
(2010) 09 BOM CK 0024
In the Bombay High Court
Case No : Writ Petition No. 938 of 2010

Pramod Chaudhari

APPELLANT

Vs

State of Maharashtra and Others

RESPONDENT

Date of Decision : 07-09-2010

Acts Referred:

Constitution of India, 1950 — Article 226
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 47

Citation : (2011) 130 FLR 223 : (2011) 3 MhLj 111

Hon'ble Judges : Shrihari P. Davare, J; R.S. Mohite, J

Bench : Division Bench

Advocate : S.S. Jadhvar, for the Appellant; S.K. Tambe, A.G.P. for Respondent No. 1 and M.K. Goyenka, for the Respondent

Final Decision : Allowed

Judgement

Shrihari P. Davare, J.—Rule. Rule made returnable forthwith. With the consent of learned Counsel for the parties, writ petition is taken up for final hearing at admission stage.

2. By way of present petition, filed under Article 226 of the Constitution of India, the Petitioner has prayed that Respondent Nos. 2 and 3 be directed to give effect to the letter dated 28-7-2006 and circular dated 24-8-2006 prospectively i.e. from the dates on which those are issued and to consider the case of the Petitioner for appointment on compassionate ground, as per the scheme existed on the date of submission of application by the Petitioner i.e. 29-6-2006 and that they be further directed to issue appointment order in favour of the Petitioner.

3. The facts giving rise to the present petition are as under;

4. Father of the Petitioner was appointed as helper in Respondent No. 2-Corporation and was made permanent on 1-6-1976. Thereafter, he was promoted to the post of Assistant Article He was suffering from health problems

and, therefore, he was referred for medical check up to the Civil Surgeon, Jalgaon, by Respondent No. 3 on 5-6-2006. After the medical check up, Civil Surgeon declared the father of the Petitioner as permanently disabled person for further service in the department as he was suffering from "Ischamic Heart Disease with Hypertension with uncontrolled Diabetes". Hence, Respondent No. 3 issued order dated 26-6-2006, terminating services of father of the Petitioner with effect from 9-6-2006 on the ground of permanent disability acquired by him i.e. from the date on which the medical certificate was issued by Civil Surgeon, Jalgaon, declaring him permanently disabled person to continue in service. Moreover, the Medical Board of SBH Government Medical College and Hospital, Dhule carried out thorough check up and investigation of the father of the Petitioner and issued certificate, certifying that he was permanently incapable for further service, on 4-8-2006.

5. In the termination order itself, the father of the Petitioner was informed that either he could challenge the said order before the appellate authority within the period of thirty days, or he may submit an application for appointment of any of his dependents on compassionate ground within the period of fifteen days. Accordingly, father of the Petitioner chose later option and submitted an application for appointment of his son on compassionate ground, on 28-8-2006. In fact, prior to that, on 29-6-2006, the Petitioner himself had also submitted similar application, seeking appointment on compassionate ground.

6. However, Respondent No. 3, vide letter dated 11-9-2006, informed the father of the Petitioner that the case of the Petitioner could not be considered for appointment on compassionate ground, in view of the letter dated 28-7-2006 and the circular dated 24-8-2006, since the said scheme was then restricted only to the cases of deaths of employees during their employment and the same was withdrawn in cases of disabilities acquired by the employees on medical ground. It is the contention of the Petitioner that the letter dated 28-7-2006 and the circular dated 24-8-2006 are illegal, arbitrary and against the spirit of the said scheme of appointment on compassionate ground and that the retrospective effect given to those letter/circular is highly arbitrary.

7. It is also the contention of the Petitioner that the Central Government has enacted the Act i.e. the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, in order to protect the rights of the disabled persons and to provide them opportunity in all sectors. The said Act deals with disability acquired by an employee during service and it restrains employer from dispensing with or reducing the rank of the employee during service period. It further provides for adjusting the disabled employee on any other post without change in his pay-scale and service benefits, and it also provides for continuation of such employee in service, even if no post is available, till he attains age of superannuation. Hence, it is the contention of the Petitioner that considering Section 47 of the said Act, action of the Respondents directing termination of services of his father due to acquisition of permanent

disability, is illegal and contrary to the said provisions of the Act.

8. It is further contention of the Petitioner that his father died on 9-3-2007 due to illness suffered by him, at the age of about 52 years. It is, therefore, the contention of the Petitioner that had his father been continued in service, in view of provisions of Section 47 of the said Act, the Petitioner would have been entitled to appointment on compassionate ground even as per the changed scheme to that effect. Hence, the Petitioner contends that the action of Respondents terminating services of his father due to acquisition of permanent disability and further action of denying the Petitioner appointment on compassionate ground, is in contravention of Section 47 of the aforesaid Act.

