

(2007) 06 BOM CK 0099

In the Bombay High Court

Case No : Writ Petition No. 3634 of 2003

Ravindra Goswami and Another

APPELLANT

Vs

State of Maharashtra and Another

RESPONDENT

Date of Decision : 28-06-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226
Maharashtra Civil Services (Pension) Rules, 1982 — Rule 68

Citation : (2008) 1 BomCR 509 : (2007) 6 MhLj 16

Hon'ble Judges : J.P. Devadhar, J; B.P. Dharmadhikari, J

Bench : Division Bench

Advocate : Anand Parchure, for the Appellant; P.D. Kothari, Assistant Government Pleader for Respondent No. 1 and Girish Choube, for the Respondent

Final Decision : Dismissed

Judgement

B.P. Dharmadhikari, J.—By this petition under Article 226 of the Constitution of India, the petitioners, who are legal heirs/dependents of ex-employees of the respondent No. 2-Corporation of City of Nagpur, are seeking writ of mandamus directing respondent No. 2 to grant them employment on compassionate basis and to set aside the communications/orders dated 23-8-2002 and 25-8-2002. The respondent No. 1 before us is the State of Maharashtra. The mother of the petitioner No. 1 by name Smt. Sugandha Goswami was working as Mazdoor (Labour) in Garden Department and on 1-7-1995, in an accident her right leg was injured and it is stated that she was bedridden for about two years and thereafter she took retirement with effect from 9-7-1998 which came to be granted by an order dated 29-6-1998. Similarly, Shri Ramsahay Shukla, the father of the petitioner No. 2 was working as Meter Reader in Water Works Department and it is alleged that because of his ailment and hyper tension, he became incapable of performing his duties as per report of Medical Officer of Nagpur Municipal Corporation dated 31-5-1996. He accordingly took retirement with effect from 30th August, 1997. Both these persons were granted invalid pension under Rule 68 of Maharashtra Civil Services (Pension) Rules, 1982.

2. The petitioners state that as per Government Policy dated 23-8-1996, dependents of Class-III and Class-IV employees, who are required to retire on medical ground upon completion of 55 and 57 years respectively, are entitled to be absorbed in employment on compassionate ground. They state that accordingly benefit has been given to one Shri Narayan Hazare and his relative. For that purpose, our attention has been invited to Resolution dated 23-6-1998. It is stated that thereafter on 31-12-1999, the respondent No. 2-Corporation passed resolution holding that the petitioners are otherwise eligible for grant of employment on compassionate basis. The Corporation then referred the matter to the State Government on 14-8-2000 and as government was not taking any decision upon it, Writ Petition No. 3613 of 2002 was filed before this Court seeking directions against the respondents for grant of appointment orders. On 15-1-2003, this Court passed orders in the said writ petition hoping that the government would take appropriate decision on proposal of Corporation within eight weeks. The petitioners thereafter submitted representations but government did not take any decision and the petitioners state that thereafter government did not accept the proposal of the Corporation on the ground that parents of the petitioners have not put in requisite qualifying service. It is in this background that they have approached this Court. By amendment, it has been pointed out that the insistence of the Corporation and the Government that the petitioners have to fulfil requirement of Clause 2(A) of Resolution dated 23-8-1996 is unwarranted and there is no nexus between the age limit prescribed in the said Government Resolution dated 23-8-1996 and the object sought to be achieved by putting such condition. The Resolution of Nagpur Municipal Corporation dated 23-6-1998 is pressed in service to point out that similarly circumstanced dependents have been given employment on compassionate ground and thus there is hostile discrimination against the present petitioners.

3. Advocate Shri Anand Parchure, in this background, has contended that Clause 2(A) of the Resolution dated 23-8-1996 must be declared as arbitrary and illegal as the requirement of retirement before 55 and 57 years in order to become eligible to claim the employment has got no nexus with the object of the scheme. He further contends that by Resolution dated 23-6-1998, the Corporation has relaxed this requirement in case of other dependents similarly situated and, therefore, very same treatment must be accorded to the present petitioners. It is stated that person whose name appears at serial No. 1 in said resolution was given benefit of scheme. It is, therefore, contended that not providing employment to the present petitioners, therefore, cannot be accepted and appropriate writ must be issued to the respondents for providing work and employment to the petitioners.

