

(2001) 03 KAR CK 0081
In the Karnataka High Court
Case No : Writ Appeal No. 7610 of 2000

Karnataka State Road Transport Corporation and Another
Vs

APPELLANT

K. Nataraj

RESPONDENT

Date of Decision : 29-03-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 1 KarLJ 185 : (2001) 4 KCCR 202 SN

Hon'ble Judges : D.V. Shylendra Kumar, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Basavaraj V. Sabarad, for the Appellant; T. Narayanaswamy and M.V. Chandrashekar, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.—This appeal by the employer, Karnataka State Road Transport Corporation ("appellant-Corporation" for short) is directed against the order of the learned Single Judge allowing the writ petition filed by the respondent-worker ("respondent" for short) whereby the learned Single Judge has issued directions to the appellant to consider the case of the respondent or any member of his family for appointment in the appellant-Corporation on compassionate grounds.

2. The appellant, being aggrieved by such directions, has preferred this appeal contending that the learned Single Judge could not have issued any directions to the appellant to consider the case of the appellant or any of the members of the respondent's family for compassionate appointment inasmuch as the workman had not died while in service and no directions could be issued by the Court to consider any case of compassionate appointment other than the one in conformity with the policy that was being followed by the appellant-Corporation for such appointments.

3. The brief facts leading to the above appeal are that the father of the

respondent Sri Krishnegowda was an employee with the appellant-Corporation. The said employee was working as a Security Guard at the Kolar Bus Depot of the appellant-Corporation and while so, during the year 1988, by a representation dated 4-7-1988, the employee requested the Corporation to immediately transfer him to any other place apprehending threat to his life at the place where he was working and also called upon the Corporation to treat the said communication as a letter of resignation if transfer to any other place was not possible and accordingly settle his dues.

4. It appears, acting on this, the appellant-Corporation accepted the letter as a letter of resignation and as per the letter dated 1-9-1988 bearing No. KST:KLR:EST:E1:1859/88-89 intimated the workman accepting his offer as a letter of resignation and relieving him.

5. However, it appears, the workman had second thought about his letter requesting to relieve him from his duties and had addressed a communication (representation) dated 19-9-1988 i.e., subsequent to the acceptance of his resignation by the Corporation, requesting the Corporation to treat his earlier letter dated 4-7-1988 as withdrawn and to permit him to resume his work. In this view of the matter, the employee had requested the employer Corporation to rescind their Order No. 184 of 1988 intimating the employee about the acceptance of his resignation. The appellant-Corporation having not altered its decision subsequent to the acceptance of the resignation of the respondent, the workman had also raised a dispute and the matter was sought to be conciliated before the Labour and Conciliation Officer, Kolar.

6. While the matters stood at this stage, it appears, the employee suffered a setback in his health and ultimately died on 30-11-1999 during the pendency of the conciliation proceedings before the Conciliation Officer. Three to four years thereafter, the respondent, son of the deceased erstwhile employee of the appellant-Corporation, gave a representation to the appellant-Corporation, seeking for providing him an employment in the appellant-Corporation on compassionate grounds. This request of the respondent was rejected by the appellant-Corporation as per the endorsement dated 5-3-1992 (Annexure-E to the writ petition) informing that as the respondent's father had resigned his post and the said resignation had been accepted as on 1-9-1988 itself, that it is not possible for the appellant-Corporation to consider the respondent's request for compassionate appointment as it was outside the scheme of compassionate appointment governing the Corporation. It is against this endorsement the respondent approached this Court by filing the writ petition seeking for quashing of this endorsement dated 5-3-1992 and for further directions to the appellant-Corporation to provide the respondent a job in the establishment of the appellant on compassionate grounds.

7. The learned Single Judge who heard the writ petition, allowed the same on the premise that certain factual averments which had been contained in the representation of late Krishnegowda, the employee in his representation, had not

been properly looked into by the Corporation before accepting the same as a letter of resignation and being of the view that accepting the said representation dated 4-7-1988 as a letter of resignation was an act of misconception on the part of the appellant-Corporation and took on record, the memo dated 28-8-2000/4-9-2000 filed by the respondent requesting the Court to issue directions to the appellant-Corporation to consider the case of the petitioner (respondent herein) or any other members of his family, to appoint to a suitable post on the establishment of the appellant-Corporation on priority basis in the next recruitment. Taking into consideration the circumstances under which the respondent's father had written the letter of resignation and in the circumstances under which it has been accepted by the Corporation, the learned Single Judge issued directions to the appellant-Corporation to consider the case of the petitioner for compassionate appointment in terms of the memo. It is aggrieved by this direction, the appellant-Corporation is in appeal before us.

