

(2006) 07 AHC CK 0120

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 76889 of 2005

Ram Gopal and Anr.

APPELLANT

Vs

Union of India & Ors.

RESPONDENT

Date of Decision : 04-07-2006

Acts Referred:

Citation : (2006) 07 AHC CK 0120

Hon'ble Judges : V.K.Shukla, J

Final Decision : Dismissed

Judgement

V.K. Shukla, J.—Present writ petition has been filed praying for following relief which is being quoted below:

?(i) Issue a writ order or direction in the nature of certiorari quashing the impugned order dated 2762001 (Annexure No. 5) and 3032005 (Annexure No. 9) passed by respondent No. 2.

(ii) issue a writ order or direction in the nature of mandamus directing the respondents authorities to follow the judgment and direction contained in the Raj Naik's case and consider the claim petitioner No. 1 for appointment on compassionate ground.?

2. Brief fact as disclosed in the writ petition is that petitioner No. 2 had been working in the office of District Manager, Food Corporation of India Limited as Handling Labour Gang No. 14, Token No. 518, Food Storage, Varanasi. Petitioner No. 1 is the son of petitioner No. 2 and claiming compassionate appointment in view of the departmental circular dated 371996 issued by the Food Corporation of India Ltd., in exercise of power vested under Section 45 of the Food Corporation Act for the purposes of regulating and extending the benefit of the appointment of next kith and kin of Handling Labours of the Corporation who sought voluntary retirement on medical ground. Board of Director's in 24th meeting held on 1061996 has approved the aforesaid proposal and pursuant thereto Circular dated 371996 had been issued. Petitioner No. 2 had applied for

being superannuated on medical ground and in this respect letter dated 10102000 has been sent by respondent No. 3 and petitioner No. 2 has been superannuated on medical ground on 31102000 It has been contended that application has been moved for providing compassionate appointment to petitioner No. 1 and in this regard a committee was constituted. Said committee on 332001 found petitioner No. 1 physically fit for loading and unloading of the 100 kgs. and 50 kgs. food grain bags on his back. Thereafter on 2762001 communication was sent to the effect that the claim of petitioner No. 1 cannot be adverted to as same was time barred. Against the same representation was moved and thereafter again claim of petitioner No. 1 has been rejected. At this juncture present writ petition has been filed. Parity has been sought to be drawn qua the judgment of this Court in the case of Raj Nath Yadav & Anr. v. The Senior Regional Officer, Food Corporation of India & Anr., a copy of which has been annexed as Annexure No. 7 to the writ petition.

3. Counteraffidavit has been filed and in the said counter affidavit it has been contended that the benefit of Circular dated 371996 for compassionate appointment could not be extended as application was moved by petitioner No. 2 when he was above 55 years of age and the same was clearly barred by time. It has been contended that rightful decision has been taken in term of Circular dated 371996, as such no interference is warranted by this Court.

4. Rejoinder affidavit has been filed and therein statement of fact mentioned in the counteraffidavit has been disputed and averments mentioned in the writ petition has been reiterated.

5. After pleading mentioned above have been exchanged, present writ petition has been taken up for final hearing and disposal with the consent of the parties.

6. Sri R.C. Gupta, learned Counsel for the petitioner contended with vehemence that in the present case once application of petitioner No. 1 to retire on medical ground has been accepted then in all eventuality, compassionate appointment ought to have been offered and ground on which claim of the petitioner has been rejected is unsustainable ground, as such writ petition in question is liable to be allowed and directives to be issued for providing compassionate appointment.

7. Sri Satya Prakash, Advocate, on the other hand countered the said submission by contending that application moved for grant of compassionate appointment was clearly barred by time, as such no interference be made by this Court and writ petition is liable to be dismissed.

