
(2005) 12 DEL CK 0061

In the Delhi High Court

Case No : Writ Petition (Civil) No. 721 of 2003

MCD

APPELLANT

Vs

Jagdish Prasad

RESPONDENT

Date of Decision : 23-12-2005

Acts Referred:

Central Civil Services (Pension) Rules, 1972 — Rule 38
Industrial Disputes Act, 1947 — Section 10

Citation : (2005) 12 DEL CK 0061

Hon'ble Judges : Gita Mittal, J

Bench : Single Bench

Advocate : Gaurang Kanth and Sohail Ashraf, for the Appellant; K.K. Rai and Harshendu Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Gita Mittal, J.—The factual position in the instant case is almost undisputed and a brief reference thereto would suffice. Sh. Budh Singh was employed as a Beldar with the Municipal Corporation of Delhi (petitioner herein) and he died in harness on 26th September, 1992. The workman left behind him his son, the present respondent who was living with him at the time of his death. It is admitted that the elder son of the deceased Sh. Karan Singh and the second son Sh Charan Singh (already expired) had been living separately during the lifetime of late Sh. Budh Singh. Therefore the respondent was the only person who was entitled to seek employment on compassionate basis.

2. Sh. Jagdish Prasad the claimant submitted an application for appointment on compassionate basis and completed all documents required by the management vide its letter dated 8th June, 1993. Since the respondent received no decision on his application, he agitated the matter before the conciliation officer under the Industrial Disputes Act, 1947. It is stated that the Delhi Municipal Workers Union espoused the his case and repeatedly requested the Municipal Corporation of Delhi to make the appointment of the respondent on compassionate ground.

3. This claim of the respondent was resisted by the petitioner and finally the appropriate government referred the matter for adjudication to the Industrial adjudicator on the following terms :-

Whether Sh. Jagdish Prasad is entitled for appointment in M.C.D. on compassionate grounds, if no, what directions are necessary in this respect.

4. The matter proceeded to evidence and by an Award dated 5th December, 2001, the industrial adjudicator answered the reference in affirmative holding that the respondent was entitled for appointment on compassionate grounds in the MCD. The industrial adjudicator carefully issued a direction to the MCD to reconsider the case of claimant for appointment on compassionate basis for the post of LDC . Further direction was made that the claimant be given suitable employment, if possible, within 60 days from the date of publication of the Award.

5. This award has been assailed by the MCD before this court principally on the ground that the respondent was not covered under the policy dated 30th June, 1997 which covered the jurisdiction of the MCD to make appointment on compassionate basis. It has been vehemently urged that the petitioner could not have been given any employment on the ground that his application stood rejected vide an order dated 1st December, 1993. According to the petitioner, the respondent no. 1 concealed the fact that two elder sons of the deceased were earning hands and that the condition of the family was not in distress at the time of death of his father.

6. Perusal of the record of the writ petition shows that even according to the petitioner, the financial status of the respondent has been stated thus :-

"3. During the cross-examination of the respondent the respondent stated that he supplied the pouches of gutka etc for livelihood and was earning Rs. 1500/- He further asserted that he and his brother have their own houses. His house in the area of 44 sq. yards valuing about Rs. 1,25,000. He had apportioned the amount of Rs. 44000 received from the management pursuant to the death of his father.

4. Vide the impugned award the Hon''ble Tribunal held that the reason given by the management was that two of the sons of deceased were earning hand but it was not disclosed as whether the respondent was also a working hand. The copy of the application of the workman showed that he was dependent on his father and it was also reported that the financial position of the family was bad. The Hon''ble Tribunal held that the respondent had ancestral house and he received the dues of his father. In fact no person of the family was employed with the Corporation or with any other stable employer. The Hon''ble Tribunal concluded that the work of the respondent was not of a stable and regular nature and Therefore respondent was entitled for appointment in the petitioner corporation on compassionate grounds.

