

(2012) 08 JH CK 0045

In the Jharkhand High Court

Case No : Writ Petition (S) No. 4715 of 2002,

R.L. Das and Another

APPELLANT

Vs

Damodar Valley Corporation Kolkata and Others

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Citation : (2012) 4 JCR 394

Hon'ble Judges : Alok Singh, J

Bench : Single Bench

Advocate : Atanu Banerjee, for the Appellant; Satish Kumar Ughal, for the Respondent

Judgement

Alok Singh, J.—Grievances raised by the petitioners is that both of them were declared medically unfit to perform their duties, therefore, they were retired on the medical ground from the services; as per Office Circular dated 16.03.1995, Annexure 1, their sons are entitled for the compassionate appointment; compassionate appointment to their sons was refused by the authorities, therefore, both the petitioners have approached this Court for redressal of their grievances. Hon''ble Apex Court in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, in para 20 has observed as under :

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind :

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme. (ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the

breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

Paragraph Nos. 1 and 4 of the Office Circular dated 16.03.1995 are being reproduced hereunder :

1. Appointment on compassionate ground will be restricted only to the cases of dependents (son/un-married daughter/widow/widower) of an employee, who dies in harness, during service period leaving his/her family in immediate need of assistance, there being no earning member in the family.

4. If the deceased employee's any son/daughter/widow/widower is already in service either in DVC or elsewhere, no second dependent will be considered for appointment in DVC on compassionate ground.

2. Having perused the judgment of Hon'ble Apex Court in the case of Bhawani Prasad Sonkar (supra) as well as condition Nos. 1 and 4 of the Office Circular dated 16.03.1995, this Court is of the firm view that compassionate appointment shall be available to the dependent, only, when, the dependent is already not engaged gainfully somewhere else and there being no earning member in the family of deceased/incapacitated employee. Compassionate appointment is to meet the sudden crisis occurring in the family and should not be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family.

3. In the case in hand, there is no assertion in the writ petition to the effect that sons of the petitioners, seeking compassionate appointment, were totally dependent on the petitioners and were not gainfully engaged anywhere else. Both the petitioners, when retired by the Company on the medical ground, were above 59 years of age. They were retired few months before their age of superannuation. Present petition was filed in the year 2002. In the absence of any material or pleading to suggest that sons of the petitioners were totally dependent on them and were not gainfully engaged, no mandamus seems to be justified in their favour.

4. In the firm opinion of this Court, writ of mandamus can be issued only when petitioners are able to establish their legal rights and when this Court finds that authority is not discharging the duties, which the authority, otherwise, is bound to discharge, under the law, in the case in hand, authority can be directed to consider the request of compassionate appointment, only when, petitioners are able to prove that their sons, seeking compassionate appointment, were totally

unemployed and were not gainfully engaged anywhere and were totally dependent on the petitioners and there were no other earning member in the family. In such circumstances, present petition fails, hence is dismissed.