
(2010) 01 DEL CK 0167

In the Delhi High Court

Case No : Writ Petition (C.) No. 4001 of 2008

Ranjod Singh

APPELLANT

Vs

Lady Shri Ram College for Women and Others

RESPONDENT

Date of Decision : 15-01-2010

Acts Referred:

Citation : (2010) 3 ILR Delhi 129 : (2010) 2 SLR 153

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : P. Ramesh Kumar, for the Appellant; Navin Chawla, for respondent No. 1, Amitesh Kumar and Mohinder Rupal, for the Respondent

Judgement

S.N. Aggarwal, J.—Whether a person can claim as of right, compassionate appointment to a particular post is the only question that requires consideration in this case.

2. Briefly stated the facts of the case giving rise to the above question are that the father of the petitioner prior to his death was working as a Senior Assistant in Lady Shri Ram College for Women under Delhi University. After he had worked for about 24 years in the College, he gave a notice on 11.01.2005 for seeking voluntary retirement but unfortunately before expiry of the notice period, he died in harness on 06.02.2005. After his death, his widow made a request to the College (respondent No. 1 herein) to give appointment to her son, the petitioner herein, to the post of Junior Assistant-cum-Typist (in short "JACT") on compassionate grounds. Since the appointment as prayed for was not coming through, she made representations to the UGC and also to the Ministry of Human Resources reiterating her claim for appointment of the petitioner on compassionate grounds. Pursuant to these representations made by her, she succeeded in getting an advise issued by the UGC to respondent No. 1 College vide UGC letter dated 21.02.2007 (Annexure P- 6 at page 21 of the paper book) advising the College to appoint the petitioner to the post of "JACT" on compassionate grounds. However, the College on receiving the said advise from

UGC, offered the post of Library Assistant in the pay scale of Rs2650-65-3300-70-4000 to the petitioner on compassionate grounds on 01.03.2007. This offer was accepted by the petitioner and he joined respondent No. 1 College as Library Assistant w.e.f. 01.03.2007. After he joined the service of respondent No. 1 College as Library Assistant, he learnt that he was recommended by the UGC vide letter dated 21.02.2007 referred above for his appointment to the post of "JACT". He thereafter started making representations not only to the College but also to the concerned university authorities including UGC for his appointment to the post of "JACT" as recommended by the UGC. Since his request for appointment to the post of "JACT" on compassionate grounds was not acceded to by any authority including respondent No. 1 College, he has filed the present writ petition seeking issuance of a writ of mandamus or any other appropriate writ, order or direction to the respondents to appoint him to the post of "JACT" and grant him all other consequential benefits including seniority as "JACT" from the date of his appointment in the College as Library Assistant.

3. Mr. P. Ramesh Kumar learned Counsel appearing on behalf of the petitioner had relied upon the advise of the UGC contained in its letter dated 21.02.2007 (Annexure P-6 at page 21 of the paper book) to argue that respondent No. 1 College has acted malafidely in not appointing the petitioner to the post of "JACT" despite advise of the UGC, which according to him is binding on the College. Learned Counsel appearing on behalf of the petitioner also drew attention of this Court to Annexure P-9 at page 24 of the paper book to show the reason communicated by the College to the petitioner for denial of appointment to the post of "JACT". According to learned Counsel appearing on behalf of the petitioner, the College could not have denied compassionate appointment to the petitioner to the post of "JACT" merely because he did not have the required skills of typing/computer as mentioned in the communication dated 27.07.2007 (Annexure P-9). It was submitted that the scheme for compassionate appointment annexed by respondent No. 1 College along with its counter affidavit as Annexure R-1/1 provides for relaxation of typing test for appointment to the post of Lower Division Clerk on compassionate grounds. The relevant extract from the scheme for compassionate appointment referred by the counsel is at the top of page 62 of the paper book. In the alternative, it was argued by the counsel for the petitioner that the petitioner possessed the qualification of diploma in Electronics, which according to him implies that he had sufficient skills of typing/computer. The submission of counsel appearing on behalf of the petitioner was that the post of Library Assistant offered by the College to the petitioner was below his dignity and was not commensurate with his qualifications possessed by him at the demise of his father. He therefore W.P.(C.) No. 4001/2008 Page 3 of 11 requested that the directions may be given by the Court to respondent No. 1 to appoint the petitioner to the post of "JACT" with all consequential benefits.

