

(2024) 05 J&K CK 0016

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 3814 Of 2019 (O&M)

Mohammad Ashraf Mir And Others

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 14, 16

Citation : (2024) 05 J&K CK 0016

Hon'ble Judges : Rajesh Sekhri, J

Bench : Single Bench

Advocate : Bhat Fayaz, Nighat, Mubashir Malik

Final Decision : Dismissed

Judgement

Rajesh Sekhri, J

1. Petitioners are aggrieved of order dated 20.11.2018, passed by Managing Director, J&K State Handloom Development Corporation, Jammu-respondent No. 2, vide which, their claim for compassionate appointment came to be rejected.

2. As factual narration of the present case would unfurl, fathers of petitioners No. 1 and 2, who were working in the respondent-department as Class-IV employees, passed away in the years 2007 and 2002 respectively. Petitioners applied for compassionate appointments, after the demise of their fathers. Respondent No. 2 furnished the requisite information regarding compassionate appointment of four persons, including petitioners, to the Commissioner/ Secretary to Government, Industries and Commerce Department, Civil Secretariat, Jammu vide his No. HDC/Per/857/73-74 dated 17.04.2017. It is case of the petitioners that while other two persons, namely, Zahida Kousar and Posh Devi came to be appointed by the respondents, their claim for compassionate appointment was rejected. According to the petitioners, one Miss Fahimun Nisa was also appointed as Sales Assistant in the respondent-Department vide Order No. HDC/Adm/663/023-32 dated 06.06.2011. Allegation of the petitioners is that

respondents have adopted a policy of pick and choose for appointments on compassionate basis which is not permissible in law.

3. It is pertinent to mention that claim of the petitioners came to be rejected by respondent No. 2 on the ground that SRO 43 of 1994 is not applicable to respondent-Corporation and since fathers of petitioners died 11 and 16 years ago respectively and petitioners are respectively 35 and 36 years of age, there seems no element of compassion in their cases. Case of the petitioners has also been rejected on the ground that respondent-Corporation is running in losses and it cannot afford to make new appointments. According to the petitioners, since respondents have already made appointment of other persons in terms of SRO 43 of 1994, they cannot be treated differently and discriminated against.

4. Petitioners have invoked writ jurisdiction of this Court, under Article 226 of the Constitution of India, for quashment of impugned order dated 20.11.2018, vide which, their claim for compassionate appointment came to be rejected and seek consequent Mandamus to the respondents for their appointment.

5. Claim of the petitioners, ex adverso, has been resisted by the respondent-Corporation, at the foremost, on the ground that petitioners are guilty of suppressing material facts from this Court and there is no legitimate cause of action to maintain present petition.

6. It is contention of the respondents that petitioners preferred a writ petition; SWP No. 2033 of 2018, in this Court which came to be disposed of at the first instance on 29.08.2018 with a direction to the respondent-Corporation to accord consideration to their claim, as reflected in the writ petition, strictly in accordance with the law and rules governing the field. Accordingly, respondent-Corporation accorded consideration to the claim of the petitioners by passing a detailed consideration order, whereby their claim came to be rejected, being devoid of merit.

7. It has been admitted by the respondents that father of petitioner No. 1, who was working in the Corporation as "Chowkidar", died in harness on 15.11.2007 and father of petitioner No. 2, who was working in the respondent-Corporation as "Helper", died in harness on 29.11.2002. Petitioners sought their appointments in the respondent-Corporation on compassionate grounds under SRO 43 of 1994. It is contention of the respondents that though there is no provision with respect to compassionate appointment in the respondent-Corporation, some appointments were made after the approval of the Administrative Department. Cases of the petitioners, amongst others, were also placed before the Board of Directors (BOD) in its 61st meeting under item No. 06 titled "Compassionate Appointments" on 30.06.2014. However, the proposal could not be approved due to lack of required documents.

