

(2015) 04 PAT CK 0078

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 3490 of 2015

Rakesh Kumar

APPELLANT

Vs

The Patna Municipal Corporation and Others

RESPONDENT

Date of Decision : 24-04-2015

Acts Referred:

Citation : (2015) LabIC 3938

Hon'ble Judges : Mihir Kumar Jha, J.

Bench : Single Bench

Advocate : Vijay Kumar Singh, for the Appellant; Ranjeet Kumar Pandey, for the Respondent

Final Decision : Dismissed

Judgement

Mihir Kumar Jha, J.—Heard learned counsel for the parties. The prayer of the petitioner in this writ application reads as follows:

"1.... for quashing the order under Memo No. 30 Patna dated 03.01.2015 passed and issued under authority of Municipal Commissioner, Patna Municipal Corporation whereby and whereunder the claiming of petitioner for appointment on compassionate ground has been rejected without considering the facts/law and documents available on records..."

2. Learned counsel for the petitioner, in support of the aforementioned prayer, has made his two fold submissions:

"(i) Firstly, according to him, the impugned order rejecting the claim of the petitioner for appointment on compassionate ground suffers from both factual and legal error inasmuch as the respondent authorities of Patna Municipal Corporation (hereinafter referred to as "the Corporation") have not truly applied the Government Notification dated 26.12.2013 in its true perspective.

(ii) Secondly, he has sought to highlight that the death of the father of the petitioner having taken place way back in the year 2008, the appointment of the

petitioner on compassionate ground had to be considered on the parameter which was existing on the date of death of his father."

3. Explaining the aforementioned submissions, learned counsel for the petitioner has highlighted that initially the qualification for appointment on the post of Class-IV (Group-D) in the State Government of Bihar was Class-8 and that was sought to be changed on 31.03.2011 by making it Class-10 but then according to him the Government itself had subsequently considered the issue and had held that for the period 31.03.2011 to 11.12.2012, the qualification for appointment on Class-IV (Group-D) post shall be Class-8 and not Class-10. On this premises, he proceeds to submit that since the petitioner had already passed Class-8 examination at the time of filing of his application for compassionate appointment consequent upon the death of his father in the year 2008, his case for compassionate appointment could not have been rejected on the ground of lack of qualification of having not passed Class-10 examination specially when the issue stands clarified by the State Government itself in its letter dated 26.12.2013 that the qualification of Class-VIII would be valid till 12.12.2012.

4. Learned counsel for the respondents, on the other hand, while supporting the impugned order, has submitted that the case of the petitioner for appointment on compassionate ground in December 2014 was considered on the existing parameter and since the Corporation has adopted the Government policy of appointment on compassionate ground which itself lays down that a person, in order to get appointment on compassionate ground, must possess the requisite qualification for the post and the post, being claimed by the petitioner, was Class-IV (Group-D) post in Corporation, his qualification of Class-8 was found to be not good enough for his appointment inasmuch as for appointment on Class-IV (Group-D) post, the requirement was to have passed Class-10 examination.

5. In the considered opinion of this Court there would be no difficulty in coming to the conclusion that after the death of the father of the petitioner, the petitioner was required to be considered for appointment on compassionate ground after he had filed his application for this purpose allegedly within prescribed period of time. The claim of the petitioner is that he had filed his application for appointment on compassionate ground on 20.11.2008 before the Executive Officer of New Capital Circle of Patna Municipal Corporation. Such application, as contained in Annexure-4/A, however does not bear any date nor was ever sent by the controlling officer to the head of Department of the Corporation. Thus this undated application having also no proof of its receipt in the office of the Corporation cannot be relied at least for the purpose of the case of the appointment of petitioner on compassionate ground remaining pending in the head office of the Corporation.

6. The petitioner, however, by placing reliance on a communication of the Executive Officer dated 15.01.2009 addressed to the Officer-in-Charge of Chowk P.S., has tried to explain that a report of antecedent of the petitioner was sought for by the Executive Officer, which should be taken to be a step towards

consideration for appointment of the petitioner on compassionate ground. The Government policy contained in letter dated 05.10.1991 however does not lay down so nor any decision of the Corporation is there that for appointment on compassionate ground, antecedent or police verification have to be made. Such antecedent and police verification is actually and normally obtained only after the appointment is made.

7. Learned counsel for the petitioner then has tried to explain that he had filed an application on 23.02.2010 to the Executive Officer for forwarding his application to the Head Office of the Corporation but the absence of date of filing the application in prescribed pro-forma by the petitioner at the time of submission again would create a doubt in such claim of the petitioner.

