
(2010) 09 GAU CK 0002
In the Gauhati High Court
Case No : WP (C) No. 86 of 2004

Minati Das (Datta) and Another	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 03-09-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 142(1), 16, 226

Citation : (2011) 3 GLR 381

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : B. Dey, for the Appellant; A. Lodh, for the Respondent

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—This writ petition has been filed with the following prayer.

- (a) Admit this petition;
- (b) Issue notice upon the respondents;
- (c) Call for the records; and
- (d) After hearing the parties be pleased to provide a suitable job on compassionate grounds in favour of one of the petitioner.

2. The two petitioners are the wife and daughter of Late Satya Ranjan Das, who died while in service under the respondents on 7.4.2000. The Annexure 5 is the survival certificate dated 12.3.2000 certifying that Late Satya Ranjan Das left behind the following survivors.

- (1) Smt. Minati Das (Datta) - Wife - 40 (petitioner No. 1)
- (2) Smt. Purabi Das - Daughter - 17 (petitioner No. 2)
- (3) Smt. Chandana Das - Daughter -10.

3. After the aforesaid demise of late Satya Ranjan Das, the petitioner No. 1 made

application for her appointment on compassionate ground followed by time-to-time reminders. However, her prayer for appointment on compassionate ground was rejected and the same was communicated to her by Annexure 8 letter dated 6.10.2003. For a ready reference the said letter is quoted below.

No.A-42011/20/03-ADMN-IV

GOVERNMENT OF INDIA MINISTRY OF INFORMATION AND BROADCASTING
DIRECTORATE OF ADVERTISING AND VISUAL PUBLICITY B-BLOCK, KG. MARG
NEW DELHI-110001, the 6th October, 2003

Smt. Minati Das,

W/o Late S.R. Das

P.O. Arundhutinagar, Road No. 1

Agartala, West Tripura - 799003.

Subject: Request for compassionate appointment-reg.

Madam,

I am directed to refer to your application date 1.10.2002 on the subject mentioned above and to inform you that your application for compassionate appointment was placed before the duly constituted committee on Compassionate Appointment was placed before the duly constituted committee on Compassionate Appointment (CCA) of DA VP for consideration.

2. The committee examined the case and found that you are being paid basic pension of Rs. 3313 and the Dearness relief currently @ 59% on the basis pension. Further, the family has received a lump sum amount of Rs. 4,13,839 towards pensioner benefits. As such, the committee did not find it a fit case for recommendation of your appointment on compassionate ground.

3. This issue with the approval of Director, DAVP.

Yours faithfully Sd/- R.K. Jha Section Officer 6.10.2003.

4. After the aforesaid letter dated 6.10.2003 the petitioner No. 1 made another representation urging for her appointment on compassionate ground, but she was intimated by Annexure 10 letter dated 9.1.2004 that, there was no merit to reopen the case.

5. The petitioner has placed reliance on the provisions for consideration of cases on compassionate ground and according to them, having regard to the educational qualification which the petitioner No. 2 has attained in the meantime at least the case of the petitioner No. 2 should be considered for appointment. The particular provision on which the petitioners have placed reliance is quoted below.

8. Procedure for appointment. - Heads of Offices will make the proposal and the

Head of Department/Ministry will decide the appointment. Proposal will be made in the prescribed form containing all particulars of the candidate and the specific relaxation required in age, qualifications, etc. The Head of Department/Ministry will take into account all the circumstances of the family, the benefits such as CGEIS payments, GPF/CPF, gratuity, etc. Received, the existence of any earning member in the family on the one hand and on the other, size of family, ages of children, essential needs, liabilities and the financial condition of the family. Financial benefits received need not necessarily be a ground for rejecting the proposal vis-a-vis other adverse factors urging acceptance.

6. The respondents have filed their counter affidavit resisting the prayer made in the writ petition. It has been stated in the affidavit that, the case of the petitioner No. 1 was duly considered by a committee headed by an officer of the rank of Deputy Secretary who did not find her case to be a fit case for appointment on compassionate ground. It has been stated that, while considering the case for compassionate appointment, the economic status, benefits received by the family of the deceased Government servant, etc., are kept in view. The parameters which are taken into account have been indicated as (i) Income of the family of the deceased Government servant; (ii) Educational qualification of the members of the deceased Government servant; (iii) Number of dependents; (iv) Assets and liabilities left by the deceased Government servant etc.

7. I have heard Mr. B. Dey, learned counsel for the petitioners as well as Mr. S. Lodh, learned Assistant Solicitor General of India. I have also, considered the materials on record.

8. By now more than 10 years have elapsed since the death of late Satya Ranjan Das on 7.4.2000. As per the survival certificate dated 12.5.2000 the petitioners were 40 and 17 years of age and thus, the petitioner No. 2 was a minor. In the writ petition the prayer is to provide a suitable job to one of the petitioners.

