
(2010) 11 AHC CK 0277

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 28295 of 2007

Ram Hari

APPELLANT

Vs

Senior Regional Manager and Another

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Citation : (2011) 1 ADJ 186

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—Heard learned Counsel for the Petitioner and learned Standing Counsel.

2. With the consent of the learned Counsel for the parties, this writ petition is being finally heard and decided at this stage under the Rules of the Court.

3. Aggrieved by the order dated 7.5.2004, Annexure-12 to the writ petition, passed by Assistant Manager, Food Corporation of India, Azamgarh (hereinafter referred to as the "F.C.I.") rejecting the claim of the Petitioner for compassionate appointment on the basis of the application submitted by his father seeking retirement on medical grounds subject to the condition of giving compassionate appointment to the Petitioner, this petition has been filed. The impugned order says that the Senior Regional Manager, F.C.I. Lucknow vide order dated 24.2.2004 /4.3.2004 has issued certain directions pursuant thereto the application given for conditional appointment on compassionate basis has been rejected.

4. The facts in brief are that the Petitioner's father was working as a "Handling Labour" in F.C.I, at its district office-FSD, Azamgarh, Gang No. 6. The F.C.I, introduced a scheme vide circular dated 2.2.1977 providing for retirement on medical grounds with the condition that in such a case, if the employee so requests appointment on compassionate basis to a dependant of such employee

can be allowed. The circular dated 2.2.1977 is reads as under:

THE FOOD CORPORATION OF INDIA

16-20 BARAKHAMBA LANE, HEAD OFFICE, NEW DELHI

NO. 24(8)/75IR(P) Dated 2.2.1977

CIRCULAR

Sub: Recruitment procedure-Appointment of next kin of deceased workers or workers retired on medical ground in relaxation of the procedure of getting them sponsored through employment exchange.

The demand of the departmental workers, both of the departs as well as the Food Storage Depots that the dependents of a deceased worker or a worker who is retired on medical grounds may be employed directly without going through the Employment Exchange has been under consideration.

It has now decided that this benefit may be extended to the departmental workers subject to the following conditions.

(i) of the dependents (son/daughter/widow who has not re-married/close relative who gives and assurance of looking after the family of medical grounds and whose family is left indigent circumstances needing immediate assistant, there being no other earning member in the family, will be given appointment without following the formalities of sponsoring by the Employment Exchange, subject to the availability of the vacancy, and further subject to the fact the that he or she is duly qualified for the post.

(ii) Time limit for submitting applications will be six months from the date of death/retirement on medical grounds, and this is no case should be extended.

iii) This benefit will come into effect from 1st January, 1977.

5. The aforesaid circular was amended vide circular dated 3.7.1996 and thereby compassionate appointment seeking retirement on medical grounds to be allowed on following conditions:

THE FOOD CORPORATION OF INDIA

HEAD OFFICE, NEW DELHI,

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

CIRCULAR

Sub: Recruitment procedure for appointment of next kin of Departmental 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 2.2.1977.27.11.1980 and 14.4.1981, the dependents of

the deceased departmental workers who dies 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 10.6.1966 that the benefit of compassionate ground appointment shall be extended to the dependent of the departmental workers who seek voluntary retirement on medical grounds at their own request subject to the following conditions:

(i) The worker who seeks voluntary retirement on medical grounds 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 certificate from Civil Surgeon/ District Medical Officer of equal status in the prescribed proforma, which will be subject to 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 appointment shall be made only in deserving cases where there is no earning 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.

(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.

(viii) The appointment shall be subject to medical fitness by an authorized Medical Officer confirming that he is fit to handle, carry bags of big size of....

