
(2009) 06 CAL CK 0054
In the Calcutta High Court
Case No : W.P.S.T. No. 235 of 2009

Rabin Routh

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 17-06-2009

Acts Referred:

Constitution of India, 1950 — Article 21

Citation : (2009) 06 CAL CK 0054

Hon'ble Judges : Tapas Kumar Giri, J; Amit Talukdar, J

Bench : Division Bench

Advocate : Munmum Tewari and Ms. Nitikana Maity, for the Appellant; Sombuddha Chakraborty with Ms. Chhabi Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—Breadwinners" Scheme, also known as Compassionate Appointment has formed an important facet of the Judicial field. In its ever widening horizon, perhaps, the last word like Article 21 of the Constitution of India, is yet to be said.

2. Enriched with several pronouncements of the Apex Court, the Law in this regard has been more or less fructified to the following extent:

On the death of the breadwinner, Compassionate Appointment, which is dehorse the normal Rule of appointment, is provided to tide over the sudden economic crisis and to ensure that the family of the deceased employee is not exposed to penury. For this purpose, it is also be ascertained that the terminal benefits received by the members of the family are sufficient to tide over this crisis and the family is otherwise, able to support itself.

3. In such trajectory we have been invited to look into the Order dated 16.01.2009 passed by the learned West Bengal Administrative Tribunal in O.A. No. 8876 of 2008 in exercise of our power of Judicial Review wherein the prayer

for compassionate appointment made by the petitioner stood refused.

4. The petitioner carries the Order of the Tribunal in this application wherein the Tribunal held : that the petitioner was guilty of laches in filing the application on time; the petitioner failed to prove separate residence from his mother, who is already gainfully employed under respondent No.3.

5. Ms. Munmun Tewari appearing with Ms. Nitikana Maity in support of this application has submitted that the order of the Tribunal cannot be sustained for several reasons.

6. She has submitted that even though it is an admitted position that the mother of the petitioner was also employed under Respondent No.3; she resided separately from the petitioner.

7. She further submitted that after the death of the petitioner's father, all terminal benefits were received by his mother including the family pension.

8. According to the learned counsel for the petitioner, he is to maintain his siblings, who are dependant upon him and in the absence of any succor by way of having an appointment, it would be difficult to maintain the family in the absence of any other means of livelihood.

9. In support of her contention Ms. Tewari referred to the decisions of the Supreme Court in Govind Prakash Verma v. Life insurance Corporation of India & Ors., (2005) 10 SCC 289 and Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, .

10. She has also referred to the Division Bench decision of this Court in Tapan Kumar Barman Vs. State of West Bengal and Others, which has followed to the judgment of Balbir Kaur & Anr. v. Steel Authority of India Ltd. & Ors.(supra) and submitted that even though the family of the petitioner received terminal benefits, such Compassionate Appointment on that ground cannot be refused.

Per Contra

11. Dr. Chakraborty appearing for the respondents assisted by Ms. Chhabi Chakraborty opposed the submissions of Ms. Tewari.

12. Dr. Chakraborty was of the view that since the mother of the petitioner was already employed, it could not be said that the family was in need of any assistance.

13. Dr. Chakraborty disputed the submissions made on behalf of the petitioner that the petitioner and his mother did not share the same accommodation and submitted that as the terminal benefits of late father of the petitioner has been disbursed, which was quite substantial in amount he did not feel that there was any scope for offering such appointment as prayed on behalf of the petitioner.

14. As a part of his submission Dr. Chakraborty referred to the decision of the Hon''ble Apex Court in General Manager, State Bank of India and Others Vs. Anju

Jain, in support of his case that Court cannot pass positive directions for appointment.

15. He thereafter referred to the decisions of the Supreme Court in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, and Punjab National Bank and Others Vs. Ashwini Kumar Taneja, on the proposition that once the terminal benefits have been received on the death of the employee by the family in the absence of any penury, the question of Compassionate Appointment cannot arise.

16. Affidavits have been exchanged between the parties and we have had the benefit of listening to the submissions made at the Bar.

17. In order to better appreciate the same, it would be appropriate to resort to the background facts leading to filing of this application.

