
(2006) 08 CAL CK 0066
In the Calcutta High Court
Case No : Writ Petition No. 14609 (W) of 2006

Maitry Banerjee

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 01-08-2006

Acts Referred:

Citation : (2006) 4 CHN 507

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Sridhar Ch. Bagari, for the Appellant;

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The petitioner prays for compassionate appointment. Her husband, late Kalyan Nath Banerjee, while working and being attached to the H.T.X.R. Section of the Chief Mechanical Engineer's Department under the Kolkata Port Trust, died-in-harness on 05.11.92. On 01.12.92, by Annexures P-2, the petitioner applied for compassionate appointment. Pursuant to the said application, the Junior Assistant Secretary - II in the Administration Department of the said Port Trust, vide Annexure P/3, sent a letter asking the petitioner to appear in a written test which was scheduled to be held on 24.9.95 at 10:00 a.m.

2. According to the petitioner, and as has been stated in paragraph 5, she was selected for compassionate appointment (List "C") vide serial No. 13 in the year 1996. However no supportive document(s) in support of such a contention has/have been brought on record save and except a mere bald statement.

3. It is her further case that she did not get any information thereafter and therefore, she filed a representation before the Chairman of the Port Trust, vide Annexure P-4. This was sent on 10.2.98. The petitioner has stated that she has been given false assurances to the effect that she would be appointed but nothing has been done till date.

4. In paragraph 9, the petitioner has stated that as per records, her date of birth is 12.12.1955.

5. On the basis of the aforementioned facts and pleadings, the petitioner has asserted that the respondents, having not issued any appointment letter till date, have frustrated the aims of a Welfare State and that their inaction is illegal and/or that the respondents should have taken action immediately after the death of her husband.

6. This Court is however unable to grant any relief to the petitioner. From her own statement, made in paragraph 9, it is evident that the petitioner's date of birth is 12.12.1955. In other words, she crossed the age of 50 on 13.12.2005 and therefore, as on date, she is not eligible for any post, being barred by age.

7. Otherwise also, the petitioner cannot get any relief as prayed for, in view of the reasons set out hereinafter.

8. It is true that her husband had died-in-harness on 05.11.92. It is also true that the petitioner applied for compassionate appointment on 01.12.92 vide Annexure P-2. It is also noted, as per the statement made by the petitioner that she was allegedly selected in the year 1996 but thereafter, the respondents did not issue the appointment letter. However, and as observed earlier, no supportive document(s) in support of such a contention has/have been brought on record. Moreover, even assuming for the sake of argument but not admitting the same in any way, even if it is presumed that she was selected in the year 1996 as alleged, there is no explanation forthcoming from the side of the petitioner as to what prevented her from coming to this Court immediately after 1996. The only explanation that the petitioner has attempted to give is in paragraph 8, where she has stated that "being a helpless lady she could not come to the Hon'ble Court earlier." This is hardly an explanation that deserves any merit.

9. Her own inaction therefore has made her case "time-barred" in addition to being "age-barred." Moreover and in the opinion of this Court, a seeker of compassionate appointment, does not have any right to assert that he must necessarily be appointed merely because his or her predecessor-in-interest died-in-harness.

10. In a judgment of the Hon'ble Supreme Court of India, delivered in the case of Haryana State Electricity Board Vs. Naresh Tanwar and Another, Their Lordships, following the judgment of Umesh Kumar Nagpal Vs. State of Haryana and Others, have held that compassionate appointment cannot be granted after a long lapse of a reasonable period and that the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem suffered by members of the family of the deceased employee. Taking note of yet another judgment rendered by the Apex Court passed in the case of Jagdish Prasad Vs. State of Bihar and Another, Their Lordships have observed that the very object of compassionate appointment is to relieve unexpected immediate hardship and distress caused to

the family by the sudden demise of the earning member of the family.

11. The aforementioned judgment of the Hon^{ble} Apex Court in the case of Naresh Tanwar (*supra*), was delivered while considering an order of the Punjab and Haryana High Court which had directed that compassionate appointment be given to Naresh Tanwar. Being aggrieved with the aforementioned direction, the Haryana State Electricity Board moved up to the Apex Court and, after considering the judgments delivered in the cases of Umesh Kumar Nagpal and Jagdish Prasad, referred to above, Their Lordships approved the view that the consideration for compassionate appointment was not a vested right which could be exercised at any point of time in the future. The object of compassionate appointment is to enable the family to get over the immediate financial crisis which it faces upon the time of death of its sole bread-winner. As such, compassionate employment cannot be claimed and offered after whatever the lapse of time and after the crisis is over. Let it be recorded at this juncture that the husband of the petitioner in this writ petition had died on 05.11.1992 (i.e. more than thirteen years ago).

12. In paragraphs 2 and 3 of the judgment passed by the Apex Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, Their Lordships have observed as follows:

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 put 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 dependent 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." [SIC]

[Emphasis and Underlining added by this Court]

13. Taking guidance from the ratio of the judgments delivered by the Hon'ble Supreme Court, this Court is of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidates are screened, interviewed and short-listed in a rational and transparent manner. Legally, there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly horse in favour of one or other member of the family of the deceased who had died more than thirteen years ago and yet during all these years, the family has survived. In such cases, there is no question of concluding that the family was living in penury. In such cases, if the "passage-of-time having gone by" criteria is ignored and compassionate appointment is considered and given, then such a consideration would be against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their bread-winner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment and in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period

ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be, that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would be dashed to the ground and abruptly be snatched away by a seeker of compassionate appointment at a time when the consideration for such appointment has become non-existent -- the deceased parent having died years ago -- an event which can hardly be said to be reasonable.

14. In the aforementioned background, this Court is constrained therefore to observe that such persons claiming compassionate employment cannot be allowed to raise demand for appointment whenever and wherever they like by invoking a procedure which blocks an otherwise transparent method of open recruitment. Such demands if allowed, would deprive the management an opportunity to appoint people through open advertisement from across the country. This Court therefore does not find any fault with the respondents nor does this Court wishes to compel them by a judicial order by which they might be subjected to a position where they will be justified in complaining that they are being deprived of their right to resort to a transparent and open method of recruitment. If such an order is passed directing them to appoint in such cases, it would run counter to the principles of *actus curiae neminem gravavit* (an act of Court shall prejudice none), because this Court would frown and would not pressurize the respondents in such a manner that it has the effect of upsetting Constitutional safeguards of public bodies to get and appoint the best of hands through open advertisements from across the country.

15. Let it once again be recorded at this juncture that the husband of the petitioner in this writ petition had died on 05.11.1992 (i.e. more than thirteen years ago). Therefore, in the facts of this case, the object of compassionate appointment has faded away by efflux of time. This Court also takes notice of the fact that this writ petition has been filed on 14.06.2006. Consequently, this Court holds that this writ petition is totally devoid of merit and is accordingly dismissed.

16. No order as to cost.