

(2014) 05 RAJ CK 0059
In the Rajasthan High Court
Case No : Civil Writ Petition No. 8864/2005

Mohammed Suleman

APPELLANT

Vs

Jaipur Vidyut Vitran Nigam Limited and Others

RESPONDENT

Date of Decision : 09-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 05 RAJ CK 0059

Hon'ble Judges : Veerender Singh Siradhana, J.

Bench : Single Bench

Advocate : B.L. Gupta, for the Appellant; G.S. Fauzdar, for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.?The respondents did not accede to the prayer for compassionate appointment, the petitioner has been impelled to invoke the writ jurisdiction of this Court by way of instant writ application praying for the following relief(s):--

"(i) by issuing an appropriate writ, order or direction or in the nature thereof may be pleaded to declare the action of the respondents in not giving compassionate appointment to the petitioner as bad in law and hold the petitioner entitled for giving compassionate appointment from the date he submitted the application for the same.

(ii) by issuing an appropriate, writ, order or direction or in the nature thereof this Hon''ble Court may further be pleased to direct the respondents to consider the petitioner''s case for compassionate appointment and give him such appointment w.e.f. The date of submitting application for the same with all consequential benefits;

(iii) any other order or direction which this Hon''ble Court may deem just and proper may also kindly be passed in favour of the petitioner with costs."

2. Shorn off unnecessary details, the essential material facts pleaded staking the claim are: that the father of the petitioner, Late Shri Usman Khan, died in harness on 3rd November, 2002, while working on the post of CCA-III in the office of Assistant Engineer (O&M), Jaipur Vidyut Vitran Nigam Limited ("JVNL", for short), Sunel, District (Jhalawar). It is pleaded case of the petitioner that the father of the petitioner, Late Shri Usman Khan, left behind two wives. The petitioner is eldest son born out of the wedlock with the first wife (Ms. Bano Bee). The second wife of the petitioner's father is Smt. Raheesa Bano. The petitioner submitted an application (Annexure-1) for appointment on compassionate grounds. Having received no response, a notice dated 29th October, 2003 (Annexure-2) was addressed to the respondents, through Counsel, claiming appointment on compassionate grounds and terminal benefits i.e., pension, gratuity and provident fund. The respondents in response to the notice vide communication dated 14th November, 2003, informed the Counsel for the petitioner that the deceased employee did not make any nomination and declaration, as to his terminal benefits, a fact, as surfaced from the service record and therefore, requested for a "Succession Certificate" from the competent court of law to settle the payment of terminal benefits and to consider the case of the petitioner for compassionate appointment. Another notice dated 25th May, 2004 (Annexure-4) was addressed to the respondents, on behalf of the petitioner, reiterating the claim for appointment on compassionate grounds and release of due terminal benefits. It is further pleaded that the respondents were informed through an affidavit by Ms. Bano Bee, the first wife of the deceased employee, of the fact that the petitioner, son and a daughter named Sitara, were born out of the wedlock. Sitara's marriage was solemnized during the lifetime of the deceased employee. The first wife of the deceased employee lived separately on account of matrimonial discord with the deceased employee. It is also an admitted fact that the deceased employee entered into second marriage with Smt. Raheesa Bano. Three daughters, namely, Parveen Bano aged about 8 years, Farim aged about 3 years and Munni aged about 1 1/2 years as well as a son Imran, aged about 6 years, were born out of the wedlock of the deceased employee with Smt. Raheesa Bano. The first wife (Smt. Bano Bee) made a proposal for according appointment on compassionate grounds to her son, the petitioner, and release of terminal benefits in favour of the second wife (Smt. Raheesa Bano). The respondents again requested the petitioner vide communication dated 17th August, 2004 (Annexure-6) to furnish a "Succession Certificate" from the competent court of law so as to settle the payment of the terminal benefits due to the deceased employee and also to consider the claim for appointment on compassionate grounds. The petitioner, in response, submitted a Certificate dated 16th December, 2004, issued by the District Judge, Tonk (Rajasthan), with reference to an amount of Rs. 50,000/- (Rupees : Fifty Thousand), deposited by Late Shri Usman Khan as PF and gratuity amount. The petitioner again addressed an undated representation (Annexure-9) claiming for appointment on compassionate grounds followed by a notice for demand of justice through Counsel dated 18th October, 2005. Since, the claim has not been

acceded to by the respondents and hence, approached this Court.

