
(2012) 04 AHC CK 0144

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15378 of 2009

Kuldeep Kumar Misra

APPELLANT

Vs

Zila Prabhandhak, F.C.I. and Others

RESPONDENT

Date of Decision : 20-04-2012

Acts Referred:

Constitution of India, 1950 — Article 16(1), 16(2), 16(3), 16(5)

Citation : (2012) 6 ADJ 95 : (2012) 134 FLR 556

Hon'ble Judges : Manoj Misra, J

Bench : Single Bench

Advocate : Manoj Kumar Sharma and Sant Ram Sharma, for the Appellant; N.P. Singh and M.P. Singh, for the Respondent

Final Decision : Dismissed

Judgement

Hon'ble Manoj Misra, J.—I have heard Sri Manoj Kumar Sharma, counsel for the petitioner and Sri N.P. Singh, counsel for the respondents and have perused the record. As pleadings are complete, with the consent of the counsel for the parties, the petition is being finally disposed of at the admission stage. The facts, in brief, are that one Mahendra Nath Misra, who was an employee of Food Corporation of India, working on the post of AG-III (Store), Jhansi, died in harness on 4.12.1991. The petitioner claims himself to be younger brother of deceased Mahendra Nath Misra. It is claimed by the petitioner that his brother Mahendra Nath Misra was suffering from Leprosy as well as Cancer. Since he was unmarried, the petitioner was looking after him, and in return, petitioner's elder brother provided for education of the petitioner. Consequent to the death of his elder brother, the petitioner, on 10.2.1992, applied for appointment on compassionate ground. This application of the petitioner remained pending on account of a succession dispute between one Uma Devi, who claimed herself to be the legally wedded wife of Mahendra Nath Misra, and the parental family of Mahendra Nath Misra. It is claimed that the Civil Court ultimately, in the year 2004, decided the dispute whereby the claim of Uma Devi was rejected and the

succession certificate granted in favour of the mother of the petitioner was upheld. After conclusion of the succession case, the petitioner again set in motion his claim for compassionate appointment, which was rejected by the order dated 17.11.2008. The ground for rejection of the claim was that under the Govt. of India's instructions only widow/ son/ daughter / adopted son or adopted daughter could be considered for compassionate appointment, therefore, the petitioner, who was brother of the deceased employee, was not eligible for consideration. It is this order, which has been impugned in this petition.

2. Alongwith his writ petition, the petitioner has enclosed a copy of circular No. 29 of 1990 dated August 20, 1990, which contains the scheme for compassionate appointment of a son/daughter/near relative of the deceased employee of Food Corporation of India.

3. The counsel for the petitioner submitted that under the scheme, which was operative on the date of death of his elder brother, the benefit of compassionate appointment was available to a "near relative" also. He claimed, that since the term "near relative" has not been defined, it would, therefore, include a brother. He contended that the application of the petitioner for appointment on compassionate ground was thus wrongly rejected. On the question of delay of nearly 18 years in approaching this Court for seeking compassionate appointment, the counsel for the petitioner submitted that the delay was not on the part of the petitioner, but for the reason that no orders were passed on his application on account of the succession dispute. More over, he submitted, that the scheme for compassionate appointment did not bar an application submitted with a delay. Referring to Clause VI of the Scheme, which provides that the appointing authority can also consider the request for compassionate appointment even when the death took place long ago, say five years or so, he submitted that the application can be entertained. He has further submitted that the delay cannot defeat his right to seek compassionate appointment, which had accrued to him on the date of the death of his brother.

