
(2015) 06 JH CK 0033
In the Jharkhand High Court
Case No : Writ Petition (S) No. 1102 of 2015

Niyoti Bala Das	Vs	APPELLANT
The Union of India and Others		RESPONDENT

Date of Decision : 15-06-2015

Acts Referred:

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

Citation : (2016) 1 AJR 101 : (2015) 3 JLJR 405

Hon'ble Judges : Dhirubhai Naranbhai Patel, J; Ratnaker Bhengra, J

Bench : Division Bench

Advocate : Kaushal Kishore Mishra, for the Appellant; Rajiv Sinha, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dhirubhai Naranbhai Patel, J.—This writ petition has been preferred challenging the order dated 12th January, 2015 passed by the Central Administrative Tribunal, Circuit Bench at Ranch in O.A. No. 204 of 2013 (R), whereby the claim for compassionate appointment of the original applicant, who is the petitioner before this court, has been rejected by the Central Administrative Tribunal.

Submissions made on behalf of the petitioner

2. Counsel appearing for the petitioner (original applicant) submitted that as husband of the petitioner was compelled to retire from the services of the Union of India on 31st July, 1990 on the ground of illness, the present petitioner should have been appointed on compassionate basis. But, the application preferred by this petitioner for such appointment was rejected by the respondents vide order dated 29th August, 2013. The said order was challenged by this petitioner in O.A. No. 204 of 2013 (R) and as the Central Administrative Tribunal, Circuit Bench at Ranchi has dismissed the said Original Application preferred by this petitioner, this writ petition has been preferred.

Submissions made on behalf of the respondents

3. Two persons cannot be given appointment on compassionate ground for the death or retirement due to ill health of one employee:

"Counsel appearing for the Union of India has submitted that no illegality has been committed by the Central Administrative Tribunal, Circuit Bench at Ranchi in dismissing the O.A. No. 204 of 2013 (R) mainly for the reason that husband of the petitioner was compelled to retire due to ill health on 31st July, 1990 and thereafter, his brother was given compassionate appointment on 27th August, 1991. A letter was also written by the husband of the petitioner to give appointment to his brother and the brother was appointed on 27th August, 1990 as a Gardener. The brother of the husband of this petitioner, who was given compassionate appointment, has also expired now, but, the petitioner cannot be given compassionate appointment now because more than person cannot be given appointment on compassionate ground for the death or retirement due to ill health of one employee."

4. The very purpose of appointment on compassionate ground frustrated due to much delay : The Original Application No. 204 of 2013 (R) was preferred in the year 2013, i.e. after a long lapse of time. This is the reason assigned by the Central Administrative Tribunal, Circuit Bench at Ranchi for rejection of the Original Application. It is further submitted by the counsel appearing for the respondents that even otherwise also much time has lapsed after retirement of the husband of the petitioner and therefore, the very purpose of the compassionate appointment is frustrated by now, hence this writ petition may not be entertained by this court.

5. Having heard both sides and looking to the facts and circumstances of the case, we are not inclined to entertain this writ petition for the following reasons:

"REASONS:

(I) Appointment on compassionate ground was already given to the Brother of the husband of the petitioner: Late Shri Amar Shankar Das (Husband of the petitioner) was working as a Lower Division Clerk in the office of the Director General of Mines Safety. Because of his ill health, he was compelled to retire on 31st July, 1990 and his brother, namely Mr. Bom Nath Das was appointed on compassionate ground as a Gardener with effect from 27th August, 1991.

(II) Appointment of brother of the husband of the petitioner was not made arbitrarily : It further appears that appointment of the brother of husband of the petitioner on compassionate ground was made on the basis of request made by the husband of this petitioner. Thus, compassionate appointment was not given to the brother of the husband of the petitioner arbitrarily by the respondents.

(III) Original Application has been filed at a much belated stage:

It has rightly been observed by the Central Administrative Tribunal, Circuit Bench

at Ranchi that appointment given on compassionate ground in the year 1991 to Mr. Bom Nath Das can not be challenged by this petitioner in the year 2013 in Original Application No. 204 of 2013 (R). At a much belated stage the Original application was preferred by the petitioner and no reason has been assigned for such gross delay.

