
(2006) 11 AHC CK 0103
In the Allahabad High Court

Munendra Pal Singh Chauhan

APPELLANT

Vs

The Chairman and Managing Director (C.M.D.) U.P. Rajya
Vidyut Utpadan Nigam Ltd., The General Manager, U.P. Rajya
Vidyut Utpadan Nigam Ltd. and The Executive Engineer/
Factory Manager, U.P. Rajya Vidyut Utpadan Nigam Ltd.

RESPONDENT

Date of Decision : 28-11-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Evidence Act, 1872 — Section 107, 108

Citation : (2006) 7 AWC 7357 : (2007) 112 FLR 691

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—Raising a short controversy the present writ petition has been filed principally on the allegation that the petitioner's father Mahendra Pal Singh Chauhan was a senior operator in "A" Power Station, Harduaganj, U.P. State Electricity Board and was a permanent employee who left the house for attending duty on 28th of August, 1990 and did not return thereafter till date. The petitioner claimed that a civil death of his father should be presumed and as his father died during the service, the petitioner is entitled for appointment under the Dying in Harness Rules. The said claim having been rejected by the respondents by the impugned order dated 17th of November, 1998, the present writ petition has been filed for quashing the impugned order dated November 17, 1998 (Annexure -2 to the writ petition) and a writ of Mandamus commanding the respondents to consider the appointment of the petitioner on the post of routine grade clerk under the Dying in Harness Rules forthwith in place of his father and prayed for all consequential service benefits in accordance with law.

2. The fact that the father of the petitioner was in the permanent service of the respondents, has not been disputed in the counter affidavit. The claim for compassionate appointment has been denied on the ground that the father of

the petitioner was reported to be missing two days prior to his date of superannuation and he could not be traced out, but in absence of any cogent material about the date of death or place of death, it would not be proper to treat that he died during the service. By extending the benefit of Dying in Harness Rules, it will not be proper to offer the appointment to the petitioner. The due date for the retirement of the petitioner's father was 31st of August, 1990 who after availing medical leave w.e.f. 22.8.1990 to 27.8.1990 attended the duty in the last night shift (from 22 hours to 6 hours) on 28/29th of August, 1990 in "D" group at Harduaganj "A" Thermal Plant Station. After due date of retirement, the mother of the petitioner has been paid G.P.F. amounting to Rs. 23,488-78, encashment balance leave Rs. 8,348.67 and arrears of pension amounting to Rs. 1,32,633-69. Besides, the family pension is being paid every month.

3. The sole argument raised by the learned Counsel for the petitioner, in the present writ petition is that indisputably the father of the petitioner was in service on 28th of August, 1990, since when he is missing. A reference has been made to a circular dated August 16, 1996 issued by the Mukhya Karmik Adhikari wherein, according to the learned Counsel for the petitioner it has been provided that in case of such employees whose whereabouts are not known and the presumption of their civil death should be drawn, the payment of pension and other pensionary benefits and the balance amount has been provided for. In the said circular it has been clarified that in the case of such employees whose whereabouts are not known, the compassionate appointment shall not be made within a period of one year. The facility of compassionate appointment shall be admissible as per Section 108 of Indian Evidence Act when the competent authority has treated such employee as dead. In contra, the learned Counsel for the Department supported the impugned order and submitted that the father of the petitioner has been found missing only two days prior to the date of his superannuation. The petitioner cannot claim compassionate appointment as only two days were left and the object of giving compassionate appointment is to give support to such families to tide over the sudden crisis.

4. I have given careful consideration to the respective submissions of the learned Counsel for the parties. Before considering the nature of the compassionate appointment, it is desirable to notice the law dealing with when presumption about the death of a person from the fact that a person has not be heard of for 7 years to be drawn. The Privy Council in *Lal Chand Marwari v. Mahant Ram Rup Gin and Anr.* AIR 1926 PC 9. held that there is no presumption, under law as to when a person has died, if such person is not heard of for 7 years. There is only one presumption, and that is the person was no longer alive. There is no presumption at all as to when such person has died that, like any fact, is a matter to proof. Their Lordships quoted with approval law of England and held that there is no difference both in India and in England on this issue. Their Lordships have quoted following passage:

If a person has not been heard of for 7 years, there is a presumption of law that he is dead. But at what time within what period he died is not a matter of presumption but of evidence, and the onus of proving that the death took place at any particular time within 7 years lies upon the person who claims a right to the establishment of which that fact is essential.

5. The aforesaid judgment of the Privy Council has been approved by the Apex Court in *Darshan Singh and Others Vs. Gujjar Singh (Dead) by Lrs. and Others*, A suit was filed claiming property of Jagjeet Singh who was reported to be not being heard for more than 7 years. The High Court considered Jagjeet Singh to be "dead only on the date on which the present suit was filed." In this fact situation the Supreme Court held that succession to the estate of Jagjeet Singh would open only on the death of Jagjeet Singh and as the plaintiff could not prove the date of death of Jagjeet Singh therefore his succession to the estate did not open on the date of filing of the suit. In para 5 of the report, the Apex Court noticed the decision of the Privy Council of *Lal Chand Marwari v. Mohan Ram Rup Giri* (supra).

