
(2016) 07 GAU CK 0011
In the Gauhati High Court
Case No : Writ Petition (C) No. 936 of 2014

Misbahuzzaman Laskar

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (2016) 5 GauLJ 458 : (2016) 4 GauLT 778

Hon'ble Judges : Mr. Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mr. M.H. Laskar and Mr. B.K. Das, Advocates, for the Petitioner; SC, FCI and Mr. P.K. Roy, Advocate, for the Respondents

Final Decision : Allowed

Judgement

Mr. Manojit Bhuyan, J.— Heard Mr. M.H. Laskar, learned counsel for the petitioner as well as Ms. A. Chakraborty, learned counsel representing Respondent Nos. 2 and 3, who are the primary respondents herein.

2. As can be gathered from the pleadings on record, the petitioner's father died-in-harness on 12.07.2011 and at the relevant time he was employed as Head Watchman in the District Office of the Food Corporation of India (FCI), Silchar. On the demise of the bread earner in the family, the petitioner made an application for appointment on compassionate ground by application dated 18.11.2011, followed by another application in the prescribed formant submitted on 27.03.2012 before the Area Manager, FCI District Office, Silchar. As the said application remained pending without any positive action, the petitioner was constrained to institute W.P. (C) No. 4046/2013 and by order of this Court dated 22.08.2013, a direction was made to the respondent authority to consider the petitioner's case for compassionate appointment by a speaking order in respect of his claim. Subsequent thereto, the Office Order dated 26.06.2014 came to be passed under the hand of the Executive Director (NE), FCI, whereby the claim for appointment on compassionate grounds was rejected. Grounds assigned is that

the petitioner being a married son of the deceased is not eligible for compassionate appointment in view of the guidelines of the Department of Personnel and Training (DoP & T) and that of the Circulars issued by the Food Corporation of India. In other words, the petitioner's claim was negated because being a married son he does not fall within the definition of "Dependent Family Member" as per the Office Memorandum dated 16.01.2013. The rejection, according to the petitioner, is wholly illegal and arbitrary, inasmuch as the DoP & T guidelines of 16.01.2013 do not place any embargo as regards appointment of the married son on compassionate grounds.

3. Mr. Laskar submits that while rejecting the petitioner's claim, the respondent authorities have relied upon a FAQ (Frequently Asked Questions) enclosed to the subsequent DoP & T Notification dated 30.05.2013, wherein as against the Question No. 13, an answer is given to the effect that a married son cannot be considered for compassionate appointment as a married son cannot be considered as a dependent of a Government servant. According to Mr. Laskar, the FAQ not being a policy guideline, the same could not be made applicable in respect of the claim of the petitioner. Notwithstanding the said FAQ, Mr. Laskar also makes reference to a subsequent FAQ issued in terms of DoP & T Office Memorandum dated 25.02.2015, whereby the embargo so placed was taken out. In the said FAQ, it has been provided to the effect that a married son can be considered for compassionate appointment if he otherwise fulfils all other requirements of the Scheme for compassionate appointment as laid-down in the Office Memorandum dated 16.01.2013. However, the embargo so removed was made effective from 25.02.2015 with the additional clarification that the cases of compassionate appointment already settled with reference to the Office Memorandum dated 30.05.2013 would not be reopened.

4. In this respect, Mr. Laskar refers to a judgment rendered by the High Court of Madhya Pradesh in the case of Ajay Kushwah v. Food Corporation of India & Ors. in Writ Petition No. 1995/2015, rendered on 17.07.2015. Mr. Laskar submits that the subject matter in Ajay Kushwah case is absolutely similar to the case in hand. The High Court of Madhya Pradesh have, inter alia, held that clarificatory instructions cannot supersede or take away any right flowing out from the main policy. A dependent son has a right to be considered and such right cannot be taken away by putting a cut-off date as the same would tantamount to dividing a homogeneous class and create a class within a class. In the instant case, although the initial embargo had been removed, however, the case of the petitioner for compassionate appointment being prior to the issuance of the DoP & T's Office Memorandum dated 25.02.2015, he is to overcome the impediment engrafted in the FAQ, which stipulates that the cases of compassionate appointments already settled with reference to the Office Memorandum dated 30.05.2013, would not be reopened. It is in this respect, that the petitioner have relied upon the case of Ajay Kushwah and also in the case of Nagendra Kumar Yadav v. Food Corporation of India of the High Court of Chhattisgarh, Bilaspur in Writ Petition(S) No. 908 of 2015.

5. Ms. A. Chakraborty, learned counsel representing the Food Corporation of India submits that no fault can be attributed to the respondent authority as the petitioner's claim was considered and examined in the light of the Government of India guidelines dated 30.05.2013, whereby a married person is not considered to be a dependent family member. Ms. Chakraborty also submits that as against the judgment rendered in Ajay Kushwah case, a Writ Appeal was preferred by the Food Corporation of India before the Division Bench of the High Court of Madhya Pradesh. According to Ms. Chakraborty, the outcome of the said Writ Appeal is not readily available. In this connection, Mr. Laskar has produced a copy of the order dated 23.06.2016 passed in Writ Appeal No. 228/2015 rendered by the High Court of Madhya Pradesh, being the Writ Appeal preferred by the Food Corporation of India. It appears from the said order dated 23.06.2013 that the Writ Appeal preferred by the Food Corporation of India was dismissed by the Division Bench.

6. The issue is now confined to whether a married son is entitled to be considered for appointment on compassionate grounds. Apparently, no impediment is placed in any of the Office Memorandums issued by the DoP & T and/or by the Food Corporation of India placing any embargo on the appointment of a married son towards compassionate appointment. In fact, no policy of the Government of India or that of the FCI contain any prohibition that married son is not entitled for compassionate appointment. Initially, it was the FAQ which had reflected an embargo. However, in course of time and by a subsequent FAQ, the same was also removed. As has been held by the High Court of Madhya Pradesh in W.P. (C) No. 1995/2015 that the respondent authority cannot deprive a deserving candidate by putting a cut-off date as the same would be in violation of Article 14 of the Constitution of India, this Court is also in respectful agreement of the views and findings of the High Court of Madhya Pradesh.

7. Needless to say that the yardstick for extending the benefit of compassionate appointment should be on the dependency of the dependents on the deceased Government servant and marital status of the dependent should not be an impediment for his consideration for appointment on compassionate ground. The Scheme for compassionate appointment is by way of a social welfare benefit for redressing/mitigating the financial crisis resulting from the loss of the sole bread winner in the family.

8. In the instant case, the petitioner being eligible in all respects had made due application for appointment on compassionate grounds. Such claim could not have been negated only because he is the married son of the deceased employee. If the petitioner is eligible for such appointment in all other aspects, his claim for appointment could not have been turned down on the grounds so assigned.

9. In respectful agreement of the judgment rendered by the High Court of Madhya Pradesh and that of the High Court of Chhattisgarh, Bilaspur, as alluded to above, this writ petition stands allowed by directing the respondent authority

to consider the case of the petitioner for appointment on compassionate grounds, if otherwise eligible, by not insisting upon the condition that the petitioner is the married son of the deceased employee. The exercise for considering the case of the petitioner for appointment on compassionate grounds shall be completed within a period of 3(three) months from today. The petitioner is permitted to furnish a copy of this order to the respondents concerned for their doing the needful in terms of the above.

10. The writ petition stands allowed. No cost.