8. According to the respondents, appointment of Miss Fahim Nissa was made after approval by the BOD in its 58th meeting, as she had filed a case before Human Rights Commission and Zahid Kousar was considered for appointment

pursuant to order dated 11.12.2017 passed by this Court. It is submission of the respondents that Administrative approval in the cases of petitioners along with other candidates, namely, Zahida Kouser, Tahir Ganie and Poshhi Devi was also sought from the Administrative Department. The recommendation was placed before the BOD for its approval in its 61st meeting held on 30.06.2014 under item No. 06. However, case of only one person figuring at Serial No. 02, namely Tariq Ahmad Ganie was approved by the Administrative Department on 30.06.2014 because death of his father had recently taken place in the year 2013. However, rest of the cases were not approved due to lack of requisite documents. The BOD directed respondent No. 2 to forward the said cases completed in all respects to the Chairman, JKHDC for consideration. It is further contention of the respondents that cases of the petitioners were again forwarded to the Administrative Department vide HTC/Per 857/73-74 dated 17.04.2017, which, however, was returned by the Administrative Department with an observation that there is considerable delay in the submission of said cases as deaths of fathers of the petitioners had occurred 11 and 16 years ago respectively. The proposal was thereafter placed before 63rd meeting of the BOD, whereby cases of the petitioners were again rejected on the ground that submission of cases was very late and hence could not be considered as there seems no element of compassion. Respondents are also affront with the contention that Corporation is not in a position to generate salary of the present employees as the same is in arrears/unpaid for the last 18 months. Respondents have prayed for dismissal of the petition.

9. Heard arguments and perused the file.

10. Mr. Bhat Fayaz, learned counsel appearing for the petitioners has relied upon *Malaya Nanda Sethy v. State of Orissa* and ors. [Civil Appeal No. 4103 of 2022 dated 20.05.2022] to reiterate the grounds urged in the memo of petition.

11. On the other hand, Mr. Mubashir Malik, learned Dy. AG appearing for the respondents has relied upon *State of West Bengal v. Debabrata Tiwari* and ors. reported as 2023 LiveLaw (SC) 175 to contend that compassionate appointment cannot be claimed as a matter of right and claim of the petitioners cannot be considered after a prolonged delay.

12. Uncontroverted facts of the case are that fathers of the petitioners, who were working in the respondent-Corporation, died in harness respectively in the years 2007 and 2002. Petitioners applied for compassionate appointments in the same year. Cases of the petitioners along with two others namely Zahida Kouser and Poshhi Devi were recommended by respondent-Corporation to the Commissioner/Secretary to Government, Industries and Commerce Department, Civil Secretariat Jammu. Case of Zahida Kouser came to be considered pursuant to order dated 11.12.2017 passed by this Court. One Ms. Fahim Nissa, who had filed a case before Human Rights Commission, also came to be appointed in the respondent-Corporation after approval of her case in the BOD in its 58th meeting. However, there is nothing on record to suggest that Smt. Poshhi Devi

whose case was also recommended by the respondent-Corporation has also been appointed.

13. The rationale behind the policy of compassionate appointment came to be discussed by the Apex Court in Debabrata Tiwari (supra). Hon'ble Supreme Court relying upon a catena of pronouncements rendered in Sushma Gosain v. Union of India reported as (1989) 4 SCC 468, Umesh Kumar Nagpal v. State of Haryana reported as (1994) 4 SCC 138, Haryana State Electricity Board. V. Hakim Singh reported as (1997) 8 SCC 85, State of Haryana v. Ankur Gupta reported as AIR 2003 SC 3797, State of Jammu and Kashmir v. Sajad Ahmed Mir reported as AIR 2006 SC 2743 and State of Himachal Pradesh v. Shashi Kumar reported as (2019) 3 SCC 653 has reiterated that compassionate appointment is not a vested right to be exercised at any time after the demise of a Government servant. Since the object of compassionate appointment is to enable the family of a deceased Government servant to tide over sudden crisis and to enable the family to get over the financial crisis, which it faces at the time of passing away of the sole bread winner of the family, employment on compassionate basis can neither be claimed nor offered after a lapse of considerable period of time and, in particular, when crisis is overcome. The very purpose of compassionate employment is to mitigate the hardship caused due to the death of the sole bread winner of the family by providing gainful employment to one of the dependants of the deceased, who is eligible for such employment, therefore, such appointment is to be provided immediately to redeem the family in distress. It has been emphasized by the Apex Court that mere death of an employee in harness, ipso facto, would not confer an entitlement in the family to such a source of livelihood and Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied that but for the provision of employment, family of the deceased may not be able to meet the crisis, a job is to be offered to the eligible member of the family, provided further that a Scheme or the rule provides for the same. Hon'ble Supreme Court in Hakim Singh has emphasized on the need of immediacy in the manner, in which claims for compassionate appointments are made by the dependants and is decided by the concerned authority. Hon'ble Apex Court has cautioned that it would be unjustified in directing compassionate appointment for a claimant fourteen years after the death of the government employee, as such a direction would tantamount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession.

