

(2010) 08 KAR CK 0007
In the Karnataka High Court
Case No : Writ Petition No. 80208 of 2010

Mallikarjun Reddy

APPELLANT

Vs

The Deputy Commissioner and The Tahsildar

RESPONDENT

Date of Decision : 23-08-2010

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 —
Rule 5

Citation : (2010) 08 KAR CK 0007

Hon'ble Judges : S.N. Sathyanarayana, J;N.K. Patil, J

Bench : Division Bench

Advocate : Ameet Kumar Deshpande and Anant Jahageerdar, for the Appellant;
M. Kumman, Government Advocate for R1 and R2, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Patil, J.—The Petitioner assailing the correctness of the order dated 24.11.2009 passed in A. No. 4705/2005 on the file of the Karnataka Administrative Tribunal, Bangalore, (for short, Tribunal") vide Annexure-E, presented the instant writ petition. He further sought for a writ, order or direction which this Hon"ble Court deems fit in the circumstances of the case.

2. The brief facts of the case are that, the father of the Petitioner late Narasareddy, while he was in service, died on 03.02.1995, leaving behind the Petitioner as a minor, as on the date of death of the deceased. On account of the death of the deceased - father of the Petitioner, he has filed an application seeking appointment on compassionate grounds when he attained majority i.e., on 24.06.2004, contending that his father was a village accountant of Navadgi village, Chittapur Taluk, Gulbarga District, while he was in service, he died, but the Petitioner was a minor as on the date of death of his father. Further case of the Petitioner is that, his mother Smt. Pramila has submitted an application on 28.12.1995, requesting the 2nd Respondent to keep one vacancy for

appointment on compassionate ground to the Petitioner when he attains the majority, which is produced at Annexure-A and thereafter the Tahsildar has sent a communication dated 25.10.2002, seeking clarification from the 1st Respondent regarding appointment on compassionate grounds, in turn, the 1st Respondent sent a communication vide Annexure-D stating that, the application filed by the mother of the Petitioner for reserving one vacancy for appointment on compassionate grounds, there is no rule to preserve one vacancy for appointment of the Petitioner on compassionate grounds on account of the death of the father of the Petitioner, even if he file an application after attaining majority, the same will be considered as per the existing rules which is permissible under the law. Be that as it may. He became a major and filed an application on 24.06.2004. The said application filed was forwarded by the 2nd Respondent to the 1st Respondent. The 1st Respondent, in turn, considering the application filed by the Petitioner, has rejected the same by its order dated 24.02.2005 vide Annexure-D, holding that, he is not entitled for appointment on compassionate grounds as per Rule 5 of the Karnataka Civil Services (Appointment on Compassionate grounds) Rules, 1996 and Amended Rules, 2000 holding that, within one year from the date of death of the father, if the Petitioner became major, he is entitled for appointment, but in the instant case, Petitioner had attained majority after 9 years of the death of the father.

3. Being aggrieved by the impugned order passed by the 1st Respondent dated 24.06.2005 and seeking appropriate relief, the Petitioner filed an application u/s 19 of the Administrative Tribunals Act, 1985, assailing the correctness of the order dated 24.02.2005 vide Annexure A6 produced in A. No. 4705/2005 on the file of the KAT, Bangalore, seeking for a direction to the Respondents to appoint the Petitioner to the post of second division assistant in the revenue department on compassionate grounds on account of the death of the father of the Petitioner. The said application filed by the Petitioner had come up for consideration before the tribunal on 24.11.2009, the tribunal in turn, after appreciating the oral and documentary evidence and other relevant material on the file and after considering the well settled law laid down by this Court and the Apex Court in catena of judgments and with reference to the amendment effected to the first proviso to Rule 5 of the Rules in 1999 & 2000, held that, if the minor dependent of a deceased government servant is entitled to apply for appointment, only if he has attained the age of majority within one year from the date of death of the government servant and therefore, the Petitioner having not attained majority within one year from the date of death of the deceased government servant, was not entitled to appointment on compassionate ground. Assailing the correctness of the order impugned and seeking appropriate relief as stated supra, the Petitioner felt necessitated to present the instant writ petition.

4. The submission of the learned Counsel for the Petitioner Sri. Ananth Jagirdar along with Sri. Ameet Kumar Deshpande, at the outset is that, the tribunal has committed a grave error without appreciating the series of matters passed by this Court that, as per the rule existing as on the date of death of the deceased

might have been made applicable to the request of the Petitioner for appointment on compassionate grounds and he has filed an application within one year from the date of attaining the majority, but the tribunal referring to the amendment to Rule 5 of 1999 & 2000 Rules, rejected the claim of the Petitioner, the same cannot be sustainable. Therefore, he submitted that, the order impugned is liable to be set aside and appropriate direction be issued to Respondents 1 and 2 to consider the case of the Petitioner for appointment on compassionate grounds.

