
(2011) 02 KAR CK 0004

In the Karnataka High Court

Case No : Writ Petition No. 66995 of 2009 (S-Res)

Maktumsab

APPELLANT

Vs

The Director, Municipal Administration and Another

RESPONDENT

Date of Decision : 21-02-2011

Acts Referred:

Citation : (2012) ILR (Kar) 2636

Hon'ble Judges : S. Abdul Nazeer, J

Bench : Single Bench

Advocate : S.B. Hebballi, for the Appellant; K. Vidyavathi, AGA for R1, Sri V.R. Datar, Advocate for R2, for the Respondent

Final Decision : Dismissed

Judgement

Abdul Nazeer, J.—The petitioner contends that his father Mehaboobsab was working as a Driver with the City Municipal Council, Bagalkot. He had made an application as per Annexure "A" dated 6.7.1989 seeking voluntary retirement w.e.f. 31.10.1989. Since he did not receive any response from the second respondent with regard to his application, he continued to work with the City Municipal Council, Bagalkot, till his death i.e., 6.1.1991. It is further contended that respondent No. 2 by his Order dated 17.5.1991 granted retrospective voluntary retirement to the father of the petitioner w.e.f. 31.10.1989. It is the case of the petitioner that the said order is illegal for the reason that the rules do not authorise the second respondent to pass an order granting permission retrospectively for voluntary retirement of a public servant. The petitioner having passed SSLC examination made an application for his appointment on compassionate grounds. The first respondent by his communication dated 16.4.1997 intimated the petitioner that since his father was permitted to retire voluntarily w.e.f. 31.10.1989, his application cannot be considered. The petitioner has produced a copy of the said communication dated 16.4.1997 at Annexure "F". Therefore, petitioner has filed this writ petition for quashing the order at Annexure "F" and for a mandamus directing the first respondent to

appoint him on compassionate grounds in the office of the second respondent. Sri Hebballi, Learned Counsel appearing for the petitioner would contend that though the father of the petitioner had made an application dated 6.7.1989 seeking voluntary retirement w.e.f. 31.10.1989, the said application was not considered. Therefore, he continued to work with the second respondent till his death on 6.1.1991. After the death of the petitioner's father, second respondent has passed an order retiring him retrospectively from 31.10.1989. It is argued that the rules do not provide for according retrospective permission for voluntary retirement of any public servant. Therefore, the said order is a nullity. The father of the petitioner has left behind the mother of the petitioner, four sisters and three brothers. The mother of the petitioner also died on 4.3.1993. The petitioner has to maintain huge family after the death of his parents. Therefore, he wants employment in order to tide over the financial crisis of his family on account of the untimely death of the bread winner of the family. The reasons assigned for rejection of the application seeking appointment on compassionate grounds is that the father of the petitioner was not in service on the date of his death because he was permitted to retire retrospectively w.e.f. 31.10.1989. The said order is totally erroneous.

2. On the other hand, Sri V.R. Datar, Learned Counsel appearing for the second respondent submits that the petitioner's father had admittedly died on 6.1.1991. The application filed by the petitioner seeking appointment on compassionate grounds was dismissed on 16.4.1997. There is a long delay in challenging the said order. Alternatively, it is argued that an application for appointment on compassionate grounds made after a long lapse of time would negate the very object of appointment. The consideration for such employment is not a vested right, which can be exercised at any time. He prays for dismissal of the writ petition.

3. The undisputed facts are that petitioner's father was employed with the City Municipal Council, Bagalkot. He had made an application dated 6.7.1989 seeking voluntary retirement w.e.f. 31.10.1989. Since he did not receive response to his application, he continued to work till the date of his death i.e., till 6.1.1991. It is also clear that the second respondent passed an order on 17.5.1991 granting retrospective voluntary retirement to the father of the petitioner w.e.f. 31.10.1989. The petitioner filed an application seeking appointment on compassionate grounds after the death of his father. The said application was dismissed on 16.4.1997. There is a long delay of 12 years in approaching this Court challenging the validity of the order at Annexure "F". It is well settled that compassionate employment cannot be granted after a lapse of reasonable period. 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 get over the financial crisis which it faces at the time of the death of the sole bread winner, the compassionate employment cannot be claimed and offered after a long lapse of time and after the crisis is over. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve

unexpected immediate hardship and distress caused to the family by sudden demise of the earning members of the family. {See Umesh Kumar Nagpal Vs. State of Haryana and Others, and Jagdish Prasad Vs. State of Bihar and Another, In this connection, it is apposite to quote a passage from the decision of the Apex Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, which is as under:

It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments 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 sudden financial crisis.

4. In Smt. Sulochana Duttargi Vs. The Manager, National Insurance Co. Ltd. and Others, this Court was considering a similar case. There was a delay of 16 years in approaching this Court seeking appointment on compassionate grounds. After considering the various decisions of the Apex Court and of this Court, it has been held as under:

7. From the catena of the decisions of the Hon"ble Apex Court referred supra, it is clear that the compassionate appointment is not a vested right, which could be exercised at any point of time in future. The compassionate employment can be claimed within the reasonable time and it cannot be claimed and offered after a long lapse of time and after the crisis in the family is over.

As noticed above, the father of the petitioner had died in the year 1991. We are in the year 2011. The object of compassionate appointment was to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment. At this belated stage, the respondents cannot be directed to employ the petitioner on compassionate grounds. The petitioner has challenged the order at Annexure "F" after 12 years without any just cause. Therefore, the petition is liable to be dismissed on the grounds of delay and laches also. Ordered accordingly. No costs.