6. It appears that the Petitioner's father made an application on 7.3.2002 seeking retirement on medical grounds provided his son may be given employment in his place. The crucial words in the application of the Petitioner's father reads as under:

I desire to go on retirement on medical ground, if my abovenamed son could be provided with an employment in my place as a Handling Labour

7. The application was duly supported with medical certificate issued by Chief Medical Officer, Azamgarh (Annexure-3 to the writ petition). The Petitioner's father also filed an affidavit before the authority concerned. The aforesaid application for voluntary retirement was accepted by the District Manager vide order dated 10.7.2002 allowing Shri Sukhran, Petitioner's father to retire from his post w.e.f 30.6.2002. Thereafter in order to provide compassionate appointment to the next kith/kin, the authorities provided a proforma to the Petitioner to submit an application for compassionate appointment on the post of "Handling Labour" in view of the scheme accepted by his father. The Petitioner submitted his application on 20.7.2002. (Annexure-6 to the writ petition). It is this application which has been considered and rejected by the impugned order.

8. The Respondents have filed counter-affidavit stating that the scheme as amended in 1996 did not provide compassionate appointment on retirement on medical grounds as a matter of right. But there are two different things. One is retirement and another is compassionate appointment.

9. Reliance is placed by both the sides on the Apex Court decision in Food Corporation of India and Anr. v. Ram Kesh Yadav and Anr. JT 2007(4) SC

1. In the aforesaid judgment the Court having considered the entire scheme of F.C.I., has held in paras 7 and 8 as under:

7. There is no doubt that an employer cannot be directed to act contrary to the terms of its policy governing compassionate appointments. Nor can compassionate appointment be directed de hors the policy. In Life Insurance Corporation of India v. Asha Ramchandra Ambedkar JT 1994(20 SC 183 this Court stressed the need to examine the terms of the Rules/Scheme governing compassionate appointments and ensure that the claim satisfied the requirements before directing compassionate appointment. In this case, the scheme clearly bars compassionate appointment to the dependant of an employee who seeks voluntary retirement on medical grounds, after attaining the age of 55 years. There is logical and valid object in providing that the benefit of compassionate appointment for a dependant of an employee voluntarily retiring on medical grounds, will be available only where the employee seeks such retirement before completing 55 years. But for such a condition, there will be a tendency on the part of employees nearing the age of superannuation to take advantage of the scheme and seek voluntary retirement at the fag end of their service, on medical grounds, and thereby virtually creating employment by "succession". It is not permissible for the Court to relax the said condition relating to age of the employee. Whenever a cut off date or age is prescribed, it is bound to cause hardship in marginal cases, but that is no ground to hold the provision as directory and not mandatory.

8. As rightly contended by FCI, the issue of voluntary retirement of an employee

on medical grounds and the issue of compassionate appointment to a dependent of such retired employee are independent of such retired employee are independent and distinct issues. An application for voluntary retirement has to be made first. Only when it is accepted and the employee is retired, an application for appointment of a dependant on compassionate grounds can be made. Compassionate appointment of a dependant is not an automatic consequence of acceptance of voluntary retirement. Firstly, all the conditions prescribed in the Scheme dated 3.7.1996 should be fulfilled. Even if all conditions as per guidelines are fulfilled, there is no "right" to appointment. It is still a matter of discretion of the competent authority, who may reject the request if there is no vacancy or if the circumstances and conditions of the family of the medically retired worker do not warrant grant of compassionate appointment to a dependant. Therefore, the observation of the High Court in Nizamuddin (supra) that allowing the request of the employee for voluntary retirement on medical grounds and rejecting the application of the dependant for compassionate appointment on the ground of non-fulfillment of conditions of scheme would amount to taking inconsistent, is clearly erroneous.

10. However, it has also observed that once an offer made is conditional, and, if one part of the offer is accepted then it would mean the entire offer as such stands accepted. In such a case it would not be open to F.C.I, to accept on the one hand only request for voluntary retirement and to reject appended condition of compassionate appointment to one of the dependant of such employee. It would be appropriate to notice para 14, 15 and 16 of the judgment which read as under:

14. The question in this case is not whether the request of the Respondents was contrary to the scheme. Nor it is the question, whether the scheme would be violated if the first Respondent is appointed on compassionate grounds. The limited question is whether FCI, having accepted the offer and accepted performance of the offer by the second Respondent, can refuse to perform or comply with the condition subject to which such offer was made. The answer is obviously in the negative. Having accepted the offer, FCI cannot avoid performance of the condition subject to which the offer was made. As noticed earlier, nothing prevented FCI from rejecting the application of the employee outright, or inform the employee before accepting the offer of voluntary retirement that it could not accept the condition, so that the employee would have had the option to withdraw the offer itself.