14. Therefore, there is a consistent line of authority of Hon'ble Supreme Court that as a general rule, appointment to any public post in the service of the State is to be made strictly on the basis of principles which accord with Articles 14 and 16 of the Constitution of India. Provision for compassionate appointment makes a departure from this general provision, providing for appointment to a public post in the service of the State by following a particular procedure of recruitment. Appointment on compassionate basis can neither be claimed as a matter of right nor made available to all types of posts regardless of the nature

of service rendered by the deceased employee. Compassionate appointment is not a source of recruitment but a means to enable the family of the deceased to tide over sudden financial crisis. Object of compassionate appointment, thus, is to provide immediate succor to the family of the deceased to get over the crisis that has befallen on the dependants of the deceased on account of untimely demise of its sole bread winner. Compassionate appointment is not a matter of inheritance based on a line of succession. Finally, compassionate appointment can neither be claimed nor offered after a lapse of considerable time, particularly, after the crisis is overcome.

15. Petitioners, in the present case, have questioned the impugned order dated 20.11.2018, by virtue of which, their claim for compassionate came to be rejected by the respondents primarily on two grounds. Firstly, on the premise that since Zahida Kouser and Poshni Devi, whose cases along with theirs' has been recommended by the respondent-Corporation and they came to be appointed, they cannot be treated differently and discriminated against. Secondly, petitioners have assailed the impugned order on the ground that since delay in submission of proposal of their cases is attributable to the respondent-Corporation, therefore, they cannot be denied the benefit of compassionate appointment for no fault on their part.

16. Hon'ble Supreme Court in Debabrata Tiwari, in a similar fact situation, has clearly held that sense of immediacy is diluted and lost in cases of prolonged delay, whether delay is on the part of the claimant claiming compassionate appointment or authority deciding the claims. It was thus held that a claim for compassionate appointment cannot be entertained after lapse of considerable period of time, because compassionate appointment is relative to the financial condition and hardship faced by the dependants of the deceased Government employee. Relevant observation captured in paragraph 7.5 of the judgment is reproduced below, for the facility of reference:

"7.5 Considering the second question referred to above, in the first instance, regarding whether applications for compassionate appointment could be considered after a delay of several years, we are of the view that, in a case where, for reasons of prolonged delay, either on the part of the applicant in claiming compassionate appointment or the authorities in deciding such claim, the sense of immediacy is diluted and lost. Further, the financial circumstances of the family of the deceased, may have changed, for the better, since the time of the death of the government employee. In such circumstances, Courts or other relevant authorities are to be guided by the fact that for such prolonged period of delay, the family of the deceased was able to sustain themselves, most probably by availing gainful employment from some other source. Granting compassionate appointment in such a case, as noted by this Court in Hakim Singh would amount to treating a claim for compassionate appointment as though it were a matter of inheritance based on a line of succession which is contrary to the Constitution. Since compassionate appointment is not a vested right and the same is relative

to the financial condition and hardship faced by the dependents of the deceased government employee as a consequence of his death, a claim for compassionate appointment may not be entertained after lapse of a considerable period of time since the death of the government employee."

17. It is manifest from the principles of law enunciated by Hon'ble Supreme Court in Debabrata Tiwari, as recent as in 2023, that a claim for compassionate appointment cannot be entertained after a considerable period of time, whether the delay is on the part of the claimant or on the part of the authorities in deciding the claim because after a prolonged period of delay, family of the deceased was not only able to sustain itself but sense of immediacy is also lost and family of the deceased was able to tide over the hardship and financial crisis which had befallen on the dependants on account of untimely demise of its bread winner.