4. Shri P.D. Kothari, the learned AGP for the respondent No. 1 has contended that scheme for employment on compassionate basis is an exception to normal mode of recruitment and, therefore, employment can be provided if all conditions thereof are fulfilled. He contends that insertion of requirement of retirement of

employee on medical ground before attaining age of 55 or 57 years is in public interest and the same cannot be challenged by the present petitioners. He has relied upon the judgment of the Hon'ble Apex Court in the case of Food Corporation of India and Another Vs. Ram Kesh Yadav and Another, , particularly paragraph 8 in support of his contention. He states that the State Government has, therefore, rightly rejected the proposals submitted by the Corporation. He further states that there was no valid proposal submitted by the Corporation in this respect.

5. Advocate Shri Girish Choube appearing for the respondent No. 2 has stated that the Resolution No. 52 dated 23-6-1998 is not the resolution of general body of Nagpur Corporation, but it was the resolution of Mayor-in-Council and he states that the said recommendations to relax the requirement of retirement before attaining age of 55 or 57 years has not been accepted by general body of Nagpur Municipal Corporation and, therefore, the recommendations as made or as in existence in Government Resolution dated 23-8-1996 still holds the field. He further states that in case of dependent Ganesh Narayan Hazare, because of exceptional circumstances, Municipal Commissioner exercised discretion available to him and provided employment. He states that other persons whose names appear in said Resolution No. 52 have not been provided with work and are not in employment. He further states that no employee who has proceeded on premature retirement on medical ground after completing age of 55 or 57 years is extended benefit of scheme of compassionate employment. He lastly argues that the conditions stipulated in the scheme are mandatory and no employment in violation thereof can be ordered even by the Court. He has placed reliance upon the judgment of the Hon'ble Supreme Court in the case of Commissioner of Public Instructions and Others Vs. K.R. Vishwanath, .

6. Advocate Shri Choube and AGP Shri Kothari both argued that as compassionate employment is an exception to normal rule of entering in public employment, prescription of age of 55 or 57 years by the government cannot be assailed as violative of Articles 14 and 16.

7. After hearing the learned Counsel appearing on behalf of the respective parties, we find that insistence of petitioners is upon relaxation of condition of retirement before attaining age of 55 or 57 years on medical ground as introduced by Government Resolution dated 23-8-1996. However, the said relaxation could have been legally done at the most by general body of Nagpur Corporation and Mayor-in-Council could not have done it. Mayor-in-Council by resolution dated 23-6-1998 has only directed that the recommendations of relaxation of said condition should be placed before the general body. In view of these recommendations of Mayor-in-Council, we had asked Advocate Shri Choube to verify and point out whether these recommendations of Mayor-in-Council have been accepted by general body. He has stated after verification of record and upon instructions that there is no resolution of general body, it is, therefore, apparent that the condition of employee retiring before attaining age

of 55 or 57 years on medical ground introduced by the Government Resolution dated 23rd August, 1996 to enable his dependent to claim employment on compassionate ground still holds field even for employment with Nagpur Municipal Corporation. The details of facts and circumstances in which Ganesh Narayan Hazare was given employment are not pleaded by the petitioners. The details are also not placed on record by the respondents. However, if any employment is provided in violation of any Government Policy decision or its own decision by Nagpur Municipal Corporation, such violation cannot be relied upon as a precedent by the petitioners and no right thereby accrues in their favour.

8. Perusal of judgment in the case of Commissioner of Public Instructions and Ors. v. K.R. Vishwanath (cited supra), particularly paragraph 10 reveals that the Hon"ble Apex Court has held that strictly the claim of appointment on compassionate ground cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. The Hon"ble Apex Court has further stated that such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. It is also observed that the appointment on compassionate ground is not another source of recruitment but merely an exception to the requirement of public service that must be made on the basis of open invitation of application and on merit.

9. The other judgment of the Hon"ble Apex Court in the case of Food Corporation of India and Anr. v. Ram Kesh Yadav and Anr. (cited supra), again explains the position in relation to compassionate employment on same lines and in paragraph 8, it has been observed that even if all conditions as per guidelines are fulfilled, there is no right to claim appointment. In paragraph 7, the stipulation of age as 55 with further condition that employee must seek voluntary retirement on medical ground before completing said age is considered in this judgment and the Hon"ble Apex Court has observed it, but for such condition there would be tendency on the part of employees nearing the age of superannuation to take advantage of the scheme to seek voluntary retirement on medical ground at fag end of their service and thereby virtually create employment by succession. It has been noticed that it was not possible for Court to relax such a condition and whenever the cut off date or age is prescribed, it is bound to create hardship in marginal cases, but that cannot be the ground to hold the provision as directory and not mandatory.

10. We find that these findings of the Hon"ble Apex Court clearly clinches the issue. In the circumstances, we find no legal right available to the petitioners. There is no substance in the writ petition. Writ Petition is accordingly dismissed with no order as to costs.