

(2008) 01 MAD CK 0198

In the Madras High Court

Case No : Writ Petition No. 21240 of 2001

R. Bharathiammal and B. Vijayakumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 29-01-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 01 MAD CK 0198

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : P.L. Narayanan, for the Appellant; P. Wilson, ASG for Respondent 1, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the arguments of Mr. PL. Narayanan, learned counsel appearing for the petitioner and Mr. P. Wilson, learned Assistant Solicitor General representing the first respondent and have perused the records.

2. The petitioners had filed the above O.A. seeking for compassionate appointment, which was denied by the first respondent by an order dated 08.5.2000. The first petitioner's husband N. Baskaran was working as Inspector in Customs and Central Excise Department at Kovilpatti and he died in harness on 12.11.1997. The first petitioner made an application to the Collector requesting for compassionate appointment to her son, who is the second petitioner. The request made by her was considered and also was rejected by the Additional Commissioner vide order dated 08.5.2000. In that, it was stated that the second petitioner cannot be granted appointment on compassionate ground as the family of the petitioners is getting two pensions and it also felt that the financial position does not warrant compassionate appointment. It was also stated that there is no vacancies available for considering compassionate appointment.

3. The first respondent has filed counter affidavit stating that the late Baskaran had two sons and one daughter and the first petitioner Bharathiammal is his wife. There was no request made to the appointment to the elder son, who was aged 26 years and who was supposed to be dabbling in politics. But it was held that the family pension given to the family is substantial and the family also had rental income.

4. The Tribunal, after accepting the stand of the respondents, found that the first petitioner herself was a Village Health Nurse and after retirement, she was also drawing pension and, therefore, the family is not in indigenous circumstances and the respondents have correctly rejected the request of the petitioner.

5. However, Mr. PL. Narayanan, learned counsel appearing for the petitioner brought to the notice of this Court the decision of the Supreme Court reported in A.P.S.R.T.C. and Ors Vs. Kaiser Begum, and submitted that even if there is no vacancy, the post should be created to give employment to the second petitioner.

6. The Supreme Court has held that the scheme of compassionate appointment is an exception to Articles 14 and 16 of the Constitution of India and, therefore, no party can, as a matter of right, claim unless their claim is based upon the scheme evolved by the Department.

7. In State of Haryana and Others Vs. Rani Devi and Another, , the 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. In the aforesaid case, it was held that if the scheme regarding appointment on compassionate ground is extended to all types of casual or ad hoc employees including those who worked as apprentices, then such scheme cannot be justified on constitutional grounds.

8. 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.

9. 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.

10. 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.

11. 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.

12. In *Punjab National Bank and Others Vs. Ashwini Kumar Taneja*, , the 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.

13. In *State of Haryana and Ors. v. Rani Devi and Anr.* (cited supra), the 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.

14. 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 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.

15. A Division Bench of this Court in the decision reported in *E. Ramasamy Vs. Tamil Nadu Electricity Board*,] after reviewing all the above cases observed as follows:

In *Sanjay Kumar Vs. The State of Bihar and Others*, , the Supreme Court has expressly held that there cannot be reservation of a vacancy till such time as the applicant 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. An application made after the period stipulated under the scheme is not maintainable, and it is not permissible to hold that such application could be made after attaining majority.

16. In the light of the above binding precedents of the Supreme Court and a Division Bench of this 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 will stand dismissed. No costs.