

(2016) 07 JH CK 0051

In the Jharkhand High Court

Case No : I.A. No. 2242 of 2014 in L.P.A. No. 124 of 2014

R.L. Das (Clerk Grade-I)

APPELLANT

Vs

Damodar Valley Corporation

RESPONDENT

Date of Decision : 25-07-2016

Acts Referred:

Citation : (2017) 2 AIRJharR 230 : (2016) 4 JCR 783

Hon'ble Judges : Mr. D.N. Patel and Mr. Amitav K. Gupta, JJ.

Bench : Division Bench

Advocate : Mr. Nagmani Tiwari, Advocate, for the Appellant; Mr. S.K. Ughal and Mr. T. Kabiraj, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

D.N. Patel, J.(Oral) - I.A.No.2242 of 2014

Learned counsel for the applicant seeks leave to amend the number of days delay, as in place of 557 days delay, it has wrongly been mentioned as 157 days.

2. Necessary amendment is permitted to be carried out in red ink, in course of day.

3. This Interlocutory Application has been preferred under Section 5 of the Limitation Act for condonation of delay of 557 days in preferring this Letters Patent Appeal.

4. Having heard learned counsel for both the sides, and looking to the facts and circumstances of the case and the reasons stated in this interlocutory application, especially in paragraph nos. 4, 5 and 6, there are reasonable reasons for condonation of delay. We, therefore, condone the delay of 557 days in preferring this Letters Patent Appeal.

5. Accordingly, I.A. No. 2242 of 2014 stands allowed and disposed of.

L.P.A. No.124 of 2014

6. This Letters Patent Appeal has been preferred by the original petitioner no.1, who had preferred writ petition being W.P.(S) No.4715 of 2002, which was dismissed by the learned Single Judge vide order dated 02.08.2012 and it has been held by the learned Single Judge that son of this appellant is not entitled for compassionate appointment, and hence, this Letters Patent Appeal has been preferred by the original petitioner no.1.

7. Having heard learned counsel for both the sides, and looking to the facts and circumstances of the case, it appears that at the fag end of the service, this appellant (original petitioner no.1) raised an issue about that the so called eye sickness, for which, a medial board was constituted on 28.05.1999 and ultimately, this appellant is seeking his son's appointment in Damodar Valley Corporation, a public sector undertaking.

8. It further appears from the arguments canvassed by the counsel for both the sides that this appellant's age was more than 59 years, when the medical board was constituted and his son by that time must be more than 35 years of age or may be even more than 40 years of age. Nothing has been pointed out that how his son was dependent upon him at such advance age of his son who was more than 35 to 40 years. It appears that by hook and crook, this appellant wants to secure the public employment by way of medical certificate. It ought to be kept in mind that much time has been passed after the medical certificate is given. We are in the year 2016 and the writ petition was decided in the year 2012. The son of this appellant must have now crossed 45 years of age and hence, no useful purpose will be served for compassionate appointment. Compassionate appointment is not a matter of right at all, it is exception of Articles 14 and 16 of the Constitution of India. Normally, those who are seeking public employment must compete with other person and they must be appointed in pursuance of the public advertisement and only as exception the compassionate appointment must be given to support the family for very sick employee.

9. It has been held by the Hon"ble Supreme Court in the case of Umesh Kumar Nagpal v. State of Haryana and others, reported in (1994) 4 SCC 138 in paragraphs 2 to 6, which reads as under:

"2. The question relates to the considerations which should guide while giving appointment in public services on compassionate ground. It appears that there has been a good deal of obfuscation on the issue. 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 Governments 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 dependants 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 dependants 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 for 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 posts 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 provision 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 dependant of the deceased employee in such posts has a 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 to 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.

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

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV. In the present case, the High Court has rightly pointed out that the State Government's instructions in question did not justify compassionate employment in Class II posts. However, it appears from the judgment that the State Government had made at least one exception and provided compassionate employment in Class II post on the specious ground that the person concerned had technical qualifications such as M.B.B.S., B.E., B.Tech. etc. Such exception, as pointed out

above, is illegal, since it is contrary to the object of making exception to the general rule. The only ground which can justify compassionate employment is the penurious condition of the deceased's family. Neither the qualifications of his dependant nor the post which he held is relevant. It is for this reason that we are unable to understand the following observations of the High Court in the impugned judgment:

"We are of the view that the extraordinary situations require extraordinary remedies and it is open to the Government in real hard cases to deviate from the letter and spirit of the instructions and to provide relief in cases where it is so warranted. To hold as a matter of law that the Government cannot deviate even minutely from the policy of providing appointment only against Class III and Class IV posts, would be to ignore the reality of life these days. It would be ridiculous to expect that a dependant of a deceased Class I Officer, should be offered appointment against a Class III or IV post. While we leave it to the Government to exercise its discretion judiciously in making appointments to Class I or II posts on compassionate grounds, yet a word of caution needs to be struck. It is to be noted that such appointments should be ordered in the rarest of rare cases, and in very exceptional circumstances. As a matter of fact, we would recommend that the Government should frame a policy even for such appointments."

