

(2006) 05 DEL CK 0045

In the Delhi High Court

Case No : Writ Petition (C) No. 4997 of 2003

Kusum Jugran

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 01-05-2006

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2006) 130 DLT 9 : (2006) 89 DRJ 619 : (2006) 110 FLR 478

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Kailash Sharma, for the Appellant; Ajit Pudussary and Barkha Babbar, for the Respondent

Final Decision : Dismissed

Judgement

S. Ravindra Bhat, J.—In these writ proceedings under Article 226 of the Constitution of India, an order dated issued by the respondent (hereafter called "BRPL") declining a request of the petitioner for a compassionate appointment, has been assailed.

2. The Petitioner's husband, was working as a Deputy sports manager with the respondent in its Bongaigaon Refinery office at Bongaigaon, Assam. On the fateful day i.e. 8th January, 2002, he had gone across at lunch, and met with an accident on the 31-C National Highway, at an intersection. The unfortunate accident proved fatal, and Shri Jugran succumbed to the injuries. He left behind his widow, the Petitioner, and two minor children. The petitioner applied for compassionate appointment to the respondent on 29-7-2002.

3. By its letter dated 7-10-2002 the respondent rejected the request for compassionate appointment. The letter, inter alia, stated as follows:

we refer to your letter dated 29.07.2002 on the above subject. We have perused the details stated in your above referred letter. On examination of the details of the case available in company records, the accident of late J.P. Jugran can not be

treated as a work related accident death case. As such, in accordance with the policy of the company it is not possible to consider your request for employment on compassionate grounds, which was also informed vide our letter of even number dated 11.06.2002.

You would kindly appreciate that with a view to mitigate hardship of the family members of a deceased employee, the company has adopted certain schemes for providing financial assistance in addition to statutory benefits. As already informed, the total amount which you have received/Culd receive under various schemes, works out to about Rs. 34 lakhs approx. This amount is in addition to the monthly pension and the compensation which you would receive under the Motor Vehicle Act. With these financial assistance, which is substantial, you can very well tide over the sudden financial crisis.

You would also appreciate that the basic object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not provide employment.

We sincerely share your grief; however, keeping in view the object of providing employment on compassionate ground and the provisions of the BRPL Employees Rehabilitation Scheme, we are not in a position to provide you any employment in the company.

Thanking you,

Yours faithfully,

Sd/-

(RP Sharma)

Sr. Manager (P&A)

4. The position of the respondent communicated through the letter, denying compassionate appointment has been questioned, as arbitrary, and contrary to the regulations governing the issue.

5. The respondent in its return, has denied liability. It has averred that the dependants of an employee dying while in employment can claim compassionate appointment, only as per the service rules. The service rules, it is stated, authorize the respondent to appoint personnel on compassionate basis only where the employee dies in an employment related accident. The scheme, which has been produced with the petition, reads as follows:

Scheme for rehabilitation of the family of the Employee dying or suffering permanent total disablement while in service.

1.0 The scheme will be called "BRPL EMPLOYERS REHABILITATION SCHEME" and is effective from 16th November, 1994.

2.0 The Scheme is intended to rehabilitate dependent family members of an

employee who dies or suffers permanent total disablement rendering the employee unfit for employment while in service of BRPL. For this purpose the family will include wife and dependent children (in case of male child up to 21 years and for female child up to marriage).

3.0 All regular employees including whole time Directors and Executive Trainees will be members of the scheme.

4.0 OPERATION OF THE SCHEME

4.1 The Company will contribute thirty months basic pay of employee on death/permanent total disablement of the employee, subject to a maximum of Rs. 1 lakh towards rehabilitation grant. If the amount works out to less than Rs. 1 lakh, the shortfall will be contributed by the employees in equal shares.

4.2 The rehabilitation grant so collected will be invested with the LIC/UTI/ Post Office/ Nationalised Banks to get a maximum return by way of regular monthly pension.

4.3 The rehabilitation grant will not be admissible where compassionate employment is provided to the wife of the deceased employee (in case of work accident related death case) or when spouse is already employed in BRPL. The scheme is also not applicable in case of unmarried employee.

The benefit accruing from the rehabilitation grant will be payable in the following manner:

a] In case of permanent total disablement while in service to the employee till death.

b] In case of death of the employee including on death of permanent total disabled employee" to the wife up to the date of her death.

c] Failing (b) the benefit will be payable to the eldest surviving child (up to the age of 21 years in case of male child and in case of female child, up to the time of her marriage). In other wards the benefit will be payable to the first child and on becoming ineligible as per above the benefit passes on to next child and so on till the last child becomes ineligible.

6. It is contended on behalf of the petitioner that the deceased official died in an employment related accident, and Therefore, the BRPL cannot deny the benefit of compassionate appointment. Counsel submitted that the petitioner was left without means of livelihood, and had to fend for herself as well as minor children. The position of the respondent in denying the liability to grant compassionate appointment has been attacked as arbitrary, and contrary to the binding policy.

7. Counsel for the petitioner also submitted that the obligation to grant compassionate appointment arose as a condition of service of the late Shri Jugran, which could not be denied by the BRPL. It was submitted that the benefit

is part of a larger social measure to see that the family and minor children of employees who die an untimely death are not rendered destitute, or left to face hardship.