7. The only ground for assailing the findings of the industrial adjudicator is that

the respondent was not covered under the scheme of engagement on compassionate basis for the reason that the respondent had inherited a house from his father and had received the terminal dues which became accruable upon demise of Sh. Budh Singh. There is no dispute that the two other sons of late Sh. Budh Singh were living independently of the deceased even at the time of his death. There is no material placed by the MCD nor any contention that these two sons were supporting the deceased or his dependents including the respondent in any manner either before his death or thereafter.

The industrial adjudicator has as a fact found that the brother of the respondent was working in some general store; that both of his brothers were married having two children each; that they were living separately in their houses. The adjudicator has also found that even the amount of Rs. 40,000/- received from the MCD upon death of Sh. Budh Singh was equally apportioned by them.

8. The respondent had admittedly submitted an application wherein he was shown as dependent upon Budh Singh. A survey report of an independent agency was also on record and was considered by the industrial adjudicator which found that Sh. Jagdish Prasad respondent herein was a married person and was unemployed. According to this survey report the financial position of the family was bad.

9. The communication dated 1st December, 1993 of the MCD rejecting the application of the respondent was on the sole ground that his case did not fall under the laid down policy.

10. Perusal of the policy of the MCD governing appointments on compassionate basis shows that the same is applicable to :

a. To a son or daughter or near relative of a Government servant who dies in harness including death by suicide, leaving his family in immediate need of assistance, when there is no other earning member in the family.

b. In exceptional cases when a department is satisfied that the condition of the family is indigent and is in great distress, the benefit of compassionate appointment may be extended to a son/daughter/near relative of a Government servant retired on medical grounds under Rule 38 of Central Civil Services (Pension) Rules, 1972, or corresponding provisions in the Central Civil Service Regulations before attaining the age of 55 years. In case of Group "D" employees whose normal age of superannuation is 60 years, compassionate appointment may be considered where they are retired on medical grounds before attaining the age of 57 years.

So far as the eligibility is concerned, certain exceptions are provide which read as under :-

c. Departments are, however, competent to relax temporarily educational qualifications in the case of appointment at the lowest level i.e. Group "D" or LDC post, in exceptional circumstances where the condition of the family is very

hard, such relaxation will be permitted up to a period of two years beyond which no relaxation of educational qualifications will be admissible and the services still unqualified, are liable to be terminated.

d. Where a widow is appointed on compassionate ground to a group "D" post, she will be exempted from the requirements of educational qualifications, provided the duties of the post can be satisfactorily performed without having the educational qualification of Middle standard prescribed in the Recruitment Rules.

11. There is no dispute that the respondent/workman was eligible for consideration for appointment and that his case has been rejected only on the ground that his brothers were earning hands. As noticed above, it has been held by the Apex Court that earning of other relatives would have no bearing on the consideration of an application by a relative of a deceased workman unless it could possibly be shown that they were contributing to the support of the family and the applicant before the court. There is no such material before the industrial adjudicator or before this court.

Even the terminal benefits were divided between the three brothers. Earning from selling gutka which would be in the nature of a sporadic trade and the income there from of the amount of Rs. 1500/- can hardly be termed as sufficient income. This amount falls well below the notified minimum wages determined by the statutory authorities.

So far as the ownership of the house is concerned, it has been noticed by the industrial adjudicator that the house was inherited by the workman. It is the case of the respondents themselves that the respondent was living with his father and a property which is occupied by the applicant as his residence can by no measure be termed as gainful employment inasmuch as such as inhabited property is not a source of income to the owner or the occupant.

The submission on behalf of the MCD to the effect that the respondent/workman was gainfully employed or otherwise possessed of such income amounts rendering him outside the ambit and purview of the scheme dated 30th June, 1997 for appointment on compassionate basis is wholly baseless and misconceived. The submission of the petitioner must Therefore necessarily be rejected.