4. Per contra, Mr. Navin Chawla learned Counsel appearing on behalf of

respondent No. 1 College had argued that the petitioner had obtained the letter dated 21.02.2007 from the UGC by exercising his clout and as the College did not want to take an issue either with the UGC or with the University, the College offered the post of Library Assistant to him on compassionate grounds. It was further contended that there were several seniors to the petitioner possessing better qualification, also appointed on compassionate basis, and they could not have been overlooked in the interest of justice. The argument of Mr. Chawla was that the petitioner did not even possess the minimum qualification required for the post of "JACT" in as much as he did not have the required skills of typing/computer for the said post. It was submitted that compassionate appointment is not a matter of right and was given to the petitioner completely out of compassion to meet the emergency of financial crisis that allegedly arose on account of demise of his father.

5. Mr. Chawla has placed reliance on two judgments of the Hon"ble Supreme Court and they are (i) Pepsu Road Transport Corporation v. Satinder Kumar and Anr., 1995 Supp (4) SCC 597 and (ii) Umesh Kumar Nagpal Vs. State of Haryana and Others, . On the strength of these two judgments, he had argued that even it is assumed that the petitioner possessed the minimum qualification required for the post of "JACT", it does not confer any vested or legal right in him to ask for an appointment on compassionate grounds to a particular post of "JACT". Mr. Chawla also drew attention of this Court to the pleadings of UGC and also of Delhi University contained in their respective counter affidavits to show that they both admit that the UGC had no power either to direct or to advise the College to make appointment on compassionate grounds and that too on a particular post.

6. Mr. Amitesh Kumar learned Counsel appearing on behalf of the UGC and Mr. Mohinder Rupal appearing on behalf of the Delhi University had both adopted the argument of Mr. Chawla and they also agreed with him that UGC had no power either to direct or advise the College to appoint a particular person to a particular post.

7. I have given my anxious consideration to the above rival arguments advanced by the counsel for both the parties and have also carefully gone through the entire record of the present case.

8. The object of the scheme is to grant appointment on compassionate grounds to a dependent family member of a Government servant dying in harness or who is retired on medical ground thereby leaving his family in penury and without any means of livelihood to relieve the family of the Government servant concerned from financial destitution and to help it get over the emergency. The efficiency of the administration cannot be completely sacrificed while making appointment. In cases of compassionate appointments, the authority concerned must consider as to whether the family of the deceased employee is unable to meet the financial crisis resulting from the employee's death. 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 is 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. 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 then a job is to be offered to the eligible member of the family.

9. In the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, it was held by the Hon"ble Supreme Court as under:

4. ...The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependent nor the post which he held is relevant.

5. ...If the dependent of the deceased employee finds it below his dignity to accept the post offered, he is free not to do so. The post is not offered to cater to his status but to see the family through the economic calamity.

10. Similarly in the case of Pepsu Road Transport Corporation v. Satinder Kumar and Anr., 1995 Supp (4) SCC 597 , it was held by the Hon"ble Supreme Court as under:

We find it difficult to approve this reasoning. The appointing authority cannot ignore the fact that while the minimum qualification for eligibility may be metric, however, generally graduates and even post-graduate degree holders respond and offer themselves for clerical appointments. Courts cannot ignore this fact and direct that possession of minimum qualification alone would be sufficient. Some discretion to the appointing authority as to the choice of post, taking into account the realities of the employment-market, should be available. Then again it would be erroneous for the courts to compel appointment to particular posts. The fact of the matter is that though this kind of appointment is sui generis and it is reasonable to expect that as and when such claims arise a provision should be made for accommodating such claims from out of the posts available for direct recruitment, the Corporation is not unreasonable when it suggests that the

qualifications for such appointments should broadly be commensurate with the level of candidates who offer themselves for appointment and not merely the minimum qualification.

11. The petitioner in the present case had done his XIIth standard at the time of death of his father. At the time his father died, he was about 32 years old and could not have been considered to be financially dependent on the deceased. The deceased father of the petitioner after working for about 24 years in the College had given a notice only about a month before his death for seeking voluntary retirement but he died before the notice period could expire. Had father of the petitioner died on expiry of notice period of his taking VRS, then certainly the petitioner had no claim for his compassionate appointment. It is also not disputed on behalf of the petitioner that the father of the petitioner had a large chunk of agricultural land in Himachal Pradesh and that he has sought voluntary retirement just a month before his death as he wanted to concentrate on agriculture. In fact the petitioner had an alternate source of income from agriculture and the family of the deceased employee could not be said to have suffered financial crises in terms of policy for compassionate appointment. Be that as it may, this Court would not like to go any further into the question whether the petitioner was entitled or not for compassionate appointment as a job of Library Assistant on compassionate grounds has already been offered and accepted by the petitioner.

