

(2002) 01 JH CK 0044
In the Jharkhand High Court
Case No : CWJC No. 2243 of 2001

Ramashray Shukla and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 25-01-2002

Acts Referred:

Citation : (2002) 01 JH CK 0044

Hon'ble Judges : S.J. Mukhopadhaya, J

Bench : Single Bench

Advocate : S. Akhtar and M. Sohail Anwar, for the Respondent

Final Decision : Allowed

Judgement

S.J. Mukhopadhaya, J.—This application has been preferred by the petitioners against office orders contained in Memo No. 59 dated 28th February, 2001 and Memo No. 278 dated 4/5 February, 2001, whereby and whereunder respondent Nos. 4 and 5 have been appointed afresh as Clerk on compassionate ground.

2. The question arises to determine in the case is whether a person can be appointed second time on compassionate ground against a higher post or not.

3. The case of petitioner is that the fathers of respondent Nos. 4 and 5 who were in the services of the State, having died in harness, the Respondent Nos. 4 and 5 applied for compassionate appointment. Their cases were placed before District Compassionate Appointment committee which in its meeting dated 17th November, 1993 recommended for their appointment against Class IV post though they were matriculate. On such recommendation both the respondent Nos. 4 and 5 were appointed against Class IV post vide orders dated 9th September, 1994 and 21st April, 1994, respectively and they joined the posts without any objection. After about six and half years they again represented to consider their cases for compassionate appointment against Class III posts which were acted upon by State authorities, who issued the impugned orders dated 29th February, 2001 and 4/5th February, 2001, appointing the respondent Nos. 4

and 5 on compassionate ground against higher Class III posts.

4. According to the petitioner the second time appointment on compassionate ground is not permissible as per Circular No. 13293 dated 5th October, 1991.

5. Respondent No. 4 and 5 on appearance have justified their appointment against Class III posts. According to them they were discriminated at the time of initial appointment. Other similarly situated persons were given appointment against Class III posts but their names were recommended for appointment against Class IV posts. However, the counsel for the respondents could not point out from the recommendation of the District Compassionate Appointment Committee dated 17th November, 1993, the person(s) similarly situated but recommended for compassionate appointment against Class III posts. There is nothing on the record to suggest that inspite of Class III vacancies, the petitioners were recommended for Class IV posts. If any post subsequently fall vacant and subsequently other persons given appointment on compassionate ground against Class III posts, that cannot be stated to be a case of discrimination.

6. The respondent Nos. 4 and 5 cannot derive any advantage of the Supreme Court decision in *Surya Kant Kadam v. State of Karnataka* reported in AIR 2001 SC 2386 as relied by their counsel, there being different facts and circumstances in the case was given compassionate appointment against a lower post of second division Assistant/Clerk also the respondent Nos. 3 and 4 of the said case. Later on the respondent Nos. 3 and 4 were promoted/appointed as Sub Inspector of Excise without consideration of the case of the appellant which was held to be discriminatory and the Court allowed the appeal with direction to consider the case of the appellant for his appointment as Sub Inspector of Excise. Further, in the said case, there was no rule/guideline on record to suggest the procedure and eligibility of appointment as is the present case.

7. In the present case the respondents failed to make out a case of discrimination at the stage of their recommendation made against Class IV posts by District Compassionate Appointment Committee in meeting dated 17th November, 1993 or at the stage of appointment when orders issued between April and September, 1994. It is also not clear whether any Class III post was vacant or not. Subsequently, if one or other person has been appointed against Class III posts the earlier appointees like respondent Nos. 4 and 5 cannot alleged discrimination, the appointments having made in two different transaction. Further, the respondent Nos. 4 and 5 having not raised any objection for about six years since their appointment, the State should have rejected the subsequent objection.

8. So far as policy decision of State is concerned under Clause 9 (Ga) of the circular No. 13293 dated 5th October, 1991, specific prohibition made for second appointment on compassionate ground against any higher post.

9. In the facts and circumstances there being prohibition of second appointment

on compassionate ground and once a person appointed on compassionate ground, subsequently the question of second time appointment on such ground does not arise, for the reasons aforesaid the impugned orders dated 23th February, 2001 and 4/5th February, 20001 are set aside.

10. However, this order will not stand in the way of respondent Nos. 4 and 5 for their appointment/promotion against Class III posts in normal course.

The writ petition is allowed.