
(2013) 04 DEL CK 0108
In the Delhi High Court
Case No : W.P. (C) No. 3931/2010

Nikhil Kapoor

APPELLANT

Vs

State Bank of Patiala and Another

RESPONDENT

Date of Decision : 01-04-2013

Acts Referred:

Citation : (2013) 04 DEL CK 0108

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.

CM No. 3865/2013 (for restoration)

This writ petition was dismissed in default on 24.1.2013. In this application for restoration in spite of the matter having been passed over, no one appears for the applicant/petitioner.

Ordinarily I would have dismissed the application for default, but since I have gone through the record, I allow the application inasmuch as I am proposing to dispose of the writ petition on merits.

CM stands disposed of.

WP(C) No. 3931/2010

1. By this writ petition, petitioner prays for employment on compassionate ground. Petitioner claims to be the son of deceased Smt. Praveen Bala Kapoor who died in harness on 6.11.1993 i.e. about twenty years back i.e. on 21.12.1993. The case as set out by the petitioner in the writ petition is that the respondent No. 1/employer marked out a lien for appointment pursuant to its policy then applicable, however, when the petitioner became a major and obtained the qualification of senior secondary school i.e. XII standard, and then

when he applied for employment, he was refused employment. On behalf of the respondent No. 1 in the counter affidavit, it is stated that the scheme which was applicable at the time when the petitioner's entitlement was marked, was replaced by a new scheme which provided only for ex-gratia lumpsum amount vide the circular dated 24.11.2005. It is also argued that the entire object of giving compassionate appointment is to tide over the immediate financial difficulties created in the family of deceased employee on account of sudden death, and this rationale will not apply in the facts of the present case where the deceased Praveen Bala Kapoor had died about 18 years prior to filing of the petition. The observations of the Supreme Court in the case of Haryana State Electricity Board and another Vs. Hakim Singh, are relied upon and which read as under:-

.... If the family member of the deceased employee can manage for fourteen years after the death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to succour to the family to tide over the sudden financial crisis befallen the dependants on account of the untimely demise of its sole earning member....

2. It is therefore contended that since presently there is no applicable scheme for grant of compassionate appointment, the petitioner cannot be granted employment.

3. The Supreme Court in the case of State Bank of India and Another Vs. Raj Kumar, has held that the entitlement to compassionate appointment is not a matter of right and is not a substitute for a regular recruitment process. The Supreme Court has clarified that compassionate appointment can be granted only if there is a prevalent scheme for grant of compassionate employment, and not otherwise. The relevant paras of the judgment of Supreme Court in the case of State Bank of India (supra) are paras 6 to 8 which read as under:-

6. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. 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. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a

right in favour of the applicant.

7. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are: (i) an application by a dependent family member of the deceased employee; (ii) fulfilment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the Scheme in force at the time of death would apply. On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, then the scheme creates a right in favour of the applicant, on making the application and the Scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

8. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a Selection Committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition, up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right, the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

(underlining added)

4. In the present case, since there was no scheme for compassionate appointment which was prevalent when the petitioner sought employment, the

petitioner therefore cannot be granted compassionate appointment. I also find strength in the argument urged on behalf of the respondent No. 1 that one of the reasons for grant of compassionate appointment is to tide over financial difficulties created by sudden death of an employee and this rationale will not apply after about two decades of the death of the employee. In view of the above, there is no merit in the petition which is accordingly dismissed, leaving the parties to bear their own costs.