
(2007) 05 DEL CK 0087

In the Delhi High Court

Case No : Writ Petition (C) No. 6410 of 2004

M.C.D.

APPELLANT

Vs

Sh. Jai Singh

RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 10

Citation : (2007) 142 DLT 581

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Geeta Mehrotra, for the Appellant; S.K. Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—The present petition has been filed by the petitioner corporation, praying inter alias for an appropriate writ, order or direction for quashing and setting aside the order/award dated 4th December, 2002, passed by the Presiding Officer, Industrial Tribunal.

2. Briefly stated, facts of the case are as follows. Father of the respondent was working with the petitioner corporation as Beldar when he died on 23rd June, 1992 leaving behind his widow, four sons and two daughters. Thereafter, the respondent applied to the petitioner corporation for appointment on compassionate grounds, but his application was rejected by the petitioner corporation vide its letter dated 23rd November, 1993 on the ground that three of the sons of the deceased were employed, and Therefore it could not be said that the deceased died in harness or that his family was left in a penurious condition. Aggrieved by the said rejection by the petitioner corporation, the respondent raised an industrial dispute, which was referred by the appropriate government to the Industrial Tribunal for adjudication vide its order dated 26th September, 1995, with the following terms of reference:

Whether Sh. Jai Singh s/o Sh. Bali, Beldar is entitled to be appointed on

compassionate grounds and if so, what directions are necessary in this respect?

3. The pleadings were completed, issues were framed and evidence was led by the parties. After considering the pleadings and the evidence so led by the parties, the learned Presiding Officer came to the conclusion that the grounds taken by the petitioner corporation in rejecting the application of the respondent was arbitrary and unjustified and on that basis held that the respondent was entitled to be appointed on compassionate grounds on the post of Beldar or any other suitable Class-IV post. Accordingly the petitioner corporation was directed to consider the case of the respondent to appoint him on the post of Beldar or any other suitable class-IV post within one month of the date of the award. It is this award of the Industrial Tribunal dated 4th December, 2002 that the petitioner has sought to challenge by way of the present proceedings.

4. Learned Counsel for petitioner submitted that the Presiding Officer erred in holding that the action of the petitioner corporation in rejecting the application of the respondent is totally arbitrary and unjustified. It was stated that the same is not true because the said application was rejected only after due consideration. Counsel for the petitioner contended that appointment on compassionate grounds cannot be claimed as a matter of right. Contention was also raised to the effect that there were limited vacancies available with the petitioner corporation for making appointments on compassionate grounds which were equal to 5% of the total vacancy position. Attention of the court was also drawn to the recommendations of the Committee constituted under orders of the Commissioner dated 6th September, 1993 in respect of compassionate appointment, wherein the cases of 180 applicants were considered, and reasons were stated for rejecting or recommending each of the applications. It was averred that the application of the respondent was rightly rejected by the petitioner on the ground that the committee observed that three out of the four sons of the deceased employee were engaged as driver, auto rickshaw driver and as a conductor with DTC respectively. Accordingly it was held by the Corporation that it was not a fit case for granting appointment on compassionate grounds and the application of the respondent was rightly rejected. Counsel for the petitioner also took the stand that the wife of the deceased employee was also receiving pension, and there was no economic hardship to tide over, for which reason an appointment on compassionate grounds had to be given to the respondent.

5. Learned Counsel for the respondent vehemently disputed the arguments addressed by the petitioner. In support of the award, he stated that it is established that the three brothers of the respondent are living separately and that the respondent and his mother were completely dependent on the salary of the deceased. It was stated that there were no infirmities in the impugned award and that it is based on correct appreciation of evidence and law that merely because there are earning members in the family, the same may not necessarily be a ground to reject the application for compassionate appointment. Counsel for

the respondent placed reliance on a judgment of This Court in the case of *Municipal Corporation of Delhi v. Jagdish Prasad* [WP(C) No. 721/2003] decided on 23rd December, 2005 and submitted that in this case, in similar facts, the court held that the application of the petitioner was rejected on erroneous grounds.

6. I have heard the counsels for the parties and have perused the records. The issue that arises for consideration here is that whether the application of the respondent for appointment on compassionate grounds could be rejected merely because three of his brothers were working. A perusal of the impugned award would show that the Presiding Officer, while arriving at a conclusion, took into consideration the evidence of the Management Witness, MW- 1, who admitted that the three elder brothers of the respondent were living separately and that the respondent was unemployed at the relevant time. He could also not point out any other income of the widow and the respondent. The Presiding Officer also relied on the Office Memorandum dated 30th June, 1987, issued by the Government of India, para No. 4 Clause(c) of which lays down as under:

In deserving cases even where there is an earning member in the family, a son/ daughter/near relative of the deceased Government servant leaving his family in distress may be considered for appointment with the prior approval of the Secretary of the department concerned who, before approving the appointment, will satisfy himself that the grant of concession is justified having regard to the number of dependents, the assets and liabilities left by the deceased government servant, the income of the earning member as also of the earning member as also his liabilities including the fact that the earning member is residing with the family of the deceased government servant and whether he should not be a source of support to the other members of the family.