8. It is in this background, this Court will have to take into consideration that the petitioner actually for the first time, had approached this Court by filing a writ petition, C.W.J.C. No. 4555 of 2013, well beyond the period of five years of the death of his father. This Court however in its order dated 22.03.2013 did not decide anything and, in fact, had simply remitted the matter back by observing that if the petitioner files a representation seeking appointment on compassionate ground, the same shall be considered in accordance with law. That order dated 22.03.2013 is appended as Annexure-8 to the Supplementary affidavit by the petitioner.

9. The Establishment-cum-Compassionate Committee of the Corporation infact on 26.12.2014 had considered the case of the petitioner along with 24 other persons who too were seeking appointment on compassionate ground and the Committee, in the case of the petitioner, had rejected the claim of the petitioner on the ground of lack of educational qualification, as would be evident from reading of the following portion of the decision of the Committee:

(sic)

10. It, thus, becomes clear that the communication in the impugned order is only a follow up action of the aforesaid decision taken by the Committee of the compassionate appointment. The impugned order dated 3.1.2015 also clearly records the reasons in detail, relevant portion whereof reads as follows:

11. This Court has given the whole history in order to examine the question of fact and law, which would now arise for consideration of the case of the petitioner. The first question would be as to which qualification will have to be looked into for the purpose of appointment on compassionate ground. It is not in doubt that the appointment of the petitioner was to be considered in the light of the observations and directions given by this Court in the order dated 22.03.2013. On 22.03.2013, the qualification for appointment on compassionate ground was Class-10.

12. In this regard, a number of Government decision, laying down qualification for Class-IV post, has to be also taken into consideration. Initially, in the State of

Bihar, there was no qualification laying down for the post of Class-IV post and the only requirement was that the person concerned must have knowledge of reading and writing Hindi and English. Subsequently, the same was amended by Circular dated 03.12.1980, wherein Class-7 was made the qualification in addition to capability of riding the cycle. This provision made by the executive instruction has remained for a long period till for the first time in the year 2010 statutory rules were framed for appointment of Class-IV (Group-D) post, wherein the qualification was made Class-8. After the statutory rules, earlier executive instruction obviously came to an end. The Government, however, in the year 2011, by an executive instruction dated 31.03.2011, had sought to enhance the qualification from Class-8 to Class-10 for Class-IV including Group-D post.

13. As noted above, the rules notified in the year 2010 still had the provision of qualification of only Class-8. Therefore, a question arose that could the statutory rules notified in the year 2010 supplanted by an executive instruction of the year 2011. The Government, therefore, had made amendment in the rules in the year 2012 again notifying that the appointment for Class-IV post, the minimum qualification would be Class-10.

14. The over emphasized reliance placed by the learned counsel for the petitioner on the Circular dated 26.12.2013 in fact has to be understood only in this background, which for the sake of clarity and convenience is quoted herein below:

15. From a bare reading of the aforementioned Government Notification dated 26.12.2013, it would be very clear that its purpose was to clarify with regard to qualification of Class-IV (Group-D) for the interregnum period i.e. in between 31.03.2011 to 11.12.2012 the date on which executive instruction was issued and the date on which the 2010 rules were amended. Thus, whatever was existing in respect of the qualification of Class-IV post, Class-8 being the qualification, was only for the purpose of interregnum period. Prior to 31.03.2011 as per the 2010 rules, the qualification was Class-8 and after amendment on 11.12.2012, the rules provide for appointment only of candidate having qualification of Class-10.

16. In this backdrop, if the case of the petitioner is examined, he was neither considered nor appointed in the period between 31.03.2011 to 11.12.2012. As noted above, the petitioner, for the first time, came before this Court in the year 2013 by filing his writ petition and on that date the qualification was only Class-10 and not class-8.

17. Thus, when the case of the petitioner was being considered by the Committee of compassionate appointment of Corporation in the year 2014, it could not have gone to the earlier qualification because the rules did not save any earlier action. The amended rules having come into force on 11.12.2012, the petitioner's case being considered only in the year 2014, pursuant to a direction of this Court in the year 2013, the Corporation had no other option but to consider the qualification which was existing on the date of consideration.

18. The Corporation, while doing so, had only followed the law laid down by the Apex Court in the case of State Bank of India and Another Vs. Raj Kumar, , wherein it has been laid down as a proposition that the eligibility criteria which is enforce on the date of consideration for appointment on compassionate ground will be the objective criteria and me earlier policy will have nothing to do. To that extent, the following passage of the judgment of the Apex Court in the case of Raj Kumar (supra) is worth reproducing which reads as follows:

"8. It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the Rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant.