8. Before proceeding to consider the respective claim raised on behalf of the parties, relevant Circular dated 371996 is being looked into:

THE FOOD CORPORATION OF INDIA. HEAD OFFICE, NEW DELHI

No. IR(L) 31(27)/87 Dated 3rd July, 1996

CIRCULAR

Subrecruitment procedure for appointment of next kin of department workers who seek retirement on medical grounds at their own request, in relaxation of the procedure of getting sponsored from Employment Exchange.

According to the existing instructions as contained in Hqrs. Circular letter No. 24 (8)/15IR (P), dated 22/1977, 27/11/1980 and 14/4/1981, the dependents of the deceased department workers who die while in service and the dependent of departmental workers retired on medical grounds by FCI can be appointed on compassionate grounds without sponsoring their names through the Employment Exchange.

The question of extending the benefit of compassionate ground appointment to the departmental labour retired on medical grounds at their own request in relaxation of the procedure of getting them sponsored through Employment Exchange has been under consideration.

It has been decided with the approval of the Board of Directors in this 248th meeting held on 10/6/1996 that the benefit of compassionate ground appointment shall be extended to the dependent of the departmental workers who seek voluntary retirement on medical ground at their own request subject of the following conditions:

- (i) The workers who seek voluntary retirement on medical ground should apply within the age limit of 55 years for the purpose of availing the benefit of compassionate ground appointment;
- (ii) The retirement on medical ground should be accompanied with medical certificates from Civil Surgeon/District Medical Officer of equal status in the prescribed proforma, which will be subject of verification, by FCI;
- (iii) The benefit of compassionate ground appointment shall be given only in Handling Labour Category that too for male dependent only;
- (iv) The maximum age limit for such compassionate ground appointment should not exceed 30 years. The minimum age of 18 years should not in any case be relaxed;
- (v) The compassionate shall be made only in deserving cases where there is no hearing member in the family of the retired worker;
- (vi) While considering the compassionate ground appointment the financial benefits, which may be available on retirement, should also be taken into account and the Competent Authority should satisfy that the retirement benefit shall not meet, for running the family; or
- (vii) Application for such compassionate grounds appointment shall be made within 3 months from the date of retirement and this period may be relaxed by the Competent Authority in exceptional and deserving cases.?

9. A bare perusal of the Circular quoted above would go to show that the benefit

of the compassionate ground appointment would be extended to the dependent of departmental workers who seek voluntary retirement on medical ground on their own, request subject to fulfillment of various conditions. First condition which has been prescribed in this respect is that worker who seeks voluntary retirement on medical ground should apply within the age of 55 years for the purposes of availing the benefit of compassionate ground appointment. Second condition is that retirement on medical ground should be accompanied with medical certificates from Civil Surgeon/District Medical Officer of equal status in the prescribed proforma, which would be subject of verification, by FCI. The benefit of compassionate ground appointment has to be given only in Handling Labour Category and that too for male dependent only. Maximum age limit for such compassionate ground appointment should not exceed 30 years has been provided for and minimum age limit of eighteen years. Compassionate appointment has to be made only in deserving cases when there is no hearing member in the family and thereafter various factor which are to be taken into account for grant of compassionate appointment. Condition No. (vii) mentions that application for such compassionate grounds appointment shall be made within three months from the date of retirement and this period may be relaxed by the Competent Authority in exceptional and deserving cases. The appointment is subject to medical fitness by an authorized Medical Officer confirming that he is fit to handle carry bags of big size. This particular circular has been issued in exercise of power vested under Section 45 of Food Corporation of India Act and said circular has statutory force. As per this circular, as far as moving of application by worker for the purposes of availing the benefit of compassionate ground appointment there is mandatory requirement that the worker who seeks voluntary" retirement on medical ground should apply within the age of 55 years and no power of relaxation has been accorded to the authority, qua this aspect of the matter As far as moving of application for compassionate ground appointment after retirement is concerned the same has to be made within three months from the date of retirement. This period of three months can be relaxed in eyeceptional and deserving cases. Thus condition No. (i) provides opportunity to the workers of moving application for the purposes of availing the benefit of compassionate ground appointment before attaining age of 55 years and there is no provision for according relaxation of said time limit or for extend of the aforesaid time period. Condition No. (i) and Condition No. (vii) operate in altogether different filed. Condition No. (i) deals with preretirement phase, and condition No. (ii) deals with postretirement phase of moving application for grant of compassionate appointment.