15. Lastly, it was pointed out that under the scheme, the competent authority had the discretion to deny compassionate appointment even if all the conditions were fulfilled; and that, therefore, the High Court ought to have merely directed consideration of the application for compassionate appointment, instead of directing appointment. But the denial of employment was not on the ground that the competent authority on considering the relevant circumstances, found that it was not a fit case for appointment on compassionate grounds. It is true that in

the normal course, if the employee's son was found eligible for employment on compassionate grounds, the Court ought to have directed consideration of his case in terms of the scheme instead of issuing a mandamus to give employment. But as already observed, the conditional offer having been accepted, FCI could not thereafter refuse appointment. We also find that fact FCI did not dispute the fact that the first Respondent was eligible and suitable for the post of handling labour. Nor did FCI contend that there was no vacancy. The employee had retired in 2000. For nearly 7 years, his son has been denied employment. On the peculiar facts, we do not find it appropriate to interfere with the direction given by the High Court to appoint the first Respondent, though for different reasons.

16. We have upheld the direction or grant of employment only because of the acceptance of an inter-linked conditional offer. Where the offer to voluntarily retire and request for compassionate appointment are not inter-linked or conditional; FCI would be justified in considering and deciding each request independently, even if both requests are made in the same letter or application. Be that as it may.

11. It is therefore evident that this case has to be examined in the light of the about decision of Apex Court and if it is found that application seeking retirement on medical ground was a composite conditional one, and making a condition that the dependant of the employee concerned has to be appointed and on that condition only he is seeking retirement on medical grounds, in such a case if the department has accepted request for voluntary retirement, then they cannot deny appointment to the dependant of such employee. But where the application is separate or there are two requests, one is for voluntary retirement on medical grounds and another request for appointment on compassionate basis to one of the dependants then in that circumstances, the position may be different.

12. In the present case as has already been noticed above, the application of the Petitioner's father was clearly a conditional and composite application. It says that in case his dependant given appointment, he intends to seek voluntary retirement. This application without reservation was accepted by authorities concerned and the incumbent was allowed to retire. Having accepted such conditional request, in my view, it would not allow the Respondent to reject request of the Petitioner for compassionate appointment, based on the conditional voluntary retirement sought by his father which has already been accepted and acted upon unconditionally by the Respondents. The case in hand is squarely covered by the Apex Court's decision in Ram Kesh Yadav (Supra) wherein it has held if the application given is a composite one and conditional, in such a case, acceptance of voluntary retirement would mean that compassionate appointments request has also been accepted, and, that it is incumbent upon F.C.I. T thereafter to provide compassionate appointment.

13. Learned Counsel for F.C.I, submits that later on some circulars have been issued in 2005 and onwards where the scheme is modified but in the case in hand that would have no application to the present facts and circumstances of

the case for the reason that the composite conditional application of the Petitioner's father having already been accepted by the competent authority allowing retirement of Petitioner's father w.e.f 30.6.2002, the subsequent amendment, if any, made would not affect inasmuch as the entire application with all the conditions appended would be deemed to be accepted by the Respondents when it accepted retirement of Petitioner's father unconditionally by order dated 10.7.2002.

14. In this case besides other, the Respondents are also estopped from taking a different view. Once they have represented the employees in a particular manner, acting whereupon the employee has acted to his detriment, then it would not be justified to allow the Respondents to wriggle out from their representations.

15. In view of the aforesaid discussion, the writ petition is allowed.

16. The impugned order dated 7.5.2004 is hereby quashed. The Respondents are directed to consider application of the Petitioner for compassionate appointment as per scheme so available at the time when the composite conditional application of the Petitioner was accepted by F.C.I.. If Petitioner fulfills all other requisite conditions of eligibility etc., he shall be considered for appointment accordingly.

17. This entire exercise shall be completed by Respondents within two months from the date of production of certified copy of the order before him.