8. Counsel for the respondent BRPL, resisted the submission of the petitioner, and stated that BRPL had released an amount of Rs. 34 lakhs, which included not only the statutory and death benefits, but also substantial ex gratia amounts. It was submitted that accident resulted in death of the petitioner" husband could not be called an employment related accident, since he had left the campus of the BRPL, during lunch. It was submitted that the expression "work accident related death case" in the circular in question, had to be given a restricted meaning. He relied upon the decision of the Supreme Court in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , and contended that all accidents occurring during hours of work are not to be treated as work related accident cases.

9. Counsel further contended that the petitioner cannot even otherwise claim compassionate appointment, because the scheme governing the subject matter seeks to rehabilitate the dependants either through monetary benefits, or compassionate appointment. The petitioner received substantial amounts, and her case cannot be termed as one bordering on destitution or extreme hardship. Reliance was placed upon the judgment in State of Haryana and Others Vs. Rani Devi and Another, ; National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, and Umesh Kumar Nagpal Vs. State of Haryana and Others, , to contend that the court should not be swayed only by sympathy, and should bear in mind that schemes of compassionate appointment are an exception to the normal mode of recruitment; Therefore, the scope of judicial review is extremely restricted.

10. The amounts received by the petitioner from the respondent have been indicated in the counter affidavit; they are as follows:

- a] Monthly pension of about Rs. 1188/- under the BRPL Employees Benevolent Fund Scheme;
- b] Rs. 750/- pension per month from BRPL Employees Rehabilitation Scheme from Life Insurance Corporation, Guwahati.
- c] Monthly Pension (widow and children Pension) of Rs. 2625/- under the Pension Scheme from the Regional Provident Fund Commissioner.

In addition, the petitioner was also granted the following benefits from the respondent:

- i] Group Term Insurance Rs. 62,000/-
- ii] Group Saving-linked Insurance Rs. 2,80,000/- approx.
- iii] Group Personal Accident benefit Rs. 20,98,000/- approx.

iv] Benevolent Fund (Balance amount) Rs. 32,000/- approx.

v] Gratuity Rs. 3,35,964/-

vi] Provident Fund Rs. 4,66,000/- approx.

vii] Terminal benefits Rs. 1,43,700/- approx

Total ? Rs. 34,17,664/- approx

Further, the petitioner is also be entitled to traveling allowance for herself and dependent children for journey to whichever place she intends to settle in and also transportation charges for carrying her personal effects and also "settling allowance" of Rs. 26,398/- approximately.

11. It has been held that the purpose of providing employment to the dependants of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments.

12. In Umesh Kumar Nagpal Vs. State of Haryana and Others, , the Supreme Court explained the position relating to grant of compassionate appointment as follows:

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 favor 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 Clauses 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 of the rule is justifiable and valid since it is not discriminatory. The favorable 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 is 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 favor 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.

13. The above exposition of law was followed in a number of judgments, including State of U.P. and Others Vs. Paras Nath, , State of Haryana and Others Vs. Rani Devi and Another, and National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, .

14. As far as the first grievance is concerned, the scheme applicable in question is not merely a compassionate appointment scheme. It is in the nature of a rehabilitation scheme; compassionate appointment can be given in work related accidents leading to death. The respondents, in the impugned order, have denied the petitioner's eligibility, on the ground that the death was not a employment, or work related one. I am of the opinion that the view taken is an unduly narrow one. Indisputably, the petitioner's husband was not going to work; he had already reported for duties. He had gone outside, at lunch time, and while crossing the road, apparently met with an accident. The law declared in the judgment in Regional Director, E.S.I. Corporation and another Vs. Francis De Costa and another, , related to a case where the employee met with the accident, while on the way to work, at a distance of more than one kilometer. The court had not ruled out liability only on that ground; it had held that there must be a causal connection between the accident and the employment. Here, the employee had already reported for duties; on his return from lunch, he met with the accident in the vicinity of the work place.

15. The above finding about the erroneous interpretation placed by the respondent however is not dispositive of the case. The further question is whether the impugned order is unsustainable in that it has denied compassionate appointment for the wrong reasons.

16. As noticed earlier, the scheme in question is a rehabilitative one. Clause 4.3 provides that eligibility of an applicant for compassionate appointment arises only when rehabilitation grant is not given, or is inadmissible. In this case, the petitioner was, in addition to statutory and terminal benefits, granted additional benefits, by the employer, amounting to over Rs. 20 lakhs. The employer had admittedly subscribed to such policies, as a measure of rehabilitative

compensation package. The total amounts secured were in the range of Rs. 34 lakhs; the petitioner is also entitled to about Rs. 4300 per month as pension amounts. It was stated that accident compensation to the tune of Rs. 3 lakhs was also received.

17. On an overview of the facts of this case, the decision of the respondent denying compassionate appointment, on the ground that substantial amounts were received by the petitioner, cannot be faulted as arbitrary or illegal. If the objective of the scheme in question and the law laid down by the Supreme Court are kept in perspective, the amounts received by the petitioner are by no means paltry. While the loss of a sole bread winner can never be replaced, and the trauma that the family is put to cannot be underplayed, yet the objective behind compassionate appointment schemes, viz to ensure social protection to families likely to be rendered destitute or penurious due to untimely death of a public servant cannot be lost sight of. In this case, the benefits received by the petitioner were specially conceived to cater to such eventualities; they are substantial. The petitioner and her family cannot be called financially straitened, or penurious to merit a compassionate appointment. Besides the scheme provides "either or" choices, in that those given grants cannot apply for compassionate appointment.

18. In view of the above findings, the petition fails, and is accordingly dismissed, without any order as to costs.