3. In response to the notice of the writ application, the respondents have filed its counter-affidavit repelling the claim of the petitioner on the ground that both the petitioner and the second wife (Smt. Raheesa Bano) of the deceased employee, staked claim for compassionate appointment. The application dated 12th November, 2003, submitted by Smt. Raheesa Bano, claiming compassionate appointment has been placed on record as Annexure-R/1. Smt. Raheesa Bano, through an affidavit, also detailed out the fact that four children were born out of her wedlock with the deceased employee and she has not opted for remarriage after death of the deceased employee and therefore, her case deserves sympathetic consideration for compassionate appointment. The respondents again called upon both the parties i.e. the petitioner as well as Smt. Raheesa Bano, to furnish the "Succession Certificate" from the competent court of law, in order to settle the terminal benefits of the deceased employee as well as the rival claim for compassionate appointment. But only a Certificate with reference to an amount of Rs. 50,000/- (Rupees : Fifty Thousand), deposited by the deceased employee, was furnished by the petitioner. The proposal as addressed by the first wife Smt. Bano Bee, through her affidavit, has not been acceded to by the second wife Smt. Raheesa Bano. Be that as it may, it is not the issue for adjudication before this Court.

4. The learned counsel for the petitioner reiterating the pleaded facts assailed the action of the respondents in not according appointment on compassionate grounds as illegal and arbitrary. The learned counsel would further submit that the respondents have unduly delayed the rightful and genuine claim of the petitioner for compassionate appointment even after submission of the "Succession Certificate" issued by the competent court of law. The learned counsel referring to Rule 5(2) of the Rajasthan Compassionate Appointment of Dependents of Deceased Government Servant Rules, 1996 (hereinafter referred to as the "Rules of 1996", for short), has emphasized that the respondents were obliged to extend compassionate appointment, after having obtained an undertaking from the petitioner to the effect that the petitioner would properly maintain the other family members, who were dependant on the deceased government servant. But the respondents failed to do so for the reason best known to them. The learned counsel has stressed that compassionate appointment is a right and therefore, the writ application deserves to be allowed with a direction to the respondents to accord compassionate appointment in favour of the petitioner.

5. In order to reinforce his submissions, reliance has been placed on the opinion of this Court in the case of Bhanwar Kanwar (Smt.) Vs. Union of India and Others, .

6. I have heard the learned counsel for the parties and with their assistance, perused the materials available on record.

7. Compassionate appointment, in deviation to normal rules of recruitment, has been conceived with the underlying object of providing immediate financial assistance to the family of the deceased government employee, who died in harness while in service. It is intended to be a beneficial measure in order to help the family to tide over the depression and financial crisis for sudden demise of the sole breadwinner of the family.

8. A bare perusal of the memo of the writ application would reveal that the petitioner has not detailed out the assets and liabilities of the family, so as to bring his case within the exception for which compassionate appointment is intended. The very concept of the compassionate appointment is an exception to the regular procedure of recruitment according to constitutional scheme, where all eligible have an opportunity of consideration of their case for appointment to public service. Compassionate appointment is not intended to be an alternative source of recruitment or a right which can be enforced irrespective of penurious condition and/or financial crisis. Compassionate appointment should be made strictly in accordance with the relevant rules and regulations or scheme governing the procedure for such an appointment.

9. From the materials available on record, it is evident that the applications claiming compassionate appointment (Annexure-1) as well as (Annexure-9), are undated. On being queried by the Court, the learned counsel could not point out about the assets and liabilities of the family. No factual foundation has been laid to substantiate the fact that the family was in financial crisis and compassionate appointment is necessary in order to enable the family of the deceased employee to overcome the sudden financial crisis due to sudden demise of the sole breadwinner of the family.

