
(2012) 08 JH CK 0133
In the Jharkhand High Court
Case No : Writ Petition (S) No. 6088 of 2009

Krishna Pandey

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 01-08-2012

Acts Referred:

Constitution of India, 1950 — Article 16, 226
Evidence Act, 1872 — Section 108

Citation : (2013) 1 AJR 27 : (2012) 4 JCR 412

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Advocate : Chandra Shekhar Prasad, for the Appellant; R.R. Mishra, G.P-II for the State, for the Respondent

Final Decision : Dismissed

Judgement

D.N. Patel

1. Learned counsel for the petitioner submitted that the petitioner is praying compassionate appointment because of death of his father on 12th April, 1996. Learned counsel for the petitioner further submitted that the father of the petitioner was working with the respondents and he expired during the course of his employment and, therefore, as a son, the petitioner is entitled to the compassionate appointment. Moreover, his claim was also recommended for his appointment on 21st April, 1997 by the Establishment Committee. The petitioner is fully qualified to be appointed on compassionate ground and, therefore, let a suitable direction be given to the respondents to appoint the present petitioner.

2. Learned counsel for the respondent-State submitted that a detailed counter affidavit has been filed and it has been stated in paragraph 9 that the matriculation certificate, presented by the petitioner for getting compassionate appointment, was got verified by the officers of the respondents and upon verification, it was found that the said certificate is a forged and fabricated document. Thus, the petitioner has presented forged and fabricated certificate of

matriculation and, therefore, he is not entitled for compassionate appointment.

3. Learned counsel for the petitioner in reply of the counter affidavit submitted that now the petitioner is relying upon some certificate of Sanskrit examination.

4. Such copy of the certificate has not been annexed with the rejoinder affidavit nor there is any reference in the original writ petition.

5. Having heard learned counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition mainly for the following facts and reasons:

(i) The father of the present petitioner was working as a Teacher with the respondents and he expired on 12th April, 1996 during course of his employment and, therefore, being a son of the deceased employee, the petitioner is seeking compassionate appointment with the respondent-State authority.

(ii) It appears that the case of the petitioner was also recommended by the Establishment Committee on 21st April, 1997, but, looking to the further facts of the case, it appears that the matriculation certificate, presented by the petitioner, was found forged and fabricated document and this fact has been stated in the counter affidavit and, therefore, the petitioner is not given compassionate appointment. Learned counsel for the petitioner is also accepting the fact that the matriculation certificate was forged and fabricated document, but, he submitted that it was presented by the petitioner's uncle and, therefore, now the petitioner is relying upon some certificate of Sanskrit examination. This contention is not accepted by this Court mainly for the reason that the petitioner has initially presented forged and fabricated matriculation certificate and there is no reference of any certificate of Sanskrit examination in the memo of the petition. The petitioner is taking a chance before this Court that on the basis of a bogus matriculation certificate, he may get compassionate appointment, otherwise, he has one more certificate ready, namely, so called Sanskrit examination certificate, which is having some reference in the rejoinder affidavit without any support of the documentary evidence or by way of annexures. In view of these facts, it appears that very tendency of the petitioner is to play fraud with the Government. Such type of tendency cannot be tolerated by any ideal State, especially when there is long lapse of time between the date on which the petitioner's father has expired and when the writ petition is preferred. No error has been committed by the respondents in rejecting the claim of the petitioner for compassionate appointment. The petitioner is suffering because of his own playing fraud.

(iii) It has been held by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, in paragraphs 2 to 6, which read as under:

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there

has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less, a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above

Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Governments instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B. Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments.

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to set over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of

time and after the crisis is over.

(Emphasis supplied)

(iv) It has been held by the Hon"ble Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, in paragraphs 3 and 5, which read as under:

3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

5. For the reasons stated above, we hold that there are no merits in this SLP and the same is accordingly dismissed.

(Emphasis supplied)

(v) It has been held by the Hon"ble Supreme Court in the case of Santosh Kumar Dubey Vs. State of U.P. and Others, in paragraphs 10 to 13, which read as under:

10. Admittedly, the father of the appellant was untraceable from 1981. Without entering into and deciding the issue as to whether employment on compassionate grounds could be asked for in a case of deemed death u/s 108 of the Evidence Act, even if we assume for the sake of argument that it can be so demanded and asked for, such a right should and could have been exercised in the year 1988 and computing the period of five years there from the period of limitation for making an application for employment in the case of the appellant expired in the year 1993.

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be

another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service.

13. In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed.

(Emphasis supplied)

(vi) Thus, looking to the date on which the father of the petitioner has expired i.e. 12th April, 1996, it appears that much time has been lapsed, thereafter. The very purpose of the compassionate appointment has been frustrated, by now. There is no reservation of the petitioner for getting compassionate appointment with the Government as there is no statutory right vested in the petitioner to get the compassionate appointment. Such type of compassionate appointments are being made by the Government as a matter of right, but, as an exception of Article 16 of the Constitution of India. One compassionate appointment means taking away chance of several aspiring candidates for getting public employment. The exception cannot be operated as a matter of rule and carved out exception under Article 16 of the Constitution is not only phenomenon.

(vii) Learned counsel for the petitioner, at the fag end of his argument and after almost conclusion of the dictation in the open Court, has now submitted that earlier the matriculation certificate was presented by petitioner's uncle, which was found false and fabricated and now the petitioner is relying upon some certificate of Sanskrit examination, which is presented by some M.L.A.

In view of the aforesaid facts, reasons and judicial pronouncements, I am not inclined to use discretionary power vested in this Court under Article 226 of the Constitution of India in favour of the petitioner. There is no substance in this writ petition and, hence, the same is, hereby, dismissed.