate appointment would be dealt with under old scheme. By this notification specific norms for compassionate appointment have been laid down with reference to receipt of family pension & interest on receivable on the amount of gratuity vis-a-vis gross monthly salary. But these norms can not be operative retrospectively.

7. While scrutinising order of rejection of the Secretary it appears to us that the

said official has not even adverted to the said criteria of the old scheme. He has tried to read the spirit of the same rather than to read expressed stipulations and directions contained therein. He has no jurisdiction to do so. He has to apply the departmental direction in terms of the express words not to understand the spirit of the same. In the old scheme unlike present one there is nothing mentioned that if any compensation or gratuity being received by the deceased employee would be a factor for refusal to grant compassionate appointment. According to us, it has to be examined whether on death the applicant and/or dependant was really depending upon the income or earnings of the deceased or not. No one has suggested nor it is the case of anyone that this small family consisting of widow, unmarried daughter and son were to be maintained by any other source. The aforesaid conditions are to be examined on the date of death of the employee concerned and not at subsequent stage. Actually cases of compassionate appointment is to be dealt with speedily. If for delayed action by the Government the dependor is to survive by begging or borrowing it cannot be said that financial crisis is overcome. Moreover, it has been held in *Balbair Kaur and Another Vs. Steel Authority of India Ltd. and Others*, that any benefit derived from Family Benefit Scheme or the Payment of Gratuity Act, 1972 for any other benefit given to the deceased employee has nothing to do with the compassionate appointment. In paragraph 13 of the said judgment it has been observed by Their Lordships:

...But in our view, this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation.

8. Similarly, the Division Bench of Kerala High Court has also held earlier in paragraph 8 that granting of terminal benefit is of no consequence in the matter of considering the compassionate appointment,

Subsequent decision of the Supreme Court in case of *Union Bank of India and Others Vs. M.T. Latheesh*, , the Supreme Court while distinguishing the judgment rendered in *Balbair Kaur's* case and the other judgment previously decided in other cases held that the compassionate appointment is not a matter of right and it is a matter of discretion and this must conform to the scheme framed by the employer. We are of the view that the said decision of the Supreme Court nowhere decided that the payment of terminal benefit received by the dependent of deceased employee could be correlated with the compassionate appointment, in absence of any provision of the scheme. It appears factually in that case that the

Supreme Court found that the Union Bank of India had formulated the scheme and under that scheme one has to fulfil the conditions, then and only then appointment could be made. In the scheme it has been specifically provided that terminal benefit could be one of the factors for granting compassionate appointment.

9. Therefore, the Supreme Court decision in Union Bank of India's case and also the other judgements of the same Court relied on therein viz. Umesh Kumar Nagpal Vs. State of Haryana and Others, , General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, and Punjab National Bank and Others Vs. Ashwini Kumar Taneja, are not for the proposition of the law that in absence of any provision in the scheme, the payment of terminal benefit could be a factor for refusing compassionate appointment.

10. We do not find any logic or rationale of this ground to be a factor for rejection in this case. If it is accepted as rightly urged by Mr. Banerjee then no compassionate appointment can be given under any circumstance because some amount of terminal benefit is always granted. Therefore, so long it is not specifically mentioned in the scheme by the Government terminal benefit cannot be a factor for refusing the prayer for compassionate appointment.

11. We have already quoted the conditions for granting compassionate appointment then mentioned in the scheme by the Government. Nowhere it provides that in the event substantial amount of terminal benefit is granted to the family concerned compassionate appointment would be refused. In this case it has to be seen that on death whether the family was depending upon the income of the deceased or not. It is stated on oath that the terminal benefit which had been received already, had been spent out because of the marriage of the daughter and there is hardly anything left for keeping this family survived. The meagre amount of pension during the life time of the widow will not keep the family survived. At the time when the application was made the family really needed this help as there was no bread earner in the family nor the family was with joint mess of other relation. As such the order of the Secretary is not "sustainable. The learned Tribunal unfortunately did not proceed with the matter with the above direction, and has casually accepted the order of the Secretary concerned. This, in our view, is not rendering justice in a case of this nature. Thus, the application is allowed. Order of the Secretary is set aside, so also the order of the Tribunal. The Government is directed to give appointment, subject to fulfilling of other conditions, in the vacancy which was asked to be kept reserved by interim order of the learned Tribunal, if available right now within two months from the date of communication of this order. If not then in any suitable vacancy at any other place and it must be done within three months from the date of communication of this order.

Prasenjit Mandal, J.

12. I agree.