4. Per contra, Sri N.P. Singh, who appeared for the Food Corporation of India, submitted that although the scheme for compassionate appointment had provided for appointment of a son/daughter/near relative of the deceased employee of a corporation, but subsequently, under the directions of the Apex Court in the case of Auditor General of India and others Vs. G. Ananta Rajeswara Rao, decided on 8.4.1993, vide circular No. 7 of 1997 dated 31.3.1997 the term "near relative" was deleted from the scheme and since then only a widow, son or daughter including adopted son or adopted daughter are entitled to be considered for appointment on compassionate ground. Sri N.P. Singh further submitted that the object of compassionate appointment is to provide succour to the bereaved family so as to enable it to tide over sudden crisis caused on account of the death of its bread winner. He submitted that the right to seek compassionate appointment is not a right which can be said to be vested in the applicant. It is only a right to be considered for compassionate appointment. He

submits that in the instant case, the brother of the petitioner had died in the year, 1991 whereas the petitioner waited for nearly 18 long years to petition this Court for compassionate appointment. He submits that even if there was a dispute relating to succession, the appointment on compassionate ground could have been claimed with the intervention of the Court. It was submitted that since the petitioner has not approached the Court within a reasonable period, an adverse inference should be drawn with regards to the pressing need of the petitioner, and that since in any case the period of crisis is over, the question of providing compassionate appointment does not arise.

5. The counsel for the petitioner in his rejoinder submissions contended that the deletion of the term "near relative" would not affect his right as the petitioner had already applied under the unamended scheme, therefore, the application should have been considered on the basis of the old scheme.

6. After having considered the rival submissions of the parties, I am of the view that since the appointment on compassionate ground is an exception to the fundamental principle enshrined under Article 16(1) of the Constitution of India, which provides that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State, the benefit of compassionate appointment can be allowed only with a view to provide for the bereaved family to tide over sudden crisis caused on account of the death of its bread winner. This benefit of compassionate appointment cannot be used as an alternate source of recruitment. The Apex Court in the case of Auditor. General of India (supra) deprecated the term near relative as vague and undefined. The relevant portion of the judgment of the Apex Court, as contained in paragraph No. 5, is reproduced below:

A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague and undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the breadwinner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however it is made clear that if the appointments are confined to the son/daughter or widow of the deceased Government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the breadwinner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it

cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para 1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted.

Keeping in view the aforesaid observations made by the Apex Court, a circular was issued by the respondent-corporation thereby deleting the term near relative from the category of eligible persons entitled to avail the benefit of compassionate appointment. However, in the instant case the deletion of the term "near relative" may not be fatal to the claim of the petitioner, as his application was filed before the amendment of the scheme. In that regard reference may be made to the Apex Court's decisions in the cases of Maharani Devi and Another Vs. Union of India (UOI) and Others, and State Bank of India and Others Vs. Jaspal Kaur, But there is another reason to deny relief to the petitioner, and that is, the delay of 18 years on the part of the petitioner in approaching the Court for appointment on compassionate ground.

7. The object of compassionate appointment is not to provide an alternative route for appointment, but to ameliorate the condition of the bereaved family caused on account of sudden death of its breadwinner. It is not a vested right which can be exercised at leisure. In the case of Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, the Apex Court said:

The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.

Likewise, in the case of Santosh Kumar Dubey Vs. State of U.P. and Others, the Apex Court, observed as under:

The very concept of giving a compassionate appointment is to tide over the financial difficulties that is 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.

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.

8. The contention of the petitioner that on account of succession dispute the application remained pending, therefore, the delay could not defeat his right, is not sustainable. The purpose of succession certificate is to enable the debtor of the deceased person to seek a valid discharge by making payment to its holder. Thus, even if there had been a dispute with regard to succession for entitlement to the terminal dues payable to the deceased employee, there was no impediment for the petitioner to approach the Court, on pressing need, if there was any, for appointment on compassionate ground. After such a long lapse, particularly, when the claim for compassionate appointment was not pending before any Court, there is no justification to consider appointment on compassionate ground, as the very purpose for which it is provided stands exhausted. For the reasons aforesaid, compassionate appointment cannot be provided to the petitioner. The petition is, therefore, liable to be dismissed and is, accordingly, dismissed. No order as to costs.