9. It is not the case in which it can be said to be a case of non-consideration of the case of the petitioner No. 1 on the basis of the application made by her. She was duly replied by the aforementioned letter dated 6.7.2003 that, in consideration of her case by the duly constituted Committee, same was found to be not a fit case for appointment on compassionate ground. After such intimation also the petitioner made further representation to which also the respondents duly furnished their reply vide Annexure 10 letter dated 9.1.2004. It will be pertinent to mention here that, the said two letters and the decision conveyed therein are not under challenge in this writ petition.

10. Needless to say that compassionate appointment is not a source of recruitment and that there cannot be endless compassion in such matter. After the death of Late Satya Ranjan Das, the petitioner No. 1 applied for consideration of her case for appointment on compassionate ground but the committee which considered her case did not find her case to be a fit case for compassionate

appointment. This court is only concerned with the decision making process and not the decision itself. It being an admitted position that the case of the petitioner was duly considered and for the reasons assigned in the decision making process reflected in the Annexure 8 letter dated 6.10.2003, her case was not found to be a fit case for appointment on compassionate ground. This court exercising its power of judicial review under article 226 of the Constitution of India cannot sit on appeal over the said decision.

11. The Apex Court in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, dealing with the scope of the court's power to order for compassionate appointment held that the court cannot confer benediction impelled by sympathetic consideration. It was reminded that the court's should endeavour to find out whether a particular case in which sympathetic considerations are to be weighed falls within the scope of law. Disregardful of law, however, heard the case may be, should never be done.

12. In Umesh Kumar Nagpal Vs. State of Haryana and Others, it was held that, compassionate employment cannot be granted after a lapse of a reasonable period and that the consideration for such employment is not a vested right. It was further observed that offering of compassionate employment as a matter of course irrespective of the financial condition of the family of the deceased is legally impermissible.

13. The Apex Court in State of Haryana Vs. Naresh Kumar Bali, reiterating the scope and ambit of the High Court in such matters observed that the High Court could have merely directed consideration of the claim of the respondents involved in the case in accordance with the Rules but could not have directed for appointment. It was observed that ".....Such a direction does not fall within the scope of mandamus. Judicial review, it has been repeatedly emphasised, is directed against the decision-making process and not against the decision itself; and it is no part of the court's duty to exercise the power of the authorities itself. There is widespread misconception on the scope of interference in judicial review. The exercise of the extraordinary jurisdiction constitutionally conferred on the Apex Court under article 142(1) of the Constitution can be of no guidance on the scope of article 226....."

14. In Sanjay Kumar Vs. The State of Bihar and Others, the Apex Court observed that, there cannot be reservation of a vacancy till such time as the petitioner becomes a major inasmuch as, the very basis of compassionate appointment is to see that the family gets immediate relief. In the instant case, the petitioner No. 2 was a minor when her father died. In any case, she was not an applicant for compassionate appointment. It is only in the writ petition the prayer made is for appointment of any one of the petitioners.

15. In Union of India (UOI) and Others Vs. Smt. Draupadi Behara and Another, the Apex Court finding fault with the direction of the High Court for appointment on compassionate ground made the following observations.

9. However, the High Court was clearly in error in directing appointment, without reference to the presence of similarly situated persons who were seeking compassionate appointment. No direction could have been given by the High Court for appointment as such within a time-limit and for asking extension of time to comply with the order, till the respondent concerned was appointed. At the most, the High Court could have asked for consideration of the case of the respondent concerned along with other applicants for compassionate appointment, if any, in terms of the operative scheme.

16. In the case of I.G. (Karmik) and Others Vs. Prahald Mani Tripathi, while emphasising that compassionate appointment must be in consonance with the Constitutional Scheme of quality enshrined in articles 14 and 16, it was observed that, it must be confined only to the purpose it seeks to achieve and that the idea is not to provide for endless compassion. In para 7 of the judgment it has been observed that "Public employment is considered to be wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion".

17. In the instant case, as noticed above, the case of the petitioner No. 1 was considered by a duly constituted Committee and the said Committee taking note of all the relevant factors did not find the case of the petitioner to be a fit case for compassionate appointment. Accordingly, she was informed of the said decision. In the matter of compassionate appointment the writ court exercising its power and jurisdiction under article 226 of the Constitution of India is only to see as to whether the case of the incumbent received due consideration or not. Further, it is the decision making process with which the writ court is concerned and not the decision itself.

18. The case of the petitioner having been considered there cannot be any further direction for consideration of her case and/or in lieu thereof to consider the case of the petitioner No. 2 who, in the meantime, over the period of 10 years has attained the majority and as submitted by the learned counsel for the petitioners has also obtained higher qualification. In any case, there cannot be any further direction for consideration of her case after 10 years of expiry of her father. As has been observed by the Apex Court, there cannot be endless compassion. It will also have to be born in mind that compassionate appointment is an exception, and not a source of recruitment.

19. For all the aforesaid reasons I do not find any merit in the writ petition and accordingly, it is dismissed without, however, any order as to costs.