
(2006) 06 BOM CK 0094
In the Bombay High Court
Case No : Writ Petition No. 376 of 1998

Rajendra Dattatraya Sawarkar and Another	APPELLANT
Vs	
State of Maharashtra and Others	RESPONDENT

Date of Decision : 06-06-2006

Acts Referred:

Citation : (2006) 5 BomCR 20 : (2006) 5 MhLj 113 : (2006) 44 MhLj 113

Hon'ble Judges : R.C. Chavan, J;D.D. Sinha, J

Bench : Division Bench

Advocate : M.W. Harsulkar, for the Appellant; D.M. Kakani, for the Respondent

Final Decision : Dismissed

Judgement

D.D. Sinha, J.—In the present writ petition, the petitioner No. 1 is seeking direction to respondents to consider the case of petitioner for grant of appointment on the compassionate ground in view of the Government Circular dated 22nd October, 1990 as well as Government Resolution dated 26th October, 1994, on the ground that the petitioner No. 2, who is the father of petitioner No. 1, was prematurely retired from service.

2. It is submitted that petitioner No. 2 was serving in Class III category with Respondent No. 3 and in the year 1987 he was compulsorily retired from service w.e.f. 1-10-1987. It is contended that Petitioner No. 2 himself on 26-2-1991 submitted an application to the respondents for grant of appointment on compassionate ground to petitioner No. 1. However, the respondents did not take any steps pursuant to the said application and therefore, petitioner No. 1 on 15-4-1994 submitted another application for grant of appointment on compassionate ground to the concerned respondents. However, the respondents failed to consider the claim of the petitioner No. 1 for grant of appointment on compassionate ground though the claim of the petitioner squarely falls within the ambit of above referred Government Circular/Government Resolution. Since the respondents failed to consider the claim of the petitioner No. 1 for grant of

appointment on compassionate ground, the petitioner had to approach this Court by filing the present writ petition whereby the directions are sought to the respondents to consider the claim of the petitioner for grant of appointment on compassionate ground.

3. The learned Counsel for the petitioner also contended that so far as Respondent No. 4 is concerned, though he is similarly circumstanced as that of the petitioner No. 1, his claim for appointment on compassionate ground was considered by the respondents and was also given appointment on the compassionate ground. It is, therefore, contended that similar treatment ought to have been given to the petitioner No. 1 by the respondents.

4. The counsel for the respondents at the outset has contended that the claim of the petitioner No. 1 cannot be considered by the department since it is inconsistent with the provisions of the Govt. Circular/Govt. Resolution. It is contended that as per Govt. Circular of 1990, the legal representatives of the employee who is compulsorily retired has to apply for grant of appointment on compassionate ground within a period of five years from the date on which such employee is compulsorily retired from service. It is contended that in the instant case the petitioner No. 2 was compulsorily retired from service w.e.f. 1-10-1987, however, the petitioner No. 1 for the first time submitted application for grant of employment on 15-4-1994, which is beyond the stipulated period of five years as contemplated by Govt. Circular of 1990 and therefore, the department was justified in ignoring the request of the petitioner for grant of employment.

5. The counsel for the respondents further contended that as per Schedule "A" to the Government Resolution of 1994, the legal representatives of the following category of employees are only entitled to claim appointment on compassionate ground;

- (i) if the employee dies during the course of employment;
- (ii) if the employee is compulsorily retired in view of medical unfitness, such as suffering from T.B., cancer etc;
- (iii) if the employee is compulsorily retired on the ground of unsoundness of mind or physical disability and is unfit to continue in service; and
- (iv) if the employee is compulsorily retired on the ground of disability incurred because of any accident occurred during the course of employment.

6. The learned Counsel for the respondents further contended that in the instant case the petitioner No. 2 who was in the employment of the respondents was compulsorily retired on the ground that the department found him unfit to continue in the employment on completion of 55 years of age and therefore, though the petitioner No. 2 was compulsorily retired from service, however, does not fall within the ambit of any of the category mentioned in the Government Resolution and therefore, petitioner No. 1 is not entitled for grant of appointment on compassionate ground.

7. We have given our anxious thoughts to the various contentions canvassed by the respective counsel. In the backdrop of the above referred fact, it is evident that the petitioner No. 1 for the first time submitted application for appointment on compassionate ground on 15-4-1994, whereas the petitioner No. 2 (Father of petitioner No. 1) was compulsorily retired from service w.e.f. 1-10-1987. It is not in dispute that as per above referred Govt. Circular/Govt. Resolution, it was incumbent on petitioner No. 1 to submit the application for appointment on compassionate ground within a period of five years from the date on which the father of petitioner No. 1 was compulsorily retired i.e. 1-10-1987. Since the application was submitted by petitioner No. 1 beyond the period of five years, the same is barred by limitation prescribed under the Government Circular/Govt. Resolution and therefore, the respondents, in our view, were justified in not considering the application of petitioner No. 1.

8. We have also perused the Govt. Circular of 1990 and Govt. Resolution of 1994 and perusal of the same shows that though the petitioner No. 2 was compulsorily retired from service, but does not come within the ambit/contingencies mentioned in the Govt. Resolution of 1994 referred to herein above. The petitioner No. 2 was compulsorily retired w.e.f. 1-10-87 since the performance of the petitioner was not found to be suitable/satisfactory to retain the petitioner No. 2 in service beyond the age of 55 years. In other words, the petitioner No. 2 being a dead wood in the department was made to retire compulsorily by the department w.e.f. 1-10-1987. It is, therefore, evident that the criteria mentioned in the Govt. Resolution of 1994, which entitles the legal representatives of the employee to seek employment on compassionate ground in case of such employee being retired compulsorily, is not attracted in case of the petitioner No. 2 who is compulsorily retired on the grounds other than mentioned in the Govt. Resolution. Hence, the petitioner No. 1, in our view, is not eligible to seek employment on compassionate ground in view of the stipulations in the Govt. Circular of 1990 as well as Govt. Resolution of 1994.

9. The contention of the learned Counsel for the petitioner that the Respondent No. 4 though similarly circumstanced was given employment by the respondents on compassionate ground is concerned, in our view, does not by itself create any right or entitlement in the petitioner No. 1 for grant of appointment on compassionate ground since the claim of the petitioner does not fall within the ambit of either Government Circular of 1990 or Government Resolution of 1994. In the instant case the petitioners have not challenged the appointment of Respondent No. 4 and therefore, it is not necessary for this Court to adjudicate upon this aspect of the matter.

10. For the reasons stated hereinabove, the petition suffers from lack of merit. The same is dismissed. No order as to cost.