

(2013) 04 MAD CK 0285

In the Madras High Court

Case No : Writ Petition No. 12204 of 2013

P. Purusothaman

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2013

Acts Referred:

Citation : (2013) 3 LLJ 792

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : L. Chandrakumar, for the Appellant;

Judgement

Elipe Dharma Rao, J.—Heard the arguments of the learned counsel appearing for the petitioner and perused the records. The petitioner is the son of late N. Ponmudi. The said Ponmudi, who was working as Hammerman in the Southern Railway, died in harness on 02.12.2003 leaving behind his second wife, his three children, viz., the petitioner, who is born through his second wife and two other sons and a daughter born through his first wife. The case of the petitioner is that since the family had no other source of income and as the other members of the family are not eligible for appointment, he submitted representations dated 28.6.2005 and 23.11.2006 seeking appointment on compassionate grounds and the same was rejected by the third respondent by communication dated 17.11.2006 on the ground of certain discrepancies. Subsequently, the petitioner moved the Lok Adalat on 19.10.2010 and as per its advice, he made farther representations on 03.6.2011 and 03.10.2001 to the General Manager, Southern Railway. The same was again rejected by the third respondent by letter dated 16.11.2011 stating that the earlier reply dated 17.11.2006 holds good. The said rejection letter was impugned before the Tribunal.

2. The Tribunal, by an order dated 08.04.2013, dismissed the Original Application by stating that the petitioner was guilty of delay and laches in seeking appointment from the Department after a lapse of nearly nine years. Against the dismissal of the said O.A., the present writ petition has been filed.

3. Learned counsel appearing for the petitioner would submit that the sudden death of the deceased caused financial crisis to the family and even the discrepancies noted by the Department were corrected as per decree in O.S. No. 1520 of 2009. He would further submit that the first wife of the deceased died on 10.9.1981 and her sons relinquished their claim for appointment as they were not qualified and have also consented to process the claim in favour of the petitioner.

4. From the averments made and on going through the materials on record, it is seen that the late father of the petitioner was missing from 06.12.1995 and returned home on 30.11.2003. It is also seen that though a major penalty charge sheet was initiated against him for unauthorized absence, the same stood cancelled due to his sudden demise on 02.12.2003 consequent to which, the settlement benefits were paid to the second wife of the deceased, viz., the mother of the petitioner, in addition to the 50% of the family pension while the remaining 50% was kept apart for the sons of the first wife.

5. As per the provisions of the Code of Criminal Procedure, immediately on coming to know that a person is missing, a complaint must have been lodged with the concerned Police. But in the instant case, the petitioner has chosen to file First Information Report at his convenience only during the year 2003, i.e., after 8 years. On this score alone, the Writ petition is liable to be dismissed.

6. Secondly, from a perusal of the order impugned before the Tribunal, it is seen that there are certain discrepancies with regard to the date of birth of the petitioner. It has been stated by the third respondent in the impugned order that as per the School Certificate of the petitioner, which is an authentic record, his date of birth is 05.05.1984 whereas the date of marriage of the deceased with the second wife is shown as 11.11.1983. Likewise, there has been discrepancy with regard to the date of birth of Rajasekar, second son of the deceased through his first wife, who died on 10.09.1981. On this ground also, the Writ Petition fails.

7. Further, though the third respondent rejected the claim of the petitioner for appointment on compassionate grounds even as early as on 17.11.2006 on the ground of certain discrepancies with regard to the date of birth of the petitioner as well as the second son of the deceased through his first wife, the petitioner preferred to file O.S. No. 1520 for correction of the said discrepancies only during the year 2009. No reason is forthcoming either before the Tribunal or before this Court for the delay.

8. In *State of Haryana and Others Vs. Rani Devi and Another*, , the Hon''ble Supreme Court while examining the object of compassionate appointment pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was a dependant of the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 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. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

9. In the decision reported in *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, , it was pointed out that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointment on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointment.

10. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , it was noted that as a rule in public service, appointment should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of the employee while in service leaving his family without any means livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

11. In *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, , it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisages specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit.

12. In *State of U.P. and Others Vs. Paras Nath*, , it was held that the purpose of providing employment to the dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments.

13. In *Punjab National Bank and Others Vs. Ashwini Kumar Taneja*, , the Hon''ble Supreme Court observed that appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement of making appointments on open invitation of application on merits. The basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden

financial crisis.

14. In *State of Haryana and others v. Rani Devi and another* (cited supra), the Hon''ble Supreme Court observed as follows:

It was also impressed that appointments on compassionate ground cannot be made after lapse of reasonable period which must be specified in the rules because the right to such employment is not a vested right which can be exercised at any time in future.

(Emphasis supplied)

It is, thus, clear that the Courts cannot direct appointments on compassionate grounds de hors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Courts cannot compel the authorities to exercise its jurisdiction in a particular way and that too, by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been provided otherwise. The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments. None of these considerations can operate when the application is made long after the death of the employee. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness when there is no other earning member in the family.

In view of the discrepancies found with regard to the marriage of the deceased and date of birth of the petitioner and in the light of the above binding precedents of the Hon''ble Supreme Court, the request of the petitioner cannot be considered. There is no illegality or infirmity in the order passed by the Tribunal. Hence, the writ petition stands dismissed. No costs.