

(2005) 06 BOM CK 0041

In the Bombay High Court

Case No : Writ Petition No. 6002 of 2004

Maharashtra State Road Transport Corporation

APPELLANT

Vs

Devendra Puranlal Birchha and Another

RESPONDENT

Date of Decision : 06-06-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16, 16(2), 226
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices
Act, 1971 — Section 28

Citation : (2006) 3 ALLMR 184 : (2005) 4 MhLj 1011

Hon'ble Judges : B.P. Dharmadhikari, J

Bench : Single Bench

Advocate : S.C. Mehadia and A.S. Mehadia, for the Appellant; D.C.R. Mishra, for the Respondent

Final Decision : Allowed

Judgement

B.P. Dharmadhikari, J.—By this writ petition under Articles 226 and 227 of Constitution of India, the petitioner-employer challenges the order dated 8-9-2004 passed by Industrial Court, Nagpur in Complaint U.L.P. No. 241/1998 whereby the said Court has directed the petitioner to provide job to the present respondent No. 1 on compassionate ground in class IV category within a period of six months.

2. The petitioner is a State Government undertaking and present respondent No. 1 filed complaint u/s 28 of Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 (hereinafter referred to as MRTU Act) contending that his father Puranlal was working as Watchman/Chowkidar with petitioner since 1968 and he expired on 30-4-1975. He stated that as per settlement entered into between the petitioner and its employees and circulars issued by petitioner from time to time, his mother made application on 24-6-1975 for the post of Clerk and in pursuance thereof on 4-9-1975 petitioner called for certain information but nothing happened thereafter. Respondent No. 1

stated that he was minor when his father expired and he made application for the first time on 24-11-1993 and Corporation/petitioner did not give any reply to it but he was assured that his claim would be considered as and when the same is reached as per its ranking in waiting/seniority list. Respondent No. 1 stated that he is enrolled with employment exchange since 1-12-1995 and he has passed 10th standard (Matric) in March, 1999 and failed in 12th standard. He stated that he belongs to Kosi community which is recognised scheduled caste and he also has licence, batch etc. required for the post of conductor with petitioner. He stated that his mother, two brothers, and two sisters have no objection if employment is provided to him. He relied upon Clause 33 of settlement of 1991 and Clause 26 of settlement of 1995 to claim priority on the ground that he is a child of S. T. employee. He also pointed out some other subsequent circulars. This claim was opposed by petitioner. The petitioner pointed out that father of respondent No. 1 committed suicide and his mother is serving with Madhya Pradesh State Government. Petitioner also contended that respondent No. 1 himself is having his own Auto-rickshaw and as such this claim was not tenable. The learned member of Industrial Court found that petitioner did not lead any evidence and evidence of respondent No. 1 disclosed that he was born on 13-7-1970. It found that in view of circular of petitioner dated 16-2-1994, period of limitation for moving application for grant of employment on compassionate ground in case of minor is till he attains 25 years of age. It found that petitioner did not provide employment to his mother and in such circumstances, as per circular, one of the dependents of deceased was found entitled to grant of employment. It held that denying employment to respondent No. 1 was in violation of circulars and therefore an unfair labour practice. It considered some rulings and granted relief to respondent No. 1 as mentioned above.

3. I have heard Advocate S. C. Mehadia for petitioner and Advocate D.C.R. Mishra for respondent No. 1. Rule. Rule is made returnable forthwith by consent of the parties.

4. Learned Advocate Shri Mehadia, for petitioner argues that compassionate employment is an exception and cannot be claimed as a matter of right He contends that it is extended so as to help the family in distress and hence, it has to be provided immediately. He contends that in the facts of present case learned member of Industrial Court failed to note the object behind grant of such employment and has granted employment after 18 years. He further contended that petitioner is maintaining waiting list and the employment is provided as per ranking in that waiting list. He therefore contended that such employment cannot be given within six months as ordered by Industrial Court. He further contended that mother of respondent No. 1 did not enter witness box and as such the petitioner could not cross-examine to prove her employment with Madhya Pradesh Government. He has relied upon the judgment of Hon''ble Apex Court reported at 2005 (5) All MR 11 between National Hydro Electric Power Corporation v. Nanak Chand and State of Manipur Vs. Md. Rajaodin, .

5. Advocate Shri Mishra for respondent No. 1 relied upon the circular dated 16-2-1994, particularly clause No. 11 to show that as per that circular, minor dependent can apply till completion of 25 years of his age for grant of employment on compassionate ground. He further stated that several minor dependents have been accordingly provided employment by petitioner after attaining majority after expiry of several years from the date of death of employee. In fact, after the case was closed for orders, he has on 2-5-2005 filed affidavit giving illustration of one Shri S. K. Gadkine who joined the service on 29 March, 1996 on compassionate ground as his father expired in 1972. He contends that petitioner is following this practice since long. He states that this Court has got limited jurisdiction in writ jurisdiction to interfere in such matter and places reliance upon the judgment of Hon''ble Apex Court between Syed Yakoob Vs. K.S. Radhakrishnan and Others, 4 and between AIR 1975 1297 (SC) .