12. In industrial adjudication, the function of an industrial tribunal is confined to administration of justice in accordance with law alone. By virtue of Section 10 of the Industrial Disputes Act, 1947 it can confirm rights and privileges on either party though they may not be within the terms of existing agreement. The tribunal is not confined only to interpret or give effect to contractual rights and obligations of the parties but can create new rights and obligations between them which it considers essential for keeping industrial peace (Re: LLJ 921 entitled *Bhartiya Bank Limited v. Employees of Bhartiya Bank Limited*).

The award of the industrial adjudicator may contain settlement of a dispute which a court could not order if it was bound by ordinary law but the tribunal is not restricted in any way by these limitations(see 1949 LLJ 245 entitled F.C. Western India Automobile Association v. Industrial Tribunal). Industrial adjudication is beyond application of statutory law alone.

The concept of social justice has become an integral part of industrial adjudication and it is idle for any party to suggest that industrial adjudication can or should ignore the claims of social justice in dealing with industrial dispute. The concept of social justice is not narrow, one sided or pedantic and is not confined to industrial adjudication alone. Its sweep is all comprehensive and is based on the basic idea of socio-economic equality; its aim being to assist the removal of socio-economic disparities and inequalities .In dealing with industrial matters, it does not adopt a doctrinaire approach and is revised to yield the adopts a realistic and pragmatic approach (se Crown Aluminium Works Vs. Their Workmen, and J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others,). The concept of social justice derives recognition in the constitutional mandate and in the resolve of the courts to ensure social justice to all.

13. It is considerations of this social justice which are the basis for confirming legality and constitutionality of the action of the authorities to make an exception to the normal method of recruitment and appointment to public office by permitting appointments on compassionate considerations in the event of demise of an employee. It is an absolute principle of functioning that appointments in public service are required to be made strictly on the basis of notified invitations for applications and considerations of merit. Appointment by any other mode is impermissible. Statutory authorities or public authorities are prohibited from indicating any other procedure other than the notified procedure or to relax qualifications laid down by the rules. To this strict rule, some exceptions have been carved out in the interest of social justice and to meet certain contingencies. One of such exception has been carved out to balance the interest between the destitute condition of those seeking employment in normal course and those placed under a threat of destitution on account of demise of an employee of the organisation on whom such person seeking the appointment was dependent.

14. While giving such compassionate employment, care has to be taken that it is not unduly unfair with the rights of those other persons who are eligible to seek appointment against a post which would have been available but for the provision enabling appointment being made on compassionate grounds to the dependants of the deceased employee (see State of Manipur Vs. Md. Rajaodin,

15. Considerations which should guide authorities while giving appointment in public offices on such basis have remained obfuscated. However binding principles have been laid down by the Apex Court setting down the parameters and considerations for making such appointments. Appointment on

compassionate ground cannot be claimed as matter of right and such appointment cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. A claim for appointment on compassionate basis has been considered as reasonable and permissible on the basis of the sudden crisis occurring in the family of an employee who has served the state and died while in service. However the rules, regulations, administration instructions and orders in this behalf must stand the test on the touchstone of Article 14 and 16 of the Constitution of India (see *State of Haryana and Others Vs. Rani Devi and Another*,

16. Appointment on compassionate basis is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the effect of the death of the employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But again such appointments on compassionate ground have to be made only in accordance with the rules, regulations or administrative instructions taking into consideration the family condition of the family of the deceased (see *Umesh Kumar Nagpal Vs. State of Haryana and Others*, and *State of Haryana and Another Vs. Ankur Gupta*,

17. An application seeking appointment on compassionate basis has necessarily to be considered expeditiously. In *Jagdish Prasad Vs. State of Bihar and Another*, compassionate appointment was sought by a son of a deceased employee who died when he was in harness. At the time of the death, the applicant was a minor of only about four years. It was held by the Apex Court that it could not be said that he was entitled to be appointed after he attained majority long thereafter. If such a contention was to be accepted, it would amount to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, dehors the recruitment rules.