10. It is an admitted fact that daughter Sitara, was already married during the life time of the deceased employee. Moreover, the petitioner and the second wife (Smt. Raheesa Bano), both have staked claim for compassionate appointment. The second wife (Smt. Raheesa Bano), has claimed compassionate appointment detailing out the fact that four children were born out of her wedlock with the deceased employee, and thus, she was in greater need of such an appointment as compared to the case of the petitioner. Be that as it may, the respondents in order to consider the matter of compassionate appointment and to settle the release of terminal benefits of the deceased employee, called upon the petitioner as well as Smt. Raheesa Bano, to furnish a "Succession Certificate", obtained from the competent court of law.

11. The petitioner has failed to substantiate the fact that he ever furnished a "Succession Certificate". The "Succession Certificate" brought on record is only with reference to the payment of an amount of Rs. 50,000/- (Rupees : Fifty Thousand), deposited by the deceased employee as PF and gratuity.

12. By a catena of judgments, the Hon"ble Apex Court of the land has held, in unequivocal terms, that compassionate appointment is an exception enabling the

employer to help the family of the deceased employee to tide over the financial crisis and hardship, and such an appointment has to be confined only for the purpose of the object sought to be achieved.

13. After a survey of various judgments, the Hon''ble Supreme Court in the case of State of U.P. and Others Vs. Pankaj Kumar Vishnoi, held thus:--

"10. Before we proceed to appreciate the entitlement of the Respondent for a particular post on compassionate basis, we think it necessary to refer to certain pronouncements in the field pertaining to compassionate appointment itself. In Umesh Kumar Nagpal Vs. State of Haryana and Others, while dealing with the concept of compassionate appointment the Court has observed that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. Mere death of an employee in harness does not entitle his family to such source of livelihood. The 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, the family will not be able to meet the crisis then a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence, they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution.

11. In Steel Authority of India Ltd. Vs. Madhusudan Das and Others, this Court reiterating the principle has stated thus:

15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.

12. In General Manager, State Bank of India and Others Vs. Anju Jain, it has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-

government or in public office, cases of all eligible candidates are to be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.

13. In *Union of India (UOI) and Another Vs. Shashank Goswami and Another*, it has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.

14. In *State Bank of India and Another Vs. Raj Kumar*, it has been ruled that the dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme."

14. The opinion referred to and relied upon by the learned counsel for the petitioner in the case of *Smt. Bhanwar Kanwar (supra)*, dealt with the Scheme for compassionate appointment issued by the Ministry of Personnel, Public Grievances and Pension, Government of India, with reference to an undertaking as per Clause 13 of the Scheme wherein the incumbent, who is seeking appointment on compassionate grounds has to furnish an undertaking to maintain properly other family members, who were dependants on the deceased government employee, who died in harness. In the instant case at hand, neither such an undertaking has been furnished nor any proposal from the second wife of the deceased government employee has been made. *Smt. Raheesa Bano*, second wife of the deceased employee, rather claimed compassionate appointment for herself detailing out the liability and dependency of the dependants of the deceased employee in view of the four children born out of the wedlock. Hence, the facts of the instant case at hand are entirely different and the judgment referred to and relied upon has no application to the facts of the case of the petitioner.

15. The object of compassionate appointment is to provide immediate succor to the family suddenly faced with the financial crisis in view of sudden demise of the

sole breadwinner of the family.

16. Compassionate appointment in ignorance to financial resources and assets available to the dependants of the deceased employee would frustrate the very object underlining such an appointment as has been held by the Hon''ble Supreme Court. Since compassionate appointment is an exception to the general rule of regular appointment according to constitutional scheme, therefore, the petitioner, who claimed compassionate appointment, has to bring his case within those exceptional circumstances warranting such an appointment.

17. For the reasons and discussions herein above, the writ application is devoid of any substance and deserves to be dismissed.

18. Ordered accordingly.

19. In view of the final adjudication on the writ application, the stay application stands closed.

20. However, in the facts and circumstances of the case, there shall be no order as to costs.