18. The father of the petitioner, late Sukdev Routh was engaged as a Group-D Staff-under Respondent No.4 in the Bardhaman Medical College Hospital.

19. Late Shri Sukdev Routh joined Government Service on 20.03.1968 and he was scheduled to call it a day on 28.02.2009 when death snatched him on 21.03.2004 from the petitioner. It would be of some relevance to keep in mind that the mother of the petitioner, Santi Routh was earlier appointed also as a Group-D Staff in the same Hospital way back on 21.03.1978 (See: paragraph 6 of the affidavit in opposition filed by the respondent No.2).

20. The petitioner by way of affirming an Affidavit, applied for Compassionate Appointment in the died in harness category on 20.04.2004.

21. In terms thereof, the respondent No.4 asked the petitioner to fill up the requisite form by his letter dated 11.08.2005 (See: paragraph 7 of the affidavit in opposition).

22. A Committee was formed consisting of three Members to determine the financial status of the petitioner and his eligibility for the job.

23. Pursuant to the letter issued by the Committee on 31.01.2006 the petitioner appeared before the Inquiry Committee on 13.01.2006 wherefrom it transpired that the family of the petitioner received Provident Fund, Gratuity and other amounts, which came to more than Rupees Three Lakh [See: paragraph 8 of the Affidavit in Opposition]. The Inquiry Committee Report has been annexed with the Affidavit (annexure-R1).

24. A stand has been taken on the basis of a Notification No. 97 Emp. Dated Kolkata, the 6th June, 2005 (Annexure- R1 collectively) show that no appointment on compassionate ground can be offered to a dependant of an employee, who dies in harness or who retires prematurely on being declared permanently incapacitated after completing 20 years of service or after attaining 50 years, whichever is earlier and as the petitioner has already completed 20 years of service and he was above 50 years - he was not entitled to such

appointment.

25. In the light of the same, we would now evaluate the claim of the petitioner for being absorbed under the Breadwinners" Scheme in the place of his father, who died in harness.

26. Dr. Chakrabroty for the respondents has raised a hitch that there is no evidence to show that the Petitioner resides separately from his Mother.

27. If we see the averments made by the petitioner in his reply in paragraph 7, we find that he has clearly stated his mother stays separately from the family and the entire benefit and pension has been received by her.

28. It has also been stated on oath that the petitioner has to tend two unemployed brothers and one unmarried sister at his cost.

29. He has also stated on oath that after his father passed away, the full family has become dependant upon him and his mother does not take any responsibility or bears any financial liability but on the contrary she enjoys all the benefit.

30. If we closely see the report of the Inquiry Committee (annexure-R1 collectively) we find that the committee, which assembled in the chamber of the respondent No.4 on 13.01.2006, noted that the family of Late Sukdev Routh, i.e. the father of the petitioner received the terminal benefits including Family Pension. The report shows "No spot verification was conducted...."

31. It is not disputed that the terminal benefits including Family Pension, has not been received by the heirs of Late Sukdhdeb Routh but it is an accepted position that the entire benefit have been appropriated by the mother of the petitioner, who also enjoys the Family Pension but she does not bear any responsibility of the petitioner or his other siblings. The report of the Inquiry Committee (anuexure?R1) has to be viewed from the said angle.

32. Furthermore, we are very much afraid, as have been sought to be established by the respondent No.2 in her Affidavit on the strength of a Notification No. 97 Emp. Dated Kolkata, the 6th June, 2005 (annexure-R1 collectively) would have any manner of application in the present case which forbade appointment on compassionate ground where the employee has either crossed 50 years of age or has put in 20 years of service. The said Circular saw the light of the day on June 6th, 2005 under the dated signature of the Chief Secretary to the Government of West Bengal. The death of the petitioner's Father took place on 21.03.2004, that was much earlier to the said Circular.

33. Already the process for considering the appointment of the petitioner had began before the said circular came into existence. As such, we feel the said circular, which cannot have any retrospective effect; would be of any assistance for Dr. Chakraborty in the given situation.

