
(2006) 08 CAL CK 0051

In the Calcutta High Court

Case No : Writ Petition No. 17158 (W) of 2006

Nanda Kumar Guhathakurata

APPELLANT

Vs

Managing Director and Others

RESPONDENT

Date of Decision : 22-08-2006

Acts Referred:

Citation : (2007) 3 CHN 132

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Amlayan Jyoti Sengupta and Abhijit Pal, for the Appellant; Apurba Kr. Dutta, for the Respondent

Final Decision : Dismissed

Judgement

Tapen Sen, J.—The petitioner prays, inter alia, for setting aside the order dated 8th July 2006 (as contained in Annexure P-5) and for issuance of an order commanding upon the respondent Nos. 1 to 4 to consider and appoint the petitioner on the basis of the appointments given to the respondent Nos. 6 to 9.

2. The learned Counsel for the petitioner craves leave to be allowed to make correction of a clerical error appearing in paragraph 28(a) of the prayer portion where the impugned order dated 8th July, 2006 has been wrongly described as 2nd February, 2006. He may do so during the course of the day.

3. The admitted case of the petitioner, as is evident from the statements made in paragraph 2 of the writ petition is, that while working as an Office Secretary in the Department of Estate Allotment of the Durgapur Steel Plant, the petitioner's father died-in-harness on 20th September, 1994 leaving behind him his wife, two sons (out of which the petitioner is unemployed) and a daughter.

4. It is also the admitted case of the petitioner that his younger brother, Ranjit Guha Thakurta, got a job in the Durgapur Steel Plant in the year 1992, i.e. prior to the death of the father of the petitioner. However, and according to the petitioner, his younger brother did not look after the family and did not keep in

touch with them.

5. The petitioner has stated that within three months from the date of his father's death, he filed an application vide Annexure P-1 (Page 19). However, this Court is not impressed with the statement made to the effect that it was filed "within three months" because the application which has been brought on record vide Annexure P-1, is undated and does not bear any proof in support of the contention made by the petitioner to the effect that it was filed within the period stated above.

6. It is evident, however, that sometime in the year 2005, the petitioner filed a writ petition before this Court which was registered as W.P. No. 12268(W) of 2005 and by reason of an order dated 2nd February, 2006 (Annexure P-4), the same was disposed of directing the concerned authorities, namely, the respondent No. 3 therein and which, incidentally, is also the respondent No. 3 herein, to consider the petitioner's prayer for appointment on compassionate grounds and to dispose of the same by passing a reasoned order, after giving a reasonable opportunity to the petitioner.

7. Incompliance of the aforementioned order, the respondents have passed the impugned order on 8th July, 2006 and upon a perusal thereof, it is evident that the prayer of the petitioner for compassionate appointment was not granted, inter alia, on the ground that his brother, namely Ranjit Guha Thakurta is already in employment in the Department of Finance and as per policy decision, in cases where any other direct dependent of an ex-employee is in employment of the Durgapur Steel Plant, no compassionate appointment is to be provided to another dependent of the same deceased employee.

8. The respondents have also taken the plea that in response to the application filed by the petitioner, they had asked him to file an affidavit, inter alia, clearly stating that no family member (spouse/children) of the deceased was/is in employment of the Durgapur Steel Plant.

9. This Court, after having gone through the contents of the impugned order, as well as the facts pleaded, is clearly of the view that no illegality nor irregularity has been committed by the respondents in issuing the impugned order.

10. The learned Counsel for the petitioner has strenuously attempted to argue that his younger brother had died prior to the death of his father and therefore, his employment, at that stage, cannot oust compassionate appointment insofar as it relates to the petitioner.

11. This Court, however, is not inclined to accept such a submission. From the statements made by the petitioner himself, it is evident that his father died on 20th September, 1994 and, therefore, 12 long years having gone by in the meantime, the very object of compassionate appointment has clearly been obliterated by efflux of time. That apart, the respondents have also taken the plea that a policy exists within the company and that is, that no person can be

considered if a direct relative of the deceased employee is already in service. The petitioner's brother being a direct descendant, the policy of the respondents cannot be said to be defective or irregular if, in the process of its being applied, the petitioner's claim gets ousted.

12. It is also evident that even the petitioner has been totally negligent in relation to his own case. A mere bald statement to the effect that he had filed an application within three months cannot be believed because the application that he has himself brought on record vide Annexure P-1, does not bear any date. On the contrary, the respondents, by their letter as contained in Annexure P-2, have referred to the application of the petitioner and this letter is dated 12.09.2003. It is obvious that it is in reply to an application that must have been filed in that year itself (i.e. 2003). If it is contended that this is in reply to the undated Application (Annexure P-1) said to have been sent within 3 (three) months from the date of death (i.e. 20.9.1994), then such a contention must be rejected outright because there is no explanation as to what was the petitioner doing all these long 9/10 years. It will, therefore, be absolutely prudent to assume that his application was actually initiated in the year 2003, i.e. more than 9 years after the death of the father of the petitioner.