5. As against this, learned AGA for Respondents, inter alia, contended and substantiated the impugned order passed as just and reasonable and strictly in consonance with the relevant provisions of the KCS (Appointment on compassionate grounds) Rules, 1999 & 2000. The tribunal after due consideration of the relevant material on the file and considering Rule 5 of the said Rules and placing specific reliance on the judgment of the Apex Court and this Court, has rejected the claim of the Petitioner for appointment on compassionate grounds. Therefore, interference by this Court is not called for.

6. After careful consideration of the submissions made by the learned Counsel appearing for the parties, the only point that arises for consideration is, Whether the order impugned calls for interference?

7. On careful perusal of the order impugned passed by the tribunal, produced vide Annexure-E, it is manifest on the face of the order, we do not find any error of law much less material irregularity as such, committed by the tribunal for declining to consider the request of the Petitioner for appointment on compassionate ground on account of the death of the father of the Petitioner during his service. It is the case of the Petitioner that, the tribunal ought to have taken the date of death of the father for application of the rule for appointment on compassionate grounds. The said aspect has been considered and deliberated and even some of the aggrieved Applicants have questioned the validity of Rule 5 of the KCS (Appointment on compassionate appointment) Rules, 1999 & 2000 and the same has been upheld by this Court in the case of Sri. K.M. Prakash Vs. The State of Karnataka, Department of Personnel and Administrative Reforms (Service Rules) and Zilla Panchayat, which reads thus:

6. It is well established by catena of decisions of the Apex Court that provision for appointment on compassionate grounds is made to tide over the sudden crisis caused by the death of a bread winner who leave the family in penury without any means of livelihood and that such a provision is really in the nature of an exception to the general principle of equality in the matter of recruitment. It is also to be remembered that such a provision made by way of an exception to the general rule cannot subsume the main principle. Therefore, there cannot be any reservation of the vacancy indefinitely till such time the minor attained majority after a lapse of several years. Therefore, the provision made prescribing the period of one year within which the Applicant ought to have attained majority from the date of death of the employee cannot be termed as arbitrary or illegal If

we keep in mind the object and purpose of compassionate appointment which is intended to provide immediate relief to the family in distress and the whole concept of providing appointment on compassionate grounds which is evolved by way of an exception to the General Rules of Recruitment, the challenge made to the proviso to Rule 5 of the Rules cannot be accepted. The Respondents were justified in placing reliance on the judgments of the Apex Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, and Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, ,

In the above decision, this Court has categorically held that, the court must keep in mind the object and purpose of appointment on compassionate ground which is intended to provide immediate relief to the family in distress and the whole concept of appointment on compassionate grounds which is evolved by way of an exception to the general Rules of Recruitment. The challenge made to the proviso cannot be accepted. The Respondent has rightly placed reliance on the judgment of the Apex Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, and Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, .

8. It is significant to note that, in the instant case, as a matter of fact, the Petitioner attained majority 9 years after the death of the father, The rule that were applicable when he attained majority were rules as amended in 1999-2000. The proviso to Rule 5 of the Rules amended provide that a minor dependent of the deceased government servant is entitled to apply for appointment only if he attains the age of majority within one year from the date of death of the government servant. In the instant case, the Petitioner has not attained majority within one year from the date of death of his father. Therefore, he is not entitled for appointment on compassionate grounds. Further, it is pertinent to note here itself that, it is the case of the Petitioner that his mother has filed an application on 28.12.1995 requesting the 2nd Respondent to preserve one post for appointment on compassionate ground when her son attain majority. Thereafter, the Petitioner's mother has submitted an application on 25.10.2001 to the 2nd Respondent. The 2nd Respondent in turn, has referred the same to the 1st Respondent for consideration. The 1st Respondent, in turn, has sent a communication dated 10.01.2003 vide Annexure-B stating that the request made by the mother of the Petitioner cannot be considered, there is no scope under the Rules. However, once if he attains majority, if he files an application, his application will be considered in accordance with the existing rules i.e., 1999-2000. Thereafter, once he attains majority, he submitted his application on 24.6.2004. The same has been considered with reference to the relevant rules which is applicable and declined the relief sought for by the Petitioner. The said reasoning assigned by the 1st Respondent by the impugned order dated 24.02.2005 and the order passed by the tribunal vide Annexure E as referred above is just and strictly in accordance with the KCS (Appointment on compassionate grounds) (Amendment) Rules, 1999 & 2000. We do not find any error or illegality much less material irregularity, as such nor the Petitioner has

made out any good grounds as such to consider the relief sought for in the instant writ petition. Therefore, we decline to consider the relief sought for in this writ petition.

9. For the foregoing reasons as stated above, the instant writ petition filed by the Petitioner is dismissed as devoid of merits.

Ordered accordingly.