34. The decisions cited by Dr. Chakraborty needs to be considered in their proper perspective.

35. Before adverting to the same we would feel it necessary to once again recapitulate the stream of events that engulfed the life of the petitioner after he lost his Father and the consequent responsibility of his siblings in the wake of financial incapacitation.

36. Facts are always stranger than fiction. Strange facts always appeal to our conscience as strangers but we have to see them in their proper perspective.

37. Dr. Chakraborty has waxed much eloquence with regard to the mother living separately from the petitioner and her other children. In fact, Dr. Chakraborty was quite aghast with such a proposition.

38. We are dealing with a strange bundle of facts where neither moral nor sentimental issues should creep in. The cold logic of Law, however, insensitive it may be, has its application. We are duty bound to follow the same irrespective of the amoral aspect of the same.

39. Sitting in exercise of our present determination for Judicial Review, we cannot take into the facts but what we have prima facie found that the statements made in paragraph 5 and 7 of the reply filed by the petitioner goes un rebutted. The Inquiry Committee Report (annexure R-1) shows there was no spot verification.

40. In all, before us, there is a young man, who having lost his father, is saddled with the yoke of keeping the pot boiling for three of his siblings without the care (in the literal sense) of his mother, who shares separate residence. The petitioner has been successful in proving his case that after having lost his father, he along with his sister and two little brothers are exposed to the vagaries of life in the absence of any financial assistance to support them. This is a fit case where the petitioner is entitled to be accommodated in the died in harness category in the place of his Father.

41. The Tribunal (consisting of a single member) adopted a very stereotype and casual approach while dismissing the prayer for Compassionate Appointment made by the petitioner.

42. We do not share the views of the learned single member of the Tribunal that there was delay in approaching the Tribunal by the petitioner.

43. The petitioner lost his father on 21.03.2004. He applied for Compassionate Appointment on 20.04.2004. Thereafter he was asked to fill up the Form on 11.08.2005 and he was asked to appear before the Inquiry Committee on 13.01.2006 on behalf of the respondent No.2, on the basis of the said Notification, communication was addressed to the respondent No.4 refusing the request of the petitioner for Compassionate Appointment on 18.08.2006. Thereafter, the petitioner has been pursuing his remedy before authorities, which he has explained in his application. As such, the question of delay as bound by the Tribunal, cannot be accepted.

44. The decisions of the Supreme Court referred to by Dr. Chakraborty in *State Bank of India & Anr. v. Somvir Singh (supra)*, *General Manager (D & PB) & Ors. v. Kunti Tiwary & Anr., (supra)* and *Punjab National Bank & Ors. v. Ashwini Kumar Taneja (supra)* cannot be made applicable in the facts of the present case.

45. The terminal benefits, which have been received after the death of his father, was absolutely appropriated by the mother of the petitioner along with Family Pension, as we find from the unrebutted position as reflected from paragraph 7 of the affidavit of reply filed by the petitioner.

46. From a wholesome appreciation of the entire factual matrix of the case that have been appreciated by us hereinabove, and as we have come to the conclusion that the respondents (Inquiry Committee) had not seen the correct picture as was also the case of the Tribunal, which we have seen, adopted a pure mechanical approach - the petitioner was wronged thereby.

47. The petitioner, as we have found, have made out a prima facie case for being appointed on compassionate ground in the peculiar facts of the present case.

48. We feel the decision of Supreme Court in *General/Manager, State Bank of India & Ors. v. Anju Jain (supra)* relied upon by Dr. Chakraborty would hardly be of any assistance to him. If we see paragraph 39 of the said Judgment, at once it can be found that in exceptional circumstances positive direction for appointment can be given. As we have found that this is such a circumstance where the petitioner should be given appointment - we allow this application and direct the respondent No. 2 to provide the petitioner with a suitable employment in the Group-D category in any appropriate place.

49. In view of our aforesaid conclusion, we do not feel inclined to refer to the decisions of Supreme Court in *Govind Prackash Verma v. Life Insurance Corporation of India & Ors., (supra)* and *Balbir Kaur & Anr. v. Steel Authority of India Ltd. Ors. (supra)* relied upon by the learned counsel for the petitioner.

Application accordingly allowed.

No Order as to costs.

Tapas Kumar Giri, J.

50. I agree.