10. Here undisputed position is that the date of birth of petitioner No. 2 is 1771943. Petitioner No. 2 for the first time has moved an application for retirement on medical ground on 312000 and on said application moved request has been made for providing voluntary retirement on medical ground as well as for compassionate appointment to his son. Again application was moved on 2262000 making request to the similar effect. Thereafter petitioner was apprised

on 2662000 that the said application is not in term of circular dated 371996, as such same has not been transmitted to the Regional Office, Lucknow. Petitioner No. 2 on 2662000 amended certificate of Regional Medical Board, Varanasi by which he was declared unfit and on the strength of the same he requested that he be permitted to discharge light duties This request of petitioner No 2 was forwarded to the Regional Office, Lucknow, however again on 2092000. Petitioner No. 2 requested for retirement on medical ground. Thereafter request made by petitioner No. 2 was accepted and petitioner No. 2 was permitted to retire on 31102000 on medical ground. Petitioner No. 2 thereafter moved an application for grant of compassionate appointment on 7112000 to his son and the same was transmitted to the Regional Office, Lucknow on 2122000. On the application of petitioner No. 2, on 442001, entire documents pertaining to medical fitness etc. has been transmitted to Regional Office but by the Regional Office refused to entertain the same being time barred on 2/662001. Thereafter again request has been made but the same has also turned down. The ground on which application for grant of compassionate appointment of petitioner has been rejected is that application has been moved after petitioner No. 2 has completed age of 55 years. This fact has been admitted that application has been moved after petitioner completed fifty five years of age. Conditions No. (i) is clear and categorical that the worker who seek voluntary retirement on medical ground should apply within the age limit of 55 years for the purposes of availing the benefit of compassionate ground appointment and as there is no provision to accord relaxation to the said age fixed or extend the said, the authorities are fully justified in refusing compassionate appointment. Here in the present case as undisputedly application has been moved after completing the age of 55 years as such same is clearly not entertainable.

11. Hon"ble Apex Court in the case of Surya Kant Kadam v. State of Karnataka & Ors., reported in 2001(2) LBESR 115 (SC) : 2001 (90) FLR 340 (SC), has held that in absence of any statutory rules, appointment on compassionate ground can be governed by the executive instructions and in spite of the fact that the said instructions may not have a statutory force, the same are bound to be observed by the employer.

12. Here as mentioned above that circular which has been issued has statutory force and same has to be observed by the employer. Thus, employer cannot be said to be at fault for rejecting the claim of the petitioner for grant of compassionate appointment on the ground that same was in breach of circular itself.

13. Reliance has been placed on the judgment of this Court in the case of Raj Nath Yadav & Anr. v. The Senior Regional Officer, Food Corporation of India & Anr., (Annexure7) which has been affirmed in the Special Appeal and against which SLP has also been filed and therein no interim order has been passed for the proposition that once voluntary retirement on medical ground has been accorded and medical examination has been held then the appointment ought to

have been offered. Said judgment in the case of *Raj Nath Yadav & Anr. v. The Senior Regional Officer, Food Corporation of India & Anr.*, would not come to the rescue of the petitioner, inasmuch as fact of said case clearly reflects that the application which was moved for grant of compassionate appointment was well within time on 30/3/1998 and at that point of time incumbent who was seeking voluntary retirement on medical ground was less than 55 years. Distinguishing feature of the aforesaid judgment, noted to the judgment itself is being quoted below:

?Shri Agarwal then submitted that the second petitioner continued to work till 31/8/1999 and paid salary and thus he worked upto the age of 56 years 1 month and 26 days whereas the maximum age limit for seeking compassionate appointment is 55 years. The fact of the matter is that petitioner had submitted the application well within time on 30/3/1998 and at that time he was less than 55 years. Delay in considering the application of the petitioner was not on account of the fault of the petitioner but on account of delay by the respondents. Even though the petitioner No. 2 might have given another application on 19/1/1999, the same could not be treated as fresh application but it would be treated in continuation of the original application dated 30/3/1998 filed by the second petitioner.?