6. In 2005 (5) All MR 11 between National Hydro Electric Power Corporation v. Nanak Chand, the Hon''ble Apex Court in paragraph 5 has observed "it is to be seen that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointment being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over certain financial crisis." Thereafter the Hon''ble Apex Court has considered its earlier judgments and found that application made ten years after death of father cannot be entertained. It therefore set aside the judgment of High Court directing appellant to provide compassionate employment to respondent. State of Manipur Vs. Md. Rajaodin, is the case where father of respondent died on 19-7-1980. Respondent moved application on 25-7-1997 and the Hon''ble Apex Court found that scheme itself provides the time period within which an application is to be filed. Hon''ble Court found that though employer issued order dated 15-12-1999 to respondent, said order does not confer any right on him. The Hon''ble Court further noticed that keeping in view the object for which the appointments on compassionate ground are made, the minimum requirement is that the request for appointment should be made as expeditiously as the circumstances warrant. It also found that such appointments are by way of exception to the normal recruitment procedure and exception is justified because of the object behind it to mitigate hardship caused to the family. It found that these considerations cannot operate when application is made after a long period of time. In facts of case before Hon''ble Apex Court, there was no scheme when father of respondent died and said scheme came into force in 1984. The Hon''ble Court found that application was moved after long lapse of time and the High Court was not justified in directing the employer to give appointment to him. The Hon''ble Apex Court however clarified that its judgment shall not come in the way of employer if employer at its discretion wanted to give effect to the order dated 15-12-1999.

7. In ruling reported at Yogender Pal Singh and others Vs. Union of India others, , the Hon''ble Apex Court considered the validity of Rules 12, 14(3) of

Punjab Police Rules, 1934 granting preference in favour of sons and near relatives of persons serving in police service. Observations of Hon"ble Apex Court in paragraph 16 to 18 are important -

"16. We should, however, point out at this stage a fundamental defect in the claim of the appellants, namely, that Rule 12, 14(3) of the Punjab Police Rules, 1934 which authorised the granting of preference in favour of sons and near relatives of persons serving in the police service became unconstitutional on the coming into force of the Constitution, Clauses (1) and (2) of Article 16 of the Constitution which are material for this case read thus :-

"16. (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

17. While it may be permissible to appoint person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution. Opportunity to get into public service should be extended to all the citizens equally and should not be confined to any extent to the descendants or relatives of a person already in the service of the State or who has retired from the service. In *Gazula Dasaratha Rama Rao Vs. The State of Andhra Pradesh and Others*, the question relating to the constitutional validity of Section 6(1) of the *Madras Hereditary Village Offices Act, 1895* (3 of 1895) came up for consideration before this Court. That section provided that where two or more villages or portions thereof were grouped together or amalgamated so as to form a single new village or where any village was divided into two or more villages all the village officers of the class defined in Section 3, Clause (1) of that Act in the villages or portions of the villages or village amalgamated or divided as aforesaid would cease to exist and the new offices which were created for the new village or villages should be filled up by the Collector by selecting the persons whom he considered best qualified from among the families of the last holders of the offices which had been abolished. This Court held that the said provision which required the Collector to fill up the said new offices by selecting persons from among the families of the last holders of the offices was opposed to Article 16 of the Constitution. The Court observed in that connection at pages 940-941 and 946-947 (of SCR) : (at Pp. 569-70 and 572 of AIR) thus :

"Article 14 enshrines the fundamental right of equality before the law or the equal protection of the laws within the territory of India. It is available to all, irrespective of whether the person claiming it is a citizen or not. Article 15

prohibits discrimination on some special grounds - religion, race, caste, sex, place of birth or any, of them. It is available to citizens only, but is not restricted to any employment or office under the State. Article 16, Clause (1), guarantees equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State; and Clause (2) prohibits discrimination on certain grounds in respect of any such employment or appointment. It would thus appear that Article 14 guarantees the general right of equality : Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. Article 15 is more general than Article 16, the latter being confined to matters relating to employment or appointment to any office under the State, it is also worthy of note that Article 15 does not mention, "descent" as one of the prohibited grounds of discrimination, whereas Article 16 does. We do not see any reason why the full ambit of the fundamental right guaranteed by Article 16 in the matter of employment or appointment to any office under the State should be cut down by a reference to the provisions in Part XIV of the Constitution which relate to services or to provisions in the earlier Constitution Acts relating to the same subject pages 940-941) (of SCR) : (at p. 569-70 of AIR).

There can be no doubt that Section 6(1) of the Act does embody a principle of discrimination on the ground of descent only. It says that in choosing the person to fill the new offices, the Collector shall select the persons whom he may consider the best qualified from among the families of the last holders of the offices which have been abolished. This, in our opinion, is discrimination on the ground of descent only and is in contravention of Article 16(2) of the Constitution." (pages 946-947) (of SCR): (at p. 572 of AIR).

