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**(2001) 09 RAJ CK 0102**

**In the Rajasthan High Court**

**Case No : Criminal Writ Petition No. 259 of 1993**

Kamlesh Kumar Nankani

APPELLANT

Vs

Zonal Manager, FCI, Jaipur

RESPONDENT

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**Date of Decision : 20-09-2001**

**Acts Referred:**

Food Corporation of India Staff Regulations, 1971 — Regulation 5

**Citation :** (2002) 2 RLW 1198 : (2002) 2 WLC 322 : (2003) 1 WLN 641

**Hon'ble Judges :** J.C. Verma, J

**Bench :** Single Bench

**Advocate :** P.V. Calla, for the Appellant; Virendra Lodha, for the Respondent

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**Judgement**

Verma, J.—Father of the petitioner Udha Ram, who was an employee of the respondent Food Corporation of India, died on 2.2.1981 while working at Jaipur. He left behind his widow and four minor children of the age of 2 years to 9 years. The petitioner was of the age of 9 years at the time of death of his father. The petitioner being so advised, moved an application through his mother on 16.5.1988 vide (An-nexure-1) after seven years of the death of the deceased employee to the respondent for giving him appointment on the suitable post as per the qualifications possessed by the petitioner. Request was repeated on number of dates with continued representations made vide (Annexure I to 5) right up to the year 1989. The request for appointment was rejected by the respondent Corporation vide its letter (Annexure-R I/2) dated 19.8.1989. Mrs. Savila Nankani, widow of the deceased also approached to Hon''ble the Prime Minister. The Office of the Hon''ble Prime Minister had sent her representation to the respondent Corporation vide (Annexure-6) dated 1.6.1990. The respondent Corporation ultimately finally rejected the request of the petitioner vide (Annexure-7) dated 9.8.1991 on the ground that the request of the dependent cannot be considered as it was time barred.

2. Being aggrieved the petitioner has filed this present writ petition for the relief for issuing a direction to the respondent Corporation to re-consider his case and

to offer the petitioner appointment on the suitable post as per his qualification.

3. The contention of the learned counsel for the petitioner is that at the time of death of his father who had left behind him the widow and four minor children, the petitioner being the eldest one of the age of 9 years was in a destitute situation and therefore, as soon as rather even on attaining the age of majority, compelled with the circumstances, the mother of the petitioner had to approach to the respondent Corporation for appointment of her son on a suitable post. It is not denied that the eldest son of the deceased employee even at the time of making first application was 16 years of age and was minor.

4. Learned counsel for the respondent Corporation, opposes the request on the ground that (1) that the appointment on the compassionate ground can only be given when there is an immediate need and in any case, after a lapse of more than 7 years when the first application was moved, there remains hardly any ground to give appointment on the compassionate ground; (2) that the instructions had been issued by the respondent Corporation to apply for such appointment within one year of the date of death of the deceased employee and if the application is time barred having been submitted after one year, no relief can be given to the petitioner; and (3) that even otherwise, the writ petition has been filed after a delay of 7 years i.e. in the month of January, 1993. Mr. Lodha, relies upon the instructions attached upon (Annexure-R I/1), it prescribes that the compassionate appointment can only be given in the circumstances if the application is made within time. On the contrary, learned counsel for the respondent relies upon the instructions issued by the respondent Corporation itself, to the effect that even though the period provided to apply for appointment on compassionate ground is one year but as per the instruction if the dependent is minor, such minor can apply after attaining the age of majority.

5. Sub Clause (a) and (b) of instruction No.4, of the instructions issued in regard to eligibility are reproduced as under:-

"IV ELIGIBILITY,

(a) Compassionate grounds appointments can be made only against direct recruitment quota vacancies on regular basis without reference to the Employment Exchange.

(b) Application for such compassionate ground appointment should be made within one year of the death of an employee or within one year of retirement of an employee on medical grounds. In case, the dependant is a minor at the time of death of an employee or at the time of retirement on medical grounds, the competent authority can wait till the dependant attain the age of 18 years. It is further emphasised that in no case an appointment should be made of a person below the age of 18 years in terms of Regulation 5 of the FCI (Staff) Regulations, 1971 under any circumstances."

6. The Reference order No. 24 of 1991, issued by the respondent Corporation,

even otherwise, in my opinion, is to assist the dependant family. Because of death of an employee, the family continues to be in a bad shape and there being no eligible person in the family to apply for such compassionate appointment on the ground of being minor, the destitute situation of the family continues. In the present case, the widow must have been burdened for bringing up her four minor children for feeding them and also for their education. If the department has provided any limitation or time limit for applying for appointment on compassionate ground, to be fair to the deceased employee who had served the department, it would have been better if the respondents would have been informed the family that any of them, is in need of any compassionate appointment can apply within one year.

7. It is provided under the rule itself that no one less than the age of 18 years of age can be offered the appointment but at the same time enables the dependant who is minor to get the appointment within one year of his attaining the age of majority. Assuming that the dependant who is of 10 years of age at the time of death of his father, applies, within one year after the death of such an employee, admittedly no appointment could be given to such a person and a decision could only be taken after such dependant attain the majority. Could such a dependant who is a minor of 8 years or 9 years apply in "such situation when such a minor even could not know about his qualification which he would attain at the time of majority. In law, application of a minor has no relevancy as he is incompetent to enter into a contract. The respondent has not come with the plea that the family does not need any compassionate appointment or that the family was having any other resources to feed themselves.

8. The contention of the respondent to the effect that sufficient time has already passed and, therefore, the very necessity of compassionate appointment does not exist and is relied upon the judgment rendered in the cases of State of UP and Ors. v. Paras Nath (1), and S. Mohan v. Govt. of Tamil Nadu and Another (2), and many others as of no consequence for the reason that rule of the department itself enables the dependant to apply after one year of attaining the majority. In the presence of such rule and instructions issued by the respondent itself which are beneficial provisions for offering the appointment to the minor ward of the deceased, the respondent is bound by his own rules. Such rule as enumerated above itself postulates that the minor is to be offered the appointment on attaining the age of majority irrespective of the fact whether he attains the age of majority immediately or after many years.

9. In view of the categorical instructions issued by the respondent itself, in my opinion, the respondent is bound by his own instructions and cannot deprive of the dependant who was a minor at the lime of death of his father. The petitioner after receiving the impugned letter dated 9.8.1991, had approached this Court in the month of January 1993, it cannot be said that the petitioner had approached this Court with laches. Even if there are laches, it is a case which requires consideration and by exercising the powers conferred under Article 226 of the

Constitution of India for the above said reasons and discussions, I allow the present writ petition and direct the respondent Corporation to reconsider the case of the petitioner in accordance with the Rules and Regulations and offer the appointment to the petitioner within a period of three months from today. The petitioner shall be entitled to a cost of Rs. 2,000/-.

10. The writ petition is disposed of.