
(2015) 05 RAJ CK 0187
In the Rajasthan High Court
Case No : Civil Writ Petition No. 5775 of 2005

Raj Bahadur

APPELLANT

Vs

Indian Oil Corporation

RESPONDENT

Date of Decision : 13-05-2015

Acts Referred:

Citation : (2015) 05 RAJ CK 0187

Hon'ble Judges : Veerender Singh Siradhana, J

Bench : Single Bench

Advocate : B.S. Ratnu, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Veerender Singh Siradhana, J.—Though the matter has been called in the second round, none has been appeared on behalf of the petitioner.

2. Since the Indian Oil Corporation Limited (for short "respondent-Corporation"), declined the claim of the petitioner for appointment on compassionate grounds vide order dated 13rd July, 2004; the petitioner has instituted the instant writ proceedings praying for the following relief(s):--

"A) by way of writ order or direction, the order dated 3.7.2004 Annexure-4 may kindly be quashed and set aside.

B) by way of writ order or direction, the respondent may be directed to give appointment to the petitioner on a suitable post.

C) any other appropriate writ, order or direction to which the petitioner may be entitled to in the circumstances of the case may be issued in his favour;

D) cost of the writ petition may be awarded in favour of the petitioner."

3. Briefly, the skeletal material facts necessary for appreciation of the controversy raised herein needs to be first noticed. It is pleaded case of the petitioner that his father, who was appointed as Operator on 6th January, 1984,

and was posted at Udaipur, died while in service on 10th April, 1987. The petitioner was born on 10th April, 1987. Having acquired the age of 16 years on 10th April, 2003, and requisite qualification of Class-X (Secondary); addressed an application to the respondent-Corporation, by the Registered Post on 23rd July, 2004, claiming appointment on compassionate grounds, which has been declined by the respondent-Corporation vide impugned order dated 13rd July, 2004. The petitioner was specifically informed that the policy for employment under the Superannuation Benefit Funds Scheme (for short "SBF Scheme"), did not exist at the time of death of his father; therefore, his prayer could not be acceded to. However, a copy of the SBF Scheme was not furnished to the petitioner, but the SBF Scheme came into existence with effect from 1st November, 1987. Father of the petitioner expired on 10th April, 1987, just three months earlier to the date when the SBF Scheme became operative, and therefore, denial on that count is arbitrary. Moreover, when the respondent-Corporation itself framed the SBF Scheme, the same should not be confined only to the dependant of the deceased employee after 1st November, 1987. Thus, the claim of the petitioner ought to have been considered.

4. In response to the notice of the writ application, the respondent-Corporation has filed its counter affidavit pleading that all the admissible terminal benefits were settled and released in favour of the nominee of Late Shri Lalbahadur Soni i.e. Smt. Rama Soni. The Scheme for "Employment of Dependant of Employee", which was in vogue at the relevant time, contemplated that if the dependent of the deceased desired to get employment, an application for the same was to be submitted within a period of 12 months from the date of death or permanent disablement of the employee. In case employment is not sought; the spouse was eligible to receive a lump-sum payment including compassionate gratuity, which will be equal to 30 months' Basic Pay last drawn by the deceased employee subject to a minimum of Rs. 25,000/- and a maximum of Rs. 50,000/- in lieu of employment. Admittedly, the date of birth of the petitioner is 10th April, 1987. The dependent wife of the deceased (Smt. Rama Soni) opted and accepted the benefit of compassionate gratuity without any demur, therefore, the petitioner is not entitled to any relief. Moreover, the writ petition suffers with the vice of delay and laches.

5. I have heard the learned counsel, Mr. B.S. Ratnu, appearing on behalf of the respondent-Corporation, and perused the materials available on record.

6. Indisputably, the date of death of the father of the petitioner and the date of birth of the petitioner is same i.e. 10th April, 1987. Under the Scheme in vogue at the relevant time provided for compassionate appointment or to claim compassionate gratuity. Wife of the deceased employee opted and accepted the benefit of compassionate gratuity without any objection. The amount of gratuity and other terminal benefits released in favour of Smt. Rama Soni (nominee of the deceased employee), have been detailed out in the reply to the writ application as under:--

7. It is reflected from the details of the payment that an amount of Rs. 25,000/- (Rupees Twenty Five Thousands Only), towards rehabilitation of the family has been released and accepted, in lieu of employment/appointment on compassionate grounds.

8. Learned counsel for the respondent-Corporation has specifically referred to the Scheme of "Employment of Dependant of Employee", which was in operation at the relevant time. Clause 7.1 of the circular modified with reference to the compassionate appointment reads thus:--

"7.1 (a) "In case employment to a dependant family member is provided under this Scheme, no Compassionate Gratuity will be payable under the Compassionate Gratuity Scheme to the disabled employee or the family of the deceased employee, as the case may be. Similarly, where Compassionate Gratuity has been paid, no employment will be provided under this Scheme to a dependant family member. Option once exercised in writing either for employment under the Scheme or Compassionate Gratuity can not be changed.

(b) If the dependant female spouse of workman is eligible for employment under this Scheme, she can opt for and is eligible to receive a lump-sum payment including Compassionate Gratuity fixed under Clause 13 of the LTA signed with the Workmen Unions on 25th June, 1983 which is equal to 30 months' Basic Pay last drawn by the employee, subject to a minimum of Rs. 25,000/- and a maximum of Rs. 50,000/- in lieu of employment for herself. If the female dependent spouse is not eligible for employment, or any other dependant family member though eligible for employment does not opt for employment, or is not eligible for employment, she/he will be entitled to receive only a normal Compassionate Gratuity as admissible under the rules of the Corporation."

9. The Schemes/Rules providing for compassionate appointment, by the very nature, is a concession in exceptional circumstances, on account of sudden demise of the sole breadwinner of the family, leaving the family in depression and financial hardship. Appointment to public service is regulated by the Constitutional Scheme and Statutory Recruitment Rules, affording an opportunity to all other eligible candidates, to have consideration of their candidature to seek employment in public service.

10. In the case of Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, (1998) 4 AD 514 : AIR 1998 SC 2230 : (1998) 4 JT 155 : (1998) 3 SCALE 590 : (1998) 5 SCC 192 : (1998) SCC(L&S) 1302 : (1998) 3 SCR 432 : (1999) 1 SLJ 32 : (1998) AIRSCW 2122 : (1998) 5 Supreme 1 , the Hon"ble Apex Court of the land held thus:--

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependents of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment or seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee. In *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, this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that 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. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual and manual categories. It was observed:--

"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 dependent 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 status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned." (p. 140)

11. In the case of *Umesh Kumar Nagpal* (supra), the Hon"ble Apex Court of the land has declared in unequivocal terms that consideration for an appointment on compassionate grounds is not a vested right, which may be exercised at any time in future, keeping in view the very object of such an appointment being to enable the family to get over the financial crisis on account of demise of the sole

breadwinner of the family.

12. Moreover, a period of 27 years has elapsed since death of the breadwinner of the family. I do not see any reason to sustain a claim for appointment on compassionate grounds after a lapse of almost three decades.

13. For the reasons and discussions herein above, the writ petition is devoid of any substance, and lacks in merit, and therefore, deserves to be dismissed.

14. Ordered accordingly.

15. However, in the facts and circumstances of the case, there shall be no order as to costs.