7. It is settled law that compassionate appointment can be granted only within certain parameters as laid down in several judgments by the Supreme Court as also This Court. The appointment of compassionate grounds cannot be claimed as a matter of right. Nor can such appointments be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee.

8. In the present case in hand, recommendations of the Screening Committee show that the only ground on which the application of the respondent for compassionate appointment was rejected is that the three brothers of the respondent were gainfully employed. In the impugned award, after adverting to the evidence placed on the record, a finding has been given on the basis of the evidence adduced by the respondent's witness that the three brothers were living separately. It was further observed that the respondent remained unemployed and the only income being received by him and his mother is the pension payable to the latter. Thus it was concluded that the widow of the deceased employee of the petitioner was living with the respondent and that his three elder brothers were living separately, out of which one was handicapped. Considering that the three elder brothers of the respondent are employees in

class-IV categories having to fend for themselves as also for their families, the learned Presiding Officer came to the conclusion that they cannot be said to have income sufficient to maintain their own family and render financial assistance to the widow of the deceased employee of the petitioner. While referring to a judgment of the Punjab and Haryana High Court in the case of Smt.Chandro Devi and Anr. v. State of Haryana and Ors. reported as 1993 (3) SLR 623 and of the Rajasthan High Court in the case of Prakash Chand Jain v. State of Rajasthan and Ors. reported as 1992 (5) SLR 680, the learned Presiding Officer came to the conclusion that the basis of rejecting the application of the respondent was arbitrary and unjustified as admittedly, no member of the family of the deceased employee was given employment on compassionate grounds and the fact that the other brothers of the respondent happen to be employed could not deprive the respondent of his claim to secure employment on compassionate grounds. While advertng to a judgment of the High Court of Allahabad in the case of Kamal Prakash Sahu v. Union of India and Ors. reported 1987 (55) FLR 143 wherein it was held that mere receipt of the usual family pension and other dues of the deceased Government servant to his heirs, being circumstances common to all, could not have been intended to be taken into account for denying the claim of the dependent members of the family for compassionate appointment, the learned Presiding Officer held that the respondent was entitled to appointment on compassionate grounds. Reference may also be made to the judgment of the Supreme Court in the case of Govind Prakash Verma v. LIC and Ors. reported as (2005) 10 SCC 289, wherein it was held as under:

Para 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.

9. There is no infirmity in the conclusions arrived at in the impugned award to the effect that the earnings of other relatives can have no bearing on the consideration of an application for compassionate appointment by dependent of the deceased workman unless and until it could be showed that other relatives were contributing financially so as to provide succour to the family of the deceased workman as also the applicant before the court. In the present case, as is apparent from a perusal of the award, there is no such material placed before the learned Presiding Officer or for that matter, before This Court.

10. While dealing with a petition u/s 10 of the Industrial Disputes Act, 1947, the Industrial Tribunal/Labour Court has vast powers which it can exercise to administer justice by not only interpreting the contractual rights and obligations between the parties but also by creating new rights and obligations inter se the parties so as to render complete justice. Fetters contained in the CPC and the Limitation Act have not been imposed on the Industrial Tribunal while answering a reference made by an appropriate Government. Thus, it is well within the domain of the Industrial Tribunal to take into its fold not only the law, but also the peculiar facts and circumstances of each case so as to render complete and effective justice between the parties. In this regard, reference is made to the following judgments:

(i) F.C. Western India Automobile Association v. Industrial Tribunal, 1949 LLJ 245.

(ii) Crown Aluminium Works Vs. Their Workmen,

(iii) J.K. Cotton Spinning and Weaving Mills Co., Ltd. Vs. Badri Mali and Others,

11. Ordinarily, if the Tribunal finds that a person is qualified to be appointed to a post on compassionate grounds, the Tribunal is expected to give directions to the management to consider/reconsider the case of an applicant in the context of the relevant rules, regulations, guidelines, administrative instructions and orders in this regard, which is of course, subject to availability of the post. However, a Tribunal does not have the power to direct appointment of any person to a particular post or direct the management to create a post and then appoint a person to such a post. In the present case, there is finding given in the impugned award that the management did not take any ground to the effect that it did not have any vacant post for giving appointment on compassionate basis or that there was some other problem. In these circumstances, clubbed with the fact that the ground on which the screening committee did not recommend the case of the petitioner for being appointed on compassionate grounds has been found to be without basis, the order in the impugned award directing the management to consider the case of the respondent for being appointed on the

post of Beldar or any other class-IV post is justified.

12. Accordingly, This Court does not deem it fit to interfere in the impugned award. The writ petition, Therefore, fails and is dismissed.

13. The petitioner is directed to consider the application of the respondent for being appointed on compassionate grounds in terms of the orders contained in the impugned award dated 4th December, 2002 and in the light of the principles of law as noticed hereinabove. The petitioner is further directed to take a decision in the matter within a period of six weeks under intimation to the respondent.