

(1997) 07 RAJ CK 0019
In the Rajasthan High Court
Case No : C.W.P. No. 1969 of 1997

Ram Lakhan and Another

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-07-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 16(2)

Citation : (1999) 3 LLJ 519 : (1998) 2 WLC 208

Hon'ble Judges : N.L. Tibrewal, J

Bench : Single Bench

Advocate : Lokesh Kumar Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

N.L. Tibrewal, J.—By this petition under Article 226 of the Constitution of India, the petitioners are seeking a writ of mandamus to consider and provide suitable employment to petitioner No. 1 under the Rajasthan Recruitment of Dependents of Government Servants (Dying while in Service) Rules, 1975 (hereinafter referred to as "the Rules of 1975"). In order to appreciate the basis of the claim, necessary facts, as borne out from the petition and the documents filed along with the petition, may be narrated, which are as under : Late Shri Raghunath Prasad was a constable in the Police Department of the State Government, who died while in service way-back on June 20, 1969. Petitioner No. 2 Smt. Ram Devi is his widow. It appears that in the year 1995, i.e., after more than 26 years of her husband's death Smt. Ram Devi moved an application in the office of the Superintendent of Police, Bharatpur with a prayer to provide suitable employment/appointment to petitioner No. 1 on the ground of his being her adopted son. The prayer was rejected by the Deputy Inspector General of Police (DIG), Bharatpur Range, Bharatpur vide order dated November 6, 1985 on the ground that petitioner Ram Lakhan was not a member of the "family" of the deceased government- servant. The petitioners are challenging the said order on two fold grounds - (i) the view of the DIG that petitioner No. 1 was not a

member of the "family" of the deceased Government servant is not legally correct as he has been validly adopted by petitioner No.2 vide a registered adoption deed after performing all necessary ceremonies; (ii) petitioner No. 1, being nephew of the deceased was entitled to get the benefit under proviso to Rule 2(f) of the Rules of 1975. I have given my careful consideration to the above submissions. As stated earlier, the application seeking employment under the Rules of 1975 has been moved by petitioner No.2 after 26 years of her husband's death. Rule 2(f) of the Rules of 1975 defines "Family" as under-

"Family" means the family of the deceased government servant and shall include wife or husband, son and unmarried or widow daughters and son/daughter adopted according to the provisions of law by the deceased Government servant, who were dependent on the deceased Government servant.

Provided that if no such member of the family be eligible for getting the benefit under these Rules, the benefit available under these rules may be extended to any other close relative of the deceased to be named by the widow or the guardian of the children of the deceased with the specific approval of the Department of Personnel."

2. A bare perusal of the above definition of "Family" would show that any person seeking benefit to be in the family of the deceased as an adopted son/daughter requires to fulfil the following conditions -

- (1) The adoption should be in accordance with the provisions of law;
- (2) it should be by the deceased government servant;
- (3) adopted son or daughter should be dependent on the deceased government servant.

3. In the instant case, admittedly conditions No. 2 and 3 are not fulfilled. Petitioner No. 1 was neither adopted by the deceased government servant nor he was dependent on him. In fact, he was not even born when the deceased government servant, namely, late Shri Raghunath Prasad had died. In view of this, claim of petitioner No. 1 to get employment under the Rules of 1975 on the ground of his being adopted by petitioner No. 2 has been rightly rejected.

4. Faced with the above situation, learned counsel vehemently contended that petitioner No. 1, being nephew of the deceased government servant, is entitled to get the benefit of employment as his "close relative". For this purpose reliance is placed on the proviso to Rule 2(f) which defines the term "Family".

5. It has been consistently held by the Apex Court of the country, as well by this Court that the object of compassionate employment is to enable the family to get over the financial crisis which it faces at the time of death of the sole breadwinner. Any provision providing employment on compassionate grounds must have a reasonable nexus to the above object. The object to provide employment on compassionate ground is not to give a member of such family a post much

less a post for the post held by the deceased. It also does not create a vested right in favour of a person to get employment as a matter of course. In this connection it shall be useful to refer the following observation made by the Supreme Court in *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1995 I LJ 798) at p.799 :

"As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into: consideration 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 in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. 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. The post in classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provisions 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 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 of 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 the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned.

Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased and sometime

even in posts above Classes III and IV. That is legally impermissible."

6. Compassionate employment is an exception to the general rules of recruitment in public services. It cannot be made as a new source of recruitment to provide appointment to someone in all cases on death of a Government servant. Such appointment must serve the purpose for which the Rules are framed otherwise it shall be violative of Articles 14 and 16 of the Constitution of India.

7. Claim of petitioner No. 1, seeking employment on the ground of his being a close relative of the deceased government servant cannot be accepted for the following reasons -

(1) In the application made under the Rules of 1975, employment/appointment was not sought on this ground;

(2) the application was made after 26 years of the death of the government servant i.e., long after the crisis was over;

(3) the term "close relative" contained in the proviso to Rule 2(f) is quite vague and undefined, as such it would be violative of Articles 14 and 16 of the Constitution. Article 14 provides equality of opportunity and equal protection of law and it prohibits discrimination. Then, Article 16(2) specifically prohibits discrimination which reads as under :

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State."

8. An appointment on the basis of descent is, violative of Article 16(2). It has been rightly held by the Supreme Court in Umesh Kumar Nagpal's Case (supra) that as a rule appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Compassionate employment in favour of the dependent of the employee dying in harness and leaving family in penury and without any means of livelihood is an exception to the above general rule which is based purely on humanitarian consideration in the interest of justice to meet immediate contingency created on sudden death of the bread-winner of the family. Granting appointment only on the basis of being a "close relative" of the deceased Government servant has no nexus with the object sought to be achieved. Further the term "close relative" is also quite vague and undefined. If employment is granted on the ground of only being a "close relative" of the deceased Government servant, it would be a breeding ground for misuse. It would offend the equality clause contained in Articles 14 and 16 of the Constitution. In Auditor General of India and others Vs. G. Ananta Rajeswara Rao, it has been held that extension of benefit of employment on compassionate ground to a near relative of the deceased government servant is violative of Article 16 of the Constitution of India. The Supreme Court has observed thus at

P.814:

"A reading of these various clauses in the memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) or 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to son/daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint persons to these posts on the ground of compassion. Accordingly we allow the appeal in part and hold that the appointment in part I of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in the harness of Government employee is valid. It is not on the ground of descent simpliciter, but exceptional circumstances for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness from economic distress. In other respects Article 16(2) is clearly attracted.

9. In view of this, the proviso to Rule 2(f) which provides extension of benefit of employment under the Rules to a "close relative" of the deceased Government servant is held to be violative of Articles 14 and 16 of the Constitution of India. Hence, petitioners' claim to provide employment/ appointment to petitioner No. 1 under the Rules of 1975 has been rightly rejected and no interference is called for by this Court. Consequently, the petition is dismissed summarily.

10. Before parting with I would like to state that some of the provisions contained in the Rules of 1975 run counter to the law laid down by the Supreme Court and they require reconsideration and appropriate modification. Without detailing out a number of decisions rendered by the Supreme Court in this regard I would like to refer only two judgments which have been referred to above, viz., Umesh Kumar Nagpal v. State of Haryana and Ors. (supra) and Auditor General of India and Ors. v. G. Ananta Rajeshwara Rao (supra). The State Government shall take appropriate steps to modify the rules accordingly. A copy of this order

be sent to the Chief Secretary, Government of Rajasthan, Jaipur and the Secretary, Department of Personnel (Rules), Secretariat, Jaipur for compliance.