13. That apart, this Court is of the view that there are only two known sources of recruitment and they are -- employment being made through open advertisements where the proposed employer resorts to a procedure which is transparent to all and by which it proceeds to screen and scrutiny the applications received from across the Country and thereafter, makes the appointments. The second source of recruitment is by filling up vacant posts by promotion. The third source, i.e. source of recruitment through compassion, commonly known as compassionate appointment, has been generated on the basis of compassion shown in appropriate cases which do deserve such compassion. This aspect has been taken into consideration by the Hon'ble Supreme Court of India in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, as well as Haryana State Electricity Board Vs. Naresh Tanwar and Another, Their Lordships have held that compassionate appointment cannot be granted after a long lapse of a reasonable period and that the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem suffered by members of the family of the deceased employee. Taking note of yet another judgment rendered by the Apex Court passed in the case of Jagdish Prasad Vs. State of Bihar and Another, Their Lordships have observed that the very object of compassionate appointment is to relieve unexpected immediate hardship and distress caused to the family by the sudden demise of the earning member of the family.

14. The aforementioned judgment of the Hon'ble Apex Court in the case of Naresh Tnnwar supra, was delivered while considering an order of the Punjab & Haryana High Court which had directed that compassionate appointment be

given to Naresh Tanwar. Being aggrieved with the aforementioned direction, the Haryana State Electricity Board moved up to the Apex Court and, after considering the judgments delivered in the cases of Umesh Kumar Nagpal and Jagadish Prasad, referred to above, Their Lordships approved the view that the consideration for compassionate appointment was not a vested right which could be exercised at any point of time in the future. The object of compassionate appointment is to enable the family to get over the immediate financial crisis which it faces upon the time of death of its sole bread-winner. As such, compassionate employment cannot be claimed and offered after whatever the lapse of time and after the crisis is over. Let it be recorded at this juncture that the father of the petitioner in this writ petition had died on 20.09.1994 (i.e. more than twelve years ago).

15. In paragraphs 2 and 3 of the judgment passed by the Apex Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, Their Lordships have observed as follows:

2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus 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. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government of 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 that 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 dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment, which are suddenly upturned.

3. Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometimes even in posts above Classes III and IV. That is legally impermissible (SIC)

(Emphasis & Underlining added by this Court)

16. Taking guidance from the ratio of the judgments delivered by the Hon'ble Supreme Court, this Court is of the view that the normal procedure for appointment is open recruitment following a lawful and legal procedure. Such a procedure means that appointment is made after vacancies are identified and then they are advertised calling for applications from the public at large. Upon receipt of such applications, the candidate are screened, interviewed and short-listed in a rational and transparent manner. Legally, there are only two known methods/modes of recruitment. One of them being open recruitment as indicated above and the other is filling up the vacant posts by promotion. The concept of compassionate appointment is a third source which has been developed on the basis of compassion but such compassion cannot be allowed to gallop like an unruly horse in favour of one or other member of the family of the deceased who had died more than twelve years ago and yet, during all these years, the family has survived. In such cases, there is no question of concluding that the family was living in penury. In such cases, if the "Passage-of-time having gone by" criteria is ignored and compassionate appointment is considered and given, then such a consideration would be against the expectations of millions of other families which have been subjected to similar unforeseen miseries on account of the death of their bread-winner. The concept of compassionate appointment virtually obliterates an elaborate and transparent procedure of open recruitment and in the opinion of this Court, following the observations of the Apex Court, such a procedure cannot be allowed to keep the consideration alive for a period ad finitum. If it is allowed to do so, it will encroach and create inroads into an otherwise transparent procedure commonly known as open recruitment. The effect would be, that all of a sudden, when other persons are in the queue waiting for their turn for regular appointment, their legitimate expectations would be dashed to the ground abruptly, and be snatched away by a seeker of

compassionate appointment at a time, when the consideration for such appointment has become none existent -the deceased parent having died years ago.

17. In the aforementioned background, this Court is constrained therefore to observe that such persons claiming compassionate employment cannot be allowed to raise such demands for appointment whenever and wherever they like by invoking a procedure which blocks an otherwise transparent method of open recruitment. Such demands, if allowed, would deprive the management an opportunity to appoint people through open advertisement from across the country. This Court therefore does not find any fault with the respondents nor does this Court desires to compel them, by a judicial order, because if it is so done, they might be subjected to a position where they will be justified in complaining that they are being deprived of their right to resort to a transparent and an open method of recruitment. If such an order is passed directing them to appoint in such cases, it would run counter to the principles of *actue curiae neminem gravavit* (an act of Court shall prejudice none). This Court would therefore frown and would not pressurize the respondents in such a manner that it has the effect of upsetting Constitutional safeguards of public bodies to get and appoint the best of hands through open advertisements from across the country.

18. This same view has been taken by me in yet another writ petition, i.e. W.P. 13609(W) 200G (Maitry Banerjee v. Union of India and Ors.)

19. For the foregoing reasons, this Court is of the firm view that after more than 12 years, the object of compassionate appointment has faded away by efflux of time and therefore the petitioner has no right now to claim compassionate appointment. The respondents, therefore, were fully justified in rejecting the claim of the petitioner.

20. For the foregoing reasons, this writ petition must fail. Consequently, the same is dismissed but, in the facts and circumstances of the case, there shall be no order as to costs.

21. Urgent xeroxed certified copy of this order, if applied for, be supplied to the parties as early as possible.