9. The Petitioner further submits that in identical matters (Writ Petition Nos. 7376 of 2008 and 7387 of 2008), this Court, vide judgment and order dated 31-7-2009, had directed the Respondents to consider the applications of the Petitioners therein for appointment on compassionate grounds and issue necessary orders, regarding their such appointments, and accordingly, said Petitioners were appointed by Respondent-Corporation and, therefore, present Petitioner has filed this petition for the prayers as set out hereinabove.

10. Respondent Nos. 2 and 3 have filed affidavit-in-reply which is sworn in (sic) Shri Suresh Vasudeo Potdar, working as Senior Clerk with MSRTC, Jalgaon, and thereby denied the averments and allegations made by the Petitioner in the petition, unless admitted specifically. It is submitted that the Petitioner has filed present petition after a lapse of more than four years and as such, petition itself is liable to be dismissed on the ground of delay and laches.

11. It is also contended on behalf of Respondents that as per the judgment of the Hon'ble Apex Court, a person cannot claim appointment on compassionate ground, as of right. The scheme is formulated to provide appointment on compassionate ground by considering urgent needs of the family. It is also submitted that in the present matter, since the Petitioner has approached this Court after lapse of about 4 years, it appears that there was no need to the family of the Petitioner, for his appointment on compassionate ground. It is also submitted that the Petitioner approached to this Court after passing of judgment in aforesaid writ petitions i.e. Writ Petition Nos. 7376 of 2008 and 7386 of 2008, to take benefit of the same. Respondents submit that in said two writ petitions, the concerned employees were declared medically unfit on 9-6-2006 and the resolution of the Corporation is also passed on the said date only, and as such, the said employees purposely got themselves declared as medically unfit so as to seek appointments to their legal heirs/dependents on compassionate ground. Otherwise, according to Respondents, in the same month, how could so many employees go for medical check up. Moreover, Respondents further submit that in entire petition, present Petitioner has nowhere stated that he is not in service anywhere, or is not having any income source and his family is in dire need of service.

12. It is also the contention of Respondent Nos. 2 and 3 that as per the government decision dated 22-8-2005, the Corporation has passed resolution bearing No. 2006.04.03 dated 9-6-2006, and as per the said resolution, it was decided that from 9-6-2006, appointments on compassionate ground would be given to legal heirs of deceased employee only. The said decision of the Government was applicable from the date of Government Resolution i.e. 22-8-2005, still the Corporation gave effect to their resolution from 9-6-2006 and issued circular bearing No. 17/2006 dated 28-7-2006. Petitioner's father was declared medically unfit by certificates dated 9-6-2006 and 4-8-2006 i.e. after 9-6-2006 which was the cut off date and as such, the Petitioner is not entitled to appointment on compassionate ground.

13. As regards the claim of the Petitioner u/s 47 of the said Act, it appears that as per the certificate bearing No. 1920 issued by the District Civil Surgeon dated 13-6-2006 father of the Petitioner was suffering from "IHD c HTC Uncontrolled Diabetes", Heart Disease with Hypertension with Hepatitis with Defective Vision. As per Section 2(t) of the Permanent Disable Act, the certificate of the authorized officer, regarding 40 per cent disability is necessary and the father of the Petitioner had not submitted the said certificate.

14. Accordingly, it is submitted by Respondent Nos. 2 and 3 that as per the letter dated 28-7-2006 and the circular dated 24-8-2006, appointment on compassionate ground can be given to the legal heirs of deceased employee who died during his service with the Corporation, and the legal heirs or dependents of the employees who are medically unfit are not entitled to appointment (sic) compassionate ground and hence, it is submitted by the Respondents that (sic) present petition bears no substance and is devoid of any merits and, therefore same be dismissed.

15. Heard learned Counsel for the respective parties.

16. Mr. Jadhavar, learned Counsel for the Petitioner, submitted that the Petitioner would be governed by the policy which was in existence on the date on which termination order of his father was issued. It is submitted that in the termination order itself, Petitioner's father was given option either to prefer appeal against the said order within thirty days or make an application for appointment of his dependent on compassionate ground within fifteen days. It is submitted that the father of the Petitioner did not file any appeal, but preferred later option for appointment of Petitioner on compassionate ground. Learned Counsel Shri Jadhavar further submitted that the subsequent change in the policy would not deny the Petitioner of his legitimate right to appointment on compassionate ground, as legal heir of his deceased father.

17. Mr. Goyenka, learned Counsel for Respondent Nos. 2 and 3, vehemently opposed this petition and submitted that the Corporation had effected change in its policy on account of change in the policy by the State Government vide Government Resolution dated 22-8-2005. It is also submitted that the change in

policy was adopted by the Respondent-Corporation with effect from 9-6-2006, though the letter was issued on 28-7-2006 and the circular was issued on 24-8-2006. Moreover, Mr. Goyenka, learned Counsel for Respondent Nos. 2 and 3, submitted that the Petitioner has approached to this Court after lapse of period of four years and has not explained the delay and laches.