(IV) More than one appointment cannot be made on compassionate ground for death or retirement due to illness of one person : Once a appointment on compassionate basis has been made, again the petitioner can not be appointed on compassionate basis because there cannot be two appointments on compassionate basis due to retirement of one person, i.e. husband of the petitioner.

(V) The very purpose of compassionate appointment frustrated due to inordinate delay: Even otherwise also much time has lapsed since the retirement of husband of the petitioner and therefore, the very purpose of the appointment on compassionate basis, i.e. to tide over the immediate financial difficulty, has been frustrated and following decisions worth a mention on this particular point:

(a) It has been held by the Hon"ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, (1994) 68 FLR 1191 : (1994) 3 JT 525 : (1994) 2 SCALE 834 : (1994) 4 SCC 138 : (1994) 3 SCR 893 : (1995) 1 SLJ 229 : (1994) 2 UJ 322 , which read as under:

"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 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 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 dependant 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 I V. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and I V. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and I V. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B. Tech. etc. Such exception, as pointed out above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even

minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the Government to

exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments."

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and I V. It is unnecessary to reiterate that these observations are contrary to law. If the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

(emphasis supplied)

(b) It has been held by the Hon"ble Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others, AIR 2000 SC 2782 : (2000) 87 FLR 132 : (2000) 10 JT 156 : (2000) 6 SCALE 197 : (2000) 7 SCC 192 : (2000) SCC(L&S) 895 : (2000) 2 SCR 710 Supp : (2000) 2 UJ 1480 : (2000) AIRSCW 3082 : (2000) 6 Supreme 43 , which reads as under:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that

the family gets immediate relief."

(emphasis supplied)

(c) It has been held by the Hon"ble Supreme Court in the case of Santosh Kumar Dubey Vs. State of U.P. and Others, (2009) 122 FLR 587 : (2009) 8 JT 135 : (2009) 8 SCALE 726 : (2009) 6 SCC 481 : (2009) 2 SCC(L&S) 224 : (2009) 9 SCR 572 : (2009) 3 SLJ 289 : (2010) 1 SLR 261 , which read as under:

"10. Admittedly, the father of the appellant was untraceable from 1981. Without entering into and deciding the issue as to whether employment on compassionate grounds could be asked for in a case of deemed death under Section 108 of the Evidence Act, even if we assume for the sake of argument that it can be so demanded and asked for, such a right should and could have been exercised in the year 1988 and computing the period of five years therefrom the period of limitation for making an application for employment in the case of the appellant expired in the year 1993.

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in government service.

13. In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed."

(emphasis supplied)

(d) It has been held by the Hon"ble Supreme Court in the case of MGB Gramin Bank v. Chakrawarti Singh, reported in (2014) 13 SCC 583 in paragraphs 6 to 9, which read as under:

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception

by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread earner. Mere death of a government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In *Umesh Kumar Nagpal v. State of Haryana* this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under: (SCC pp. 140-41, paras 2, 4 and 6)

"2. ... 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 the post held by the deceased. ... 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.

4. ... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

6. ... The consideration for such employment is not a vested right.... The object being to enable the family to get over the financial crisis"

(emphasis added)

8. An "ameliorating relief" should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The courts and the tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments."

(emphasis supplied)

Therefore, as per the aforesaid decisions, appointment on compassionate basis cannot be claimed as a matter of right, as it is not a vested right because the very concept of giving compassionate appointment is to tide over sudden financial difficulties that are faced by the family of a deceased employee and therefore, it cannot be granted after lapse of a reasonable period because in that case the very object of compassionate appointment, i.e. immediate relief to the family facing sudden financial difficulties, gets frustrated.

6. As a cumulative effect of the aforesaid facts and circumstances and judicial pronouncements, we find that no error has been committed by the Central Administrative Tribunal, Circuit Bench at Ranchi in rejecting the claim of the appellant/original petitioner for appointment on compassionate ground and therefore, we are not inclined to quash order dated 12th January, 2015 vide which O.A. No. 204 of 2013 (R) has been dismissed.

7. There is no substance in this writ petition, which is accordingly dismissed.