6. Thus from the above discussion it boils down to this that the burden to prove the actual date of death, lies upon the person who propounds the death of such person. Under Sections 107 and 108 of the Evidence Act only this much presumption can be drawn that such a person is no longer alive but there is no presumption about the actual date of death of such person. In view of this legal proposition, the argument of the learned Counsel for the petitioner that the father of the petitioner has died on 29th of August 1990 while in service cannot be accepted in absence of any proof about his actual death on that date. Reliance has been placed upon a judgment of Civil Judge in O.S. suit No. 588 of 1997 *Smt. Murti Devi v. Munendra Singh Chauhan and Anr.* decided on 17.1.1998. The Civil Judge has held only this much therein, that a presumption may be drawn about the death of Mahendra Pal Singh as there is no evidence that he is alive, u/s 108 of the Indian Evidence Act. Even in the said judgment no finding has been recorded about the actual date of death of Shri Mahendra Pal Singh Chauhan.

7. In view of the above discussion, the argument that Shri Mahendra Pal Singh Chauhan, the father of the petitioner has expired on 29th of August, 1991 or while in service, is not tenable in law and is therefore rejected. There is no material on record to show that the petitioner has made any attempt by producing evidence of unimpeachable character to prove that his father actually expired on 29th of August, 1990 or in harness.

8. There is another aspect of the case also. The entire thrust of the argument is that as the father of the petitioner has expired on 29th of August, 1990 while in service, therefore, the petitioner is entitled for compassionate appointment. The aforesaid argument has been made ignoring the very concept of compassionate appointment.

9. The object of compassionate appointment is not to give a member of deceased

family a post. Mere death of an employee in harness does not entitle his family to such source of livelihood. The employer or the government as the case may be, has to examine the financial condition of the family of the deceased and compassionate appointment shall be offered only when the employers come to the conclusion that the family will not be able to meet the crisis on account of the sudden death of the employee, then a job is to be offered to the eligible member of the family (See Umesh Kumar Nagpal v. State of Haryana and Ors. AIR 1994 SC 2309).

10. Punjab National Bank and Others Vs. Ashwini Kumar Taneja, is an authority for the proposition that the appointment on compassionate ground is not source of recruitment but merely an exception to the requirement of making appointment on open invitations of applications on merits. Basic intention is that on the death of employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over the sudden financial crisis. In Union Bank of India v. M.T. Latheesh AIR 2006 SC the Apex Court has reiterated its above view.

11. In Indian Drugs and Pharmaceuticals v. Devki Devi and Ors. 2006 (5) ALJ 489, the Apex Court has considered its other earlier decisions on the point and reached to the same conclusion that compassionate appointment is given out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both the ends meet, provisions are made for giving to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that the provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible to seek appointment against the post which would have been available, but for the provisions enabling appointment being made on compassionate grounds of the dependants of the deceased employee, it has been held that appointment on the compassionate ground is not another source of recruitment.

12. Coming to the facts of the present case and the law as discussed above, it is clear that in any view of the matter it is not a case of sudden crisis. Indisputably, the father of the petitioner was due to retire on 31st of August, 1990. Two days prior to the date of superannuation, according to the petitioner, he has been found missing. The father of the petitioner indisputably was going to retire on 31st of August, 1990 and as such even assuming for the sake of argument that he has not been actually heard of since 29th of August, 1990, the family has not suffered any sudden financial crisis to entitle the petitioner to lay his claim for compassionate appointment. As pointed out by the Apex Court that the very object of granting compassionate appointment is to provide financial support to the family of an employee on account of sudden death. By no stretch of imagination, in the present case it can be said that it is a case of sudden financial crisis to the family even if it is assumed that the father of the petitioner is no

longer alive. Taking into consideration the entire stock of situation this Court is of the view that the petitioner has not been able to prove the actual death of his father as 29th of August, 1990 or the fact that his father died in harness. Secondly, even if accepting the case of the petitioner for the sake of argument, the petitioner is not entitled for any relief as very avow object of the compassionate appointment runs counter to the claim of the petitioner. It is acknowledged position of law that compassionate appointment cannot be new source of recruitment otherwise, as pointed out by the Apex Court in *State of Hariyana and Ors. v. Rana Devi and Ors.* AIR 1966 SC 2445 such claim of the petitioner cannot be upheld on the touch stone of Articles 14 or 16 of the Constitution of India in as much as the claim for compassionate appointment is considered, as reasonable or permissible on the basis of sudden crisis occurred in the family of such employee, who has served the State and dies while in service.

13. Reliance placed upon the circular dated August 16, 1996 (Annexure -4 to the writ petition) is misplaced one and has hardly any application to the facts of the present case. Only this much has been said in the said circular that the facility of compassionate appointment shall be admissible only when the competent authority treats the employee as dead, u/s 108 of the Indian Evidence Act.

14. In view of the above discussion, the writ petition lacks merit and is therefore dismissed. No order as to costs.