14. Next judgment on which reliance has been placed in the case of *Nizamuddin & Anr. v. The District Manager, Food Corporation of India, Kanpur Nagar & Anr.*, in Special Appeal No. 579 of 2005, decided on 11/5/2005 for the proposition that once voluntary retirement on medical ground has been provided for then grant of compassionate appointment is a must. Following observation has been relied upon:

?It was a writ petition of father and son. The son was writ petitioner No. 1 and the father was the second one. They had come to the respondents under a Scheme which permitted an employee to retire below the age of 55 years on medical ground and if he did that his dependent would be entitled to be considered for a compassionate appointment. The father was medically found unfit and duly granted retirement. The son was found medically fit but not granted the employment. The only reason put forward by the authorities is that the father had put in the application for voluntary retirement eight days after he attained the age of 55 years; according to the writ petitioners it was only two days and not eight days.

Be that as it may the authorities took an inconsistent stand in allowing medical retirement for the father and disallowing compassionate appointment for the son. It has never been the case of the authorities that in any event they would have to retire the father as he had made an application for retirement on medical grounds. Since the scheme of retirement and new employment was sought to be implemented both the father and the son and the authorities had acceded to such an approach by the two writ petitioners, they have to apply the scheme to both of them on reasonable basis. They failed to do so in allowing the scheme to

operate for the father and in stopping the operation of the scheme for the son, although the cause for nonapplication or application of the scheme was the for both father and son as far as the authorities were concerned.?

15. In the aforesaid Division Bench judgment this aspect of the matter as to what would be the impact of nonmoving of application well within the prescribed age of 55 years has not at all been touched or decided. Said judgment starts with 'Be that as it may?'. The question of maintainability of the application for grant of compassionate appointment has not at all been dealt with and the same has not at all been answered, as such said judgment cannot said to be binding precedent. Hon"ble Apex Court in the case of Bhagwan Pillai v. State, reported in AIR 2003 SC 2317, has taken the view that if there is specific statutory bar, the view, if any expressed, without analysing the statutory provision, cannot be treated as binding precedent. To the contrary Hon"ble Apex Court in the case of Commissioner, Public Instructions & Ors. v. K.R. Vishwanath, reported in 2005 (107) FLR 153, decided on 3082005 wherein for the purpose of moving application for grant of compassionate appointment, for minor limitation was provided for making application to be within one year from attaining majority and therein majority was attained on 20101995 and application was moved on 2121996 by applicant. Authorities rejected the application, as barred by limitation, Karnataka Administrative Tribunal as well as Division Bench reversed the decision taken by authorities and directed the authorities to consider claim for grant of compassionate appointment ignoring limitation, Apex Court did not approve the judgment of Tribunal and High Court, and took the view that Tribunal and High Court were not justified in directing consideration of claim for compassionate appointment, in terms of Rules, without taking note of limitation prescribed. Operative portion of said judgment is being quoted below:

'Above being the position, the Tribunal and the High Court were not justified in directing that the respondent's case be considered for appointment in terms of the Rules without taking note of the limitation prescribed. The judgments are set aside. The appeal is allowed without any order as to costs.?

16. Hon"ble Apex Court in the case of A. Umarani v. Registrar, Cooperative Societies, reported in 2004 (7) SCC 112, while considering the case of compassionate appointment, has held that even Apex Court should not exercise the Extraordinary jurisdiction under Article 142, issuing directions to give compassionate appointment in contravention of the provision of the Scheme/ Rules etc. as provisions will have to be complied with, mandatorily and any appointment given or ordered to be given in violation of the Scheme would be illegal.

17. Consequently, present writ petition is dismissed.