9. Normally, the three basic requirements to claim appointment under any scheme for compassionate appointment are : (i) an application by a dependent family member of the deceased employee; (ii) fulfillment of the eligibility criteria prescribed under the scheme, for compassionate appointment; and (iii) availability of posts, for making such appointment. If a scheme provides for automatic appointment to a specified family member, on the death of any employee, without any of the aforesaid requirements, it can be said that the scheme creates a right in favour of the family member for appointment on the date of death of the employee. In such an event the scheme in force at the time of death would apply.

10. On the other hand, if a scheme provides that on the death of an employee, a dependent family member is entitled to appointment merely on making of an application, whether any vacancy exists or not, and without the need to fulfil any eligibility criteria, men the scheme creates a right in favour of the applicant, on making the application and the scheme that was in force at the time when the application for compassionate appointment was filed, will apply. But such schemes are rare and in fact, virtually nil.

11. Normal schemes contemplate compassionate appointment on an application by a dependent family member, subject to the applicant fulfilling the prescribed eligibility requirements, and subject to availability of a vacancy for making the

appointment. Under many schemes, the applicant has only a right to be considered for appointment against a specified quota, even if he fulfils all the eligibility criteria; and the selection is made of the most deserving among the several competing applicants, to the limited quota of posts available. In all these schemes there is a need to verify the eligibility and antecedents of the applicant or the financial capacity of the family. There is also a need for the applicant to wait in a queue for a vacancy to arise, or for a selection committee to assess the comparative need of a large number of applicants so as to fill a limited number of earmarked vacancies.

12. Obviously, therefore, there can be no immediate or automatic appointment merely on an application. Several circumstances having a bearing on eligibility, and financial condition up to the date of consideration may have to be taken into account. As none of the applicants under the scheme has a vested right the scheme that is in force when the application is actually considered, and not the scheme that was in force earlier when the application was made, will be applicable.

13. Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

14. In this context we may usefully refer to the decision of this Court in *Union of India (UOI) Vs. R. Padmanabhan*, wherein this Court observed (SCC PP 278-79, para 8):

"8.....That apart, being *ex gratia*, no right accrues to any sum as such till it is determined and awarded and, in such cases, normally it should not only be in terms of the Guidelines and Policy in force, as on the date of consideration and actual grant but has to be necessarily with reference to any indications contained in this regard in the Scheme itself. The line of decisions in relation to vested rights accrued being protected from any subsequent amendments may not be relevant for such a situation and it would be apposite to advert to *State of Tamil Nadu Vs. Hind Stone and Others*, . That was a case wherein this Court had to consider the claims of lessees for renewal of their leases or for grant of fresh leases under the Tamil Nadu Minor Mineral Concession Rules, 1959. The High Court was of the view that it was not open to the State Government to keep the applications filed for lease or renewal for a long time and then dispose them of on the basis of a rule which had come into force later. This Court, while reversing such view taken by the High Court, held that in the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application, despite the delay if any, involved although it is desirable to dispose of the applications, expeditiously."

15. We may also refer to the decision of this Court in Kuldeep Singh Vs. Govt. of NCT of Delhi, which considered the question of grant of liquor vend licences. This Court held that where applications required processing and verification the policy which should be applicable is the one which is prevalent on the date of grant and not the one which was prevalent when the application was filed. This Court clarified that the exception to the said rule is where a right had already accrued or vested in the applicant, before the change of policy.

16. In this case the employee died in October, 2004, the application was made only in June, 2005. The application was not even by the respondent, but by his mother. Therefore, it was necessary to ascertain whether respondent really wanted me appointment, whether he possessed the eligibility, and whether any post was available. Within two months of the application, me new Scheme came into force and the old Scheme was abolished. The new Scheme specifically provided that all pending applications will be considered under the new Scheme. Therefore it has to be held that the new Scheme which came into force on 4.8.2005 alone will apply even in respect of pending applications."

(Underlining for emphasis)

19. Thus in view of the law laid down by the Apex Court in the case of Raj Kumar (supra) and the facts, as noted above, there can be no two opinion that the petitioner, having only the qualification of Class-8, was correctly found ineligible for appointment on compassionate ground in December 2014 when his case was considered in view of the earlier order of this Court dated 22.03.2013 in C.W.J.C. No. 4555/2013.

20. Let it be noted that the appointment on compassionate ground has to be always made as per the Scheme laid down in the policy. The Government policy which is still in vogue is dated 05.10.1991 and also has been adopted by the Corporation. That policy clearly lays down that the appointment can be made only of such person who are eligible including having qualification for the post. The only power of relaxation in such policy is in respect of relaxation of age.

21. In that view of the matter, this Court will not find any error in rejecting the case of the petitioner for appointment on compassion-ate ground inasmuch as the petitioner did not possess the requisite qualification for Class-IV post in Corporation. That being so, this writ application must fail and is, accordingly, dismissed.