18. We are of opinion that the claim made by the appellants for the relaxation of the Rules in their cases only because they happen to be the wards or children or relatives of the police officers has got to be negatived since their claim is based on "descent" only, and others will thereby be discriminated against as they do not happen to be the sons of police officers. Any preference shown in the matter of public employment on the grounds of descent only has to be declared as unconstitutional. The appellants have not shown that they were otherwise eligible to be recruited as Constables in the absence of the order of relaxation on which they relied. Hence they cannot succeed. "

(Emphasis Added)

8. Thus the object of rule/scheme providing compassionate employment to dependents of deceased is to help the family which has fallen in sudden and unexpected distress. If this object is to be achieved, such employment must be extended within reasonable time of occurring of such unfortunate event. Employment with petitioner is public employment and all eligible candidates are entitled to apply and compete for it. This open invitation and competition can be avoided constitutionally only because of pious object with which provision is made for compassionate employment. This object cannot be fulfilled by providing

compassionate employment after expiry of long period. In the facts of present case, deceased employee of petitioner expired on 30-4-1975 and respondent No. 1 who happened to be minor then moved applications on 24-11-1993 that is after 18 years of death. Though his mother sought employment immediately thereafter, said claim was not pressed and no legal action was initiated then against petitioner. This shows that family of deceased was not in dire need of any immediate assistance. Said right was perhaps preserved by family to rehabilitate claimant son after he attained majority. The scheme of compassionate employment cannot permit grant of employment after 18 years. From the discussion above, it is clear that grant of employment under such scheme after such long time or a provision for claiming such employment after attaining majority would be violating of Article 16 of Constitution of India. It would be reservation of jobs for dependents of M.S.R.T.C. employees only. The appointment on compassionate ground cannot be considered as another source of recruitment or a scheme for reserving future vacancies for minors of deceased employees. The learned member of Industrial Court here has acted as if there is reservation in favour of respondent No. 1 on account of sad demise of his father while in service. Clause 11 in scheme dated 16-2-1994 has come into operation after respondent No. 1 submitted his application for grant of employment on compassionate ground. Moreover, said clause has the effect of reserving the vacancies for minor dependents till their age of 25 years and thus it creates a reservation on the basis of descent which is prohibited under Articles 16 and 14 of Constitution of India. There cannot be any such service condition in the employment with petitioner. If the petitioner has provided employment to others by following such policy, said appointments need not be disturbed. If persons below respondent No. 1 in waiting list prepared by petitioner for grant of employment on compassionate ground are already provided such employment, petitioner shall also employ respondent No. 1 accordingly. However Clause 11 does not create any right in present respondent to claim compassionate employment after 18 years and petitioner did not commit any unfair labour practice falling under Item 9 of Schedule IV of MRTU Act in the matter.

9. In *Mancha Ram v. State of Rajasthan*, 2000 L.I.C. 2421, the High Court there has considered validity of Rule 10(3) of Rajasthan Compassionate Appointment of Dependents of Deceased Government Servants Rules, 1996. It appears that before this 1996 Rules, 1975 Rules were applicable and said Rules provided that dependent of deceased employee may apply for employment on compassionate ground after attaining majority. However, initially 1996 Rules did not contain similar provision and it was introduced on 19-4-1999. The period for submitting the application came to be fixed as three months instead of earlier 45 days and it also contained a clause which read as - "in case the husband or wife, as the case may be, is not willing for employment and the eldest of the dependents has not attained the age of 18 years, the information to this effect may be furnished to the Head of the Department within period of three months from the date of the death of employee and the limitation of applying for service of three months shall

be counted from the date of attending the age of 18 years." Conclusions of High Court in paragraph 30 are -

"Thus, in view of the above, as the very purpose of compassionate employment is to redeem the family from immediate financial hardship, the amendment contained in Clause (3) of Rule 10 to make it available to dependent whenever he attains majority, cannot be sustained in the eye of law being violative of the provisions of Articles 14 and 16 of the Constitution. It opens a mode of employment by succession which is not permissible in law. If the eldest dependent attains the age of 18 years after an inordinate delay from the death of the employee, offering appointment to him at such a belated stage would not serve the purpose of granting immediate financial relief to redeem the bereaved family from financial constraints. Therefore, the said clause, being ultra vires, is struck down. However it is clarified that the judgment shall not have any bearing on the appointments already made under the Rules and it will have prospective effect. Even in case of petitioner, if he had already been appointed on compassionate ground, it is not desirable to disturb him."

10. This judgment and finding of learned Single Judge is considered by the Division Bench of Rajasthan High Court in the case of Board of Rajasthan v. Rajendra, reported at 2007 L.I.C. 1333 and in para 11, the said view has been endorsed and request for its reconsideration has been rejected. In paras 15, 17 and 20, the Court has also held that amendment to Rule 10(3) of Rajasthan Compassionate Appointment of Dependents of Deceased Government Rules 1966, making appointment available to dependent after he attains majority is invalid.

11. Thus direction dated 8-9-2004 issued by learned Member, Industrial Court in Complaint U.L.P. No. 241 of 1998 to provide employment to the respondent is untenable and the same is hereby quashed and set aside. Writ petition is allowed and rule is made absolute accordingly. There shall be no order as to costs.