18. Facts and circumstances of Malaya Nanda Sethy relied by learned counsel for the petitioners are distinguishable from the facts and circumstances attending the present case. In the said case, father of appellant died in harness on 02.01.2010. Appellant applied for appointment on compassionate basis under Orissa Civil Service (Rehabilitation Assistance) Rules, 1990 (Rules of 1990, for short) on the ground that his mother was unable to undertake government job due to her medical condition. The Medical Board also certified the factum that mother of the appellant was unable for Government job. The concerned Tehsildar also submitted its report that family income of the appellant from all sources did not exceed ceiling of Rs.72,000/- per month. Meanwhile, Rules of 1990 came to be replaced by Odisha Civil Services (Rehabilitation Assistance) Rules, 2020 (Rules of 2020, for short). It is pertinent to mention that under Rules of 1990, there was no provision that when wife of the deceased was alive, son could not make an application for appointment on compassionate grounds. Therefore, since mother of the appellant was unable to undertake Government job due to her medical condition, appellant, being son of deceased government employee, was entitled to apply for compassionate appointment on the demise of his father. Under the Rules of 2020, one family member of the deceased government servant could be appointed on compassionate ground to Group "D" base level post. Application of the appellant was sent to Collector for taking necessary action under the Rules of 2020 by the office of Excise Commissioner, Odisha. The question which arose for consideration in the said case was whether the Scheme/Rules in force on the date of death of the government servant would apply or the Scheme/Rules in force on the date of consideration of the application on compassionate grounds would apply. Since there were divergent views in different decisions of Hon'ble Supreme Court, therefore, it is pertinent to mention that, keeping the larger question open and aside and in view of peculiar facts and circumstances of the case, appellant was held entitled for appointment on compassionate grounds as per Rules of 1990. Relevant excerpt of the judgment, for facility of reference reads as below:

"7.Therefore, in the peculiar facts and circumstances of the case, keeping the larger question open and aside, as observed hereinabove, we are of the opinion that the appellant herein shall not be denied appointment under the 1990 Rules."

19. Reverting to the present case, fathers of the petitioners, as already mentioned, respectively died in the years 2007 and 2002 i.e. 17 and 22 years ago respectively. Though they applied in the same year for compassionate appointment, however, their claims could not be considered due to delayed submission of their cases by the respondent-Corporation. It is pertinent to mention that cases of both the petitioners were recommended by the respondent-Corporation and was placed before BOD in its 61st meeting under Item No.06 titled "Compassionate Appointments" on 30.06.2014. However, the proposal could not be approved due to lack of required documents. Subsequently, complete set of documents was furnished to Administrative Department, however, cases were returned to the respondent-Corporation due to delayed submission by the respondents. Pertinently, petitioners' cases were again proposed by the respondents and placed in 63rd BOD meeting for consideration, but proposal was rejected by the BOD. Case of Tariq Ahmad Ganie in 61st BOD meeting, held on 30.06.2014, was considered by the Board because his father had recently passed away in the year 2013 only. Fahim Nissa had filed a case before Human Rights Commission and her case was duly approved by the BOD in its 58th meeting and Zahid Kouser came to be considered pursuant to the order passed by this Court on 12.11.2017.

20. No doubt, petitioners, in the present case, applied for their appointments on compassionate basis in the same year, their fathers passed away i.e. in the years 2007 and 2002 respectively. There appears to be some negligence on the part of the respondent-Corporation as also BOD in deciding the claim of the petitioners. However, if the present case is approached with the principles of law enunciated by the Apex Court in Debabrata Tiwari, the sense of immediacy, in this case, for reasons of considerable delay is diluted and lost. Father of petitioner No. 1 expired 17 years ago and father of petitioner No. 2 passed away 22 years ago and since petitioners, for all these years, have not only succeeded to tide over the hardship and financial crisis but able to sustain, therefore, claim of the petitioners, at this length of time, cannot be entertained as a matter of inheritance.

21. For what has been observed and discussed above, present petition being devoid of merit is dismissed.