5. It is obvious from the above observations that the High Court endorses the policy of the State Government to make compassionate appointment in posts equivalent to the posts held by the deceased employees and above Classes III and IV. It is unnecessary to reiterate that these observations are contrary to law. If the dependant 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.

6. For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

(emphasis supplied)

10. It has been held by the Hon"ble Supreme Court in the case of Sanjay Kumar v. State of Bihar and others, reported in (2000) 7 SCC 192 in paragraph 3, which reads as under:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread-earner who had left the

family in penury and without any means of livelihood. In fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 2-6-1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

(emphasis supplied)

11. It has been held by the Hon"ble Supreme Court in the case of Santosh Kumar Dubey v. State of Uttar Pradesh and others, reported in (2009) 6 SCC 481 in paragraphs 10 to 13, which reads as under:

"10. Admittedly, the father of the appellant was untraceable from 1981. Without entering into and deciding the issue as to whether employment on compassionate grounds could be asked for in a case of deemed death under Section 108 of the Evidence Act, even if we assume for the sake of argument that it can be so demanded and asked for, such a right should and could have been exercised in the year 1988 and computing the period of five years therefrom the period of limitation for making an application for employment in the case of the appellant expired in the year 1993.

11. The very concept of giving a compassionate appointment is to tide over the financial difficulties that are faced by the family of the deceased due to the death of the earning member of the family. There is immediate loss of earning for which the family suffers financial hardship. The benefit is given so that the family can tide over such financial constraints.

12. The request for appointment on compassionate grounds should be reasonable and proximate to the time of the death of the bread earner of the family, inasmuch as the very purpose of giving such benefit is to make financial help available to the family to overcome sudden economic crisis occurring in the family of the deceased who has died in harness. But this, however, cannot be another source of recruitment. This also cannot be treated as a bonanza and also as a right to get an appointment in Government service.

13. In the present case, the father of the appellant became untraceable in the year 1981 and for about 18 years, the family could survive and successfully faced and overcame the financial difficulties that they faced on missing of the earning member. That being the position, in our considered opinion, this is not a fit case for exercise of our jurisdiction. This is also not a case where any direction could be issued for giving the appellant a compassionate appointment as the prevalent rules governing the subject do not permit us for issuing any such directions. The appeal, therefore, has no merit and is dismissed."

(emphasis supplied)

12. It has been held by the Hon^{ble} Supreme Court in the case of MGB Gramin Bank v. Chakrawarti Singh, reported in (2014) 13 SCC 583 in paragraphs 6 to 9, which read as under:

"6. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The competent authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

7. In Umesh Kumar Nagpal v. State of Haryana this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under: (SCC pp. 14041, paras 2, 4 & 6)

"2. ? 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 for the post held by the deceased. ? The exception to 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.

4. ? The only ground which can justify compassionate employment is the penurious condition of the deceased's family.

* * *

6. ? The consideration for such employment is not a vested right?. The object being to enable the family to get over the financial crisis"

8. An "ameliorating relief" should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

9. The courts and the tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulation framed in respect thereof did not cover and contemplate such appointments."

(emphasis supplied)

13. It has been held by the Hon"ble Supreme Court in the case of Bhawani Prasad Sonkar v. Union of India reported in (2011) 4 SCC 209, especially in paragraph 15, which reads as under:

"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve."

(emphasis supplied)

14. Thus, in the facts and circumstances of the present case, it appears that at the fag end of carrier, the plea of sickness has been raised and though the son is more than 35 to 40 years, this appellant is seeking compassionate appointment for his son. Compassionate appointment is not a right vested in son of this appellant. Moreover, appellant has failed to establish that his son is dependent upon him at the age of 35 to 40 years. This aspect of the matter has been properly appreciated by the learned Single Judge while dismissing the writ petition being W.P. (S) No.4715 of 2002. We, see no reason to take any other view than what is taken by the learned Single Judge while passing the order dated 02.08.2012 in W.P.(S) No. 4715 of 2002.

15. There being no substance in this Letters Patent Appeal and, hence, the same is, hereby, dismissed.