12. The petitioner in the present case has based his claim for compassionate appointment to a particular post of "JACT" on the basis of advise of the UGC contained in its letter dated 21.02.2007, Annexure P-6 at page 21 of the paper book. The advise of the UGC contained in the said letter of 21.02.2007 is of no legal consequence because it was admitted not only by the counsel for the UGC but also by the counsel for Delhi University that the UGC had no power either to direct or advise the College to appoint a particular person on compassionate grounds to a particular post. The University Grants Commission has been constituted under the provisions of University Grants Commission Act, 1956 (Act No. 3 of 1956) which came into force w.e.f. 05.11.1956. The Act was enacted to make provisions for the co-ordination and determination of standards in universities. The Commission under the provisions of the Act has been entrusted with the duty to take such steps as it may think fit for the promotion and co-ordination of university education and for the determination and maintenance of standards of teaching, examination and research in universities. For the said purpose, the Commission has been vested with the power to recommend to any university the measures necessary for the improvement of university education and advise the universities upon the action to be taken for the purpose of implementation of such recommendations. The powers that have been bestowed under the provisions of University Grants Commission Act, 1956 do not empower the commission to recommend appointment of any person in a college to a particular post.

13. The Delhi University, in para 4 of its counter affidavit, has taken a categorical stand that it is not the role or function of the UGC to advise a college in regard to appointment on compassionate grounds in individual cases.

14. Even the UGC, in para 9 of its counter affidavit, has taken a stand that so far as the appointment including the compassionate appointment to any post in the Lady Shri Ram College for Women is concerned, the same is to be considered as finally decided by the said College. It is stated by the UGC that matter of such appointments is an issue of internal administration of the College with which it has no role to play.

15. In view of the stand taken by the respondents in their separate counter affidavits that the UGC has no role or power to direct the College to make a particular appointment to a particular post, the petitioner cannot be permitted to take any advantage of the advice contained in the letter of UGC dated 21.02.2007 referred above. The power of making appointment is vested solely with the Governing Body of the College itself. On repeated representations of the petitioner made by him to the concerned authorities after he had joined the service in respondent No. 1 College as Library Assistant, the Governing Body of the College in its meeting held on 04.05.2007 had unanimously decided as under:

3.1.5. The Governing Body was appraised of the request submitted by Mrs. Swarna Devi w/o late Shri Sujan Singh, who had served the College for twenty four years and died while in employment, on February, 2005. Mrs. Swarna Devi made a request in writing to the Chairman that her son Mr. Ranjod Singh may be appointed as Junior Assistant-cum-Typist after he was appointed as Library Attendant. The Governing Body noted that her son Mr. Ranjod Singh is not suitable for appointment by the College for the post of "JACT". He does not have typing/computer knowledge, which is essential from the College point of view for this position. The Governing Body decided that since he does not possess the required skills for the same, there was no question of considering him for appointment as "JACT" at this stage. The Governing Body further decided that it was necessary to meet College needs. Mr. Ranjod Singh had already been given appointment on compassionate grounds, as Library Attendant and this request cannot be entertained. The Governing Body reiterated its right of appointment as per guidelines laid down and based on the requirements of the College.

16. It was held by the Hon'ble Supreme Court in the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, that even the High Court and Administrative Tribunals cannot give direction for appointment of a person on compassionate grounds but can merely direct consideration of the claim for such an appointment. In view of this judgment of the Supreme Court, the UGC could not have given any direction to the College for appointment of the petitioner to a specified post of "JACT". In the present case, the Governing Body of respondent No. 1 College had taken a unanimous decision as referred above that the petitioner could not be appointed to the post of "JACT" because he did not possess the required typing/computer knowledge

and also because there were persons seniors to him who possessed better qualification and could not have been ignored. It is this decision of the Governing Body that will hold the field.

17. The argument of learned Counsel appearing on behalf of the petitioner that the College could have relaxed the requirement of knowledge of typing/computer as provided in the scheme for compassionate appointment, does not hold any water. His argument that Diploma in Electronics possessed by the petitioner by itself shows that he had knowledge of typing/computer is also untenable. The Diploma in Electronics possessed by the petitioner has no relevance to the post of "JACT" or even to respondent No. 1 College otherwise as the said College is not a science College. Even if it is assumed that the petitioner possessed minimum qualification required for the post of "JACT", still he has no vested or legal right to claim appointment on compassionate grounds on a post of his choice. The Hon'ble Supreme Court has laid down in the case of Umesh Kumar Nagpal (Supra) that mere possessing of minimum qualification to hold a particular post does not bestow any legal right on the dependent of a deceased employee to seek employment on compassionate grounds to a particular post. This Court is of the opinion that compassionate appointment to a particular post cannot be claimed by anybody as a matter of right. Non-appointment of the petitioner to a post of his choice does not violate any of his fundamental right guaranteed to every citizen under the Constitution.

18. In view of the foregoing, I do not find any merit in this writ petition, which fails and is hereby dismissed but in the circumstances leaving the parties to bear their own costs.