8. Sri Basavaraj V. Sabarad, learned Counsel appearing on behalf of the appellant has submitted that the scheme for compassionate appointment that is in operation in the appellant-Corporation is one which provides for employment to the kith and kin of a deceased employee who dies while in service. In the instant case, the respondent's father being not in service on the date of death, inasmuch as his resignation letter had been accepted by the Corporation even more than a year earlier and ?had been relieved of his duty, the Corporation cannot be directed to consider the case of the respondent for compassionate appointment. It is also the further submission of the learned Counsel for the appellant that the acceptance by the appellant-Corporation of the letter of resignation tendered by the employee having become final and unless that order of acceptance was not in any manner known to law, set aside or varied the question of treating the respondent's father to have been continued in employment, does not arise inasmuch as the claim of the respondent for compassionate appointment was on the ground that if the said offer of acceptance of resignation is set aside, then it can be deemed that the employee was in service as on the date of his death, which enables a relative of such a person to put forth a claim for appointment on compassionate grounds.

9. Countering these submissions made on behalf of the appellant-Corporation, Sri T. Narayanaswamy, learned Counsel appearing on behalf of the respondent, has submitted that the learned Single Judge has issued directions to the Corporation having regard to the most peculiar circumstances of the case and particularly having regard to the trying circumstances to which the employee had been subjected to when he wrote the letter dated 4-7-1988 and as such, the directions issued by the learned Single Judge should not be disturbed in the present appeal.

10. It is also the submission of the learned Counsel for the respondent that even before the letter of the respondent's father dated 4-7-1988 came to be accepted as a letter of resignation by the appellant-Corporation and an endorsement dated

1-9-1988 came to be issued, the employee had written another letter dated 19-9-1988 requesting the Corporation to consider his case for mutual transfer and when once such a request for mutual transfer is made, the offer of resignation did not remain and as such the appellant-Corporation could not have accepted the letter dated 4-7-1988 to accept it as a letter of resignation as per the order dated 1-9-1988. Unfortunately for the respondent, there is nothing on record to indicate that the erstwhile employee had in fact made a representation dated 19-9-1988 and it also transpires from the records of the appellant-Corporation that no such representation dated 19-9-1988 had been received by the appellant-Corporation. This submission of Sri T. Narayanaswamy is not substantiated by any material on record. Accordingly, we are not inclined to accept this submission.

11. In this scenario, the question is as to whether the learned Single Judge was justified in law in issuing directions to the Corporation to consider the case of the respondent for appointment on compassionate grounds.

12. The law in this regard is well-settled by the authoritative pronouncements of the Apex Court. Compassionate appointment is an exception to the normal rule of appointment by following the prescribed procedure and is a special provision provided to tide over the unforeseen events and to mitigate the hardship to the family of the deceased employee. Compassionate appointment is not a matter of right. If there is a scheme providing for compassionate appointment, in an organisation like that of the appellant which is akin to "State" and if the employer acts contrary to its own scheme, then alone in such a case of flagrant violation by an employer of its own scheme, this Court may intervene in the exercise of its discretionary jurisdiction under Article 226 of the Constitution of India. If either a scheme is not provided for in an establishment or when the said scheme does not provide for compassionate appointment, when a situation of the present nature occur, it is not for this Court to issue directions to such an establishment to consider the case of any person for appointment on compassionate grounds. It is not the function of this Court to either rewrite the provisions of such a scheme or to enlarge the scope of the scheme for compassionate appointment. What is important to be noticed here is that an appointment on compassionate grounds is an exception to the rule of equality which enjoins an employer to follow the prescribed norms and procedures and not to act in an arbitrary manner and also it enjoins an employer to provide equal opportunity of employment to all citizens. Therefore, it is essential for this Court to ensure that an employer always strictly conforms with the published scheme for compassionate appointment in the organisation. When such is the function of this Court, it is definitely not either proper or open to this Court to issue directions to any employer to act in any manner de hors the scheme for appointment on compassionate grounds envisaged in that organisation.

13. Accordingly, we are of the view that the directions issued by the learned Single Judge to consider the case of the respondent is not sustainable in law.

14. We allow this appeal and set aside the directions and dismiss the writ petition. In the facts and circumstances of the case, parties are directed to bear their own costs.