18. In several cases the courts have had occasions to examine the cases of family members of deceased employees who were minors at the time of the death of the employee while in service. Even though compassionate appointment was offered to the widow of the deceased, however the option to be appointed was sought to be exercised on behalf of minor children/sons. Upon the minor child attaining majority, applications seeking appointment on compassionate basis were sought to be enforced. In these circumstances, it has been observed that such applications were made with the object of enabling the family to tide over in sudden crisis but the purpose was to obtain employment out of turn, on compassionate basis for the applicant, which would benefit for his while life time. It has been held that this was beyond Article 16 of the Constitution and cannot constitute a reasonable and intelligible differentia (see *Rajender Poddar v. State of Bihar* and *Anr. 1991 L C 959; 54 (2001) DLT 746 MCD v. Veer Mohd*). It is apparent that when an application is belated or delayed, the penury on account of the sudden of an employee's demise dissipates and there would be no warrant or justification for violating the equalities guaranteed under Article 14 and 16 of

the Constitution.

19. A distinction has to be however drawn between a delayed application by a petitioner that would defeat a request for compassionate appointment and a timely application that has been kept pending for a very long time. Such a delay in deciding a justified request would not defeat the request.

20. It is well settled that High Courts and administrative tribunals cannot confer benediction impelled by sympathetic consideration to make appointment on compassionate grounds if the regulations framed therein do not contemplate or provide so (see *Umesh Kumar Nagpal Vs. State of Haryana and Others*,

21. The person seeking employment on compassionate basis cannot insist for an appointment at a particular post alone (see *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*,

22. It is well settled law that considerations of sympathy cannot guide a court while considering a matter relating to appointment on compassionate basis. The applicable regulations and rules have to be strictly followed. It is well settled law that no mandamus will be issued directing for an appointment to made on compassionate basis (see *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*,

23. It is also well settled that the jurisdiction of a High Court for issuing a mandamus under Article 226 of the Constitution of India cannot be exercised to direct appointment on compassionate basis. The court can merely direct consideration of the claim of the applicant (see *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*,

24. Compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules regarding the consideration for such employment as it is not a vested right which can be exercised at any time in the future. The object of such employment being to enable the family to overcome a financial crises which it faces on account of death of the sole bread earner. It is obvious that employment on compassionate basis cannot be claimed and offered, whatever the lapse of time and after the crisis is over (see 1994 (4) SCC 158 entitled *Umesh Kumar Nagpal v. State of Haryana*).

25. It has been held by the Apex Court that in the absence of a vacancy, it is not open to an authority to appoint a person to any post and it will be a gross abuse of the powers of the public authority to appoint persons when vacancies are not available. If persons are so appointed and paid salaries, it will be a mere misuse of public funds, which is totally unauthorised. Normally, even if the tribunal find that a person is qualified to be appointed to a post under the kith and kin policy, the tribunal should only give a direction to the appropriate authority to consider the case of a particular applicant in the light of the relevant rules and subject to availability of the post. A tribunal has no power either to direct the appointment of any person to a post or direct authorities concerned to create a

supernumerary post and then appoint a person to such post (se Himachal Road Transport Corporation Vs. Dinesh Kumar, ; Municipal Council, Ambala v. Balvinder Singh and Ors., (2000) 2 LLJ 532 (SC))

26. One of the most material considerations which would entitle a person to consideration and seek appointment on compassionate basis is the financial condition of the family of the deceased and the applicant seeking such appointment. In 2005 (10) SCC 289 entitled Govind Prakash Verma v. LIC and Ors., the Apex Court held as follows :-

6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.

27. There is no dispute before this court that the respondent/application was entitled to consideration of the application in the post in which he had applied. The industrial adjudicator had only directed consideration of the application and making of the appointment if the same were possible. It is settled law that such an appointment has to abide by the rules applicable in this behalf. It has been found that the rejection of the respondent's application was on erroneous grounds.

Accordingly, I find no merit in this writ petition which is hereby dismissed.

The petitioners shall consider the application of the respondent in terms with the award and in the light of the principles of law noticed herein. This consideration shall be effected within a period of six weeks and decision thereon shall be communicated to the respondent. The respondent shall be entitled to costs which are quantified at Rs. 5,500/-