18. In the said context, learned Counsel Mr. Goyenka relied upon observations made by the Hon"ble Supreme Court in the case of State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , and more particularly from paragraphs 10 and 17 as follows.

10. ...The father of the applicant who was in service, died-in-harness in March, 1987 and for the first time, the application was made by the applicant after more than four years i.e. in September, 1991. The family thus survived for more than four years after the death of the applicant's father. Even at that time, the applicant, under the relevant guidelines, could not have been appointed and hence relaxation was prayed. It is no doubt true that the case of the applicant was favourably considered by the departments and recommendation was made, but it is also a fact which has come on record that in March, 1996, a decision was taken by the authorities not to give appointment to the applicant on compassionate ground. From the affidavit-in-reply filed by the authorities in the High Court as also from the finding of the learned single Judge, it is clear that the applicant had knowledge about rejection of his application in 1996 itself. Nothing was done by the applicant against the said decision. Considerable period elapsed and only in 1999, when there was some inter-departmental communication and Administrative Officer informed the Chief Engineer vide a letter dated 8th June, 1999 that the applicant could not be appointed on compassionate ground that the applicant woke up and filed a writ petition in the High Court. It is also pertinent to note that the letter of 1999 itself recites that the case of the applicant for compassionate appointment was considered and the prayer had already been turned down by the Administrative Department and the said fact had been communicated to the officer of the Chief Engineer. A copy of the said letter was also annexed to the letter of 1999. In our opinion, therefore, the learned single Judge was right in dismissing the petition on the ground of delay and laches by holding that the applicant had not done anything for a considerable period after March, 1996 when his claim was rejected even though he was informed about the decision and was very much aware of it. The Division Bench, in our view, was not justified in setting aside the said order and in directing the authorities to consider the case of the applicant for compassionate appointment and by giving directions to give other benefits.

17. In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the

date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal.

19. On perusal of the record and after considering the rival submissions, it is seen that the order terminating services of the father of the Petitioner on the ground of permanent disability acquired by him, was issued on 26-6-2006, although it was given effect from 9-6-2006 i.e. the date on which the medical certificate was issued, declaring him permanently disable to continue in service. However, Respondent No. 3, by letter dated 11-9-2006, communicated to the father of the Petitioner that the case of the Petitioner could not be considered for appointment on compassionate ground, in view of letter dated 28-7-2006 and circular dated 24-8-2006, since the said scheme was restricted only in cases of deaths of the employees during employment, and was withdrawn in cases of disabilities acquired on medical grounds.

20. Hence, it is clear from the record that it is only for the first time that the policy was made public vide said letter dated 28-7-2006 and circular dated 24-8-2006. It is settled principle of law that services of the employees would be governed by the service conditions as existed on the date of their appointment/termination. In the present case, on the date of order of termination of services of father of the Petitioner i.e. 26-6-2006 which is given effect from 9-6-2006, the change in policy of Respondent-Corporation was not made known to public. Besides that, giving retrospective effect to the letter dated 28-7-2006 and circular dated 24-8-2006 by Respondent Nos. 2 and 3 from 9-6-2006 is apparently arbitrary, more so when it was not made public earlier, as aforesaid.

21. Moreover, it is significant to note that by way of termination order dated 26-6-2006, the father of the Petitioner was given option either to prefer appeal against the said order within the period of thirty days, or to submit an application for appointment to any of his dependents on compassionate ground within the period of fifteen days. Admittedly, in the present case, father of the Petitioner did not challenge the said order of termination, but acted on the representation made by the Respondents in the said termination order and, accordingly, Petitioner applied for appointment on compassionate ground as dependent/legal heir of his father and, therefore, the proposition of promissory estoppel would come into picture and the Petitioner would be entitled to rest his claim on the said principle of promissory estoppel and Respondent Nos. 2 and 3 cannot be permitted to resile from the representation made in the termination order.

22. As regards the reliance placed by the learned Counsel for Respondent Nos. 2 and 3 on the observations made by the Hon"ble Supreme Court in the case of State of J. and K. v. Sajad Ahmed Mir (supra), it is apparent that the facts and

circumstances of the present case and those of the case before the Hon''ble Supreme Court, differ from each other and, therefore, said observations cannot be of any aid and assistance to the case of Respondent Nos. 2 and 3 herein.

23. In the facts and circumstances, we are of the considered view that the application preferred by the Petitioner on 29-6-2006 for appointment on compassionate ground needs to be considered by Respondent Nos. 2 and 3 favourably, in view of policy which existed earlier i.e. appointment on compassionate ground in case of termination of employee on the ground of physical disability.

24. In the result, petition succeeds and the same is allowed. Respondents are directed to consider the Petitioner's application dated 29-6-2006 for appointment on compassionate ground favourably within the period of three months from today.

Rule is made absolute in aforesaid terms.