
(2014) 10 KL CK 0222

In the High Court Of Kerala

Case No : Writ Petition (Civil) No. 21814 of 2014 (B)

S. Lijikumar

APPELLANT

Vs

The Food Corporation of India

RESPONDENT

Date of Decision : 16-10-2014

Acts Referred:

Citation : (2014) 10 KL CK 0222

Hon'ble Judges : Dama Seshadri Naidu, J

Bench : Single Bench

Advocate : D. Kishore and Mini Gopinath, Advocate for the Appellant; N. Nagaresh, Assistant Solicitor General, T.P.M. Ibrahim Khan, S.C. and K.M. Abdul Majeed, Advocate for the Respondent

Judgement

Dama Seshadri Naidu, J.—The petitioner has been raising a legal battle of multiple rounds seeking appointment in Public Service on compassionate grounds. This is the third writ petition assailing the fourth rejection in Exhibit P25.

2. Briefly stated, the petitioner's father while working as Ex. Dusting Operator in the respondent Corporation died in harness on 27.02.1997. The petitioner, by then 23 years old, being a non Graduate with Type Writer Higher (English) and with an annual income of Rs. 6,000/- as on 21.06.1997, applied to the respondent corporation seeking employment on compassionate grounds. In response thereto, the respondents sent Exhibit P2 call letter, and later subjected the petitioner to interview. In any event, the claim of the petitioner was rejected through Exhibit P3 dated 03.07.1998, holding that the petitioner would not fall within 5% of the death-cum-disability employment quota earmarked for dying in harness scheme. Undeterred, the petitioner went on representing to the authorities through Exhibits P4 and P5 even in the face of Exhibit P3 rejection. On 14.05.2001, the respondent corporation issued Exhibit P6 circular spelling out a policy decision to consider all the pending cases of compassionate appointments in the light of the instructions issued by the Managing Director of the respondent corporation through letter dated 29.06.2000.

3. Taking aid of Exhibit P6 circular, the petitioner once again made Exhibits P7 and P8 representations to the authorities concerned. At this juncture, through Exhibit P9, the second respondent recommended the case of the petitioner to the fourth respondent. Once again in the light of Exhibit P9 recommendation, the petitioner submitted Exhibit P10 representation which in fact was followed by another recommendation by the second respondent in Exhibit P11. Predictably, now making a reference to Exhibit P11 representation, the petitioner once again submitted Exhibit P12 representation. Eventually, through Exhibit P13 dated 09.01.2006, a second rejection order was passed by the authorities. Concerning Exhibit P13, it is the case of the petitioner that initially the order had not been communicated to him.

4. Thus, aggrieved by the rejection of the petitioner's claim through Exhibit P13, he went on representing further through Exhibits P14 and P15. Eventually, when the petitioner sought certain information through Exhibit P16 by taking recourse to the provisions of the Right to Information Act, the respondents issued a reply through Exhibit P17. In the said reply, the respondent authorities are said to have informed the petitioner that his application for compassionate appointment stood rejected long back. Thus, assailing Exhibit P17, the petitioner filed W.P. (C) No. 5125/2012, which came to be disposed of by this Court through Exhibit P18. In fact, this Court having set aside Exhibit P17 (Exhibit P13 in the writ petition), directed the authorities to reconsider the claim of the petitioner afresh. In compliance with the direction of this Court in Exhibit P18, the respondent authorities passed Exhibit P19 order, which is a third rejection.

5. Yet again assailing Exhibit P19 the petitioner filed W.P. (C) No. 20482 of 2012, which was disposed of by this Court through Exhibit P24 judgment, once again directing reconsideration of the petitioner's case. It is pertinent to mention that pending W.P. (C) No. 20482/2012, the respondent corporation issued a communication deciding to reopen all the applications for compassionate appointments that had been closed earlier on the ground of limitation. To put it more expressly, as could be seen from Exhibit P21, earlier the respondent corporation rejected most of the applications for compassionate appointment if they had been submitted beyond the prescribed period of three years from the date of the death of the incumbent. Though there was a policy decision to reconsider only those cases that had been rejected on the ground of limitation, strangely the fifth respondent, who is said to have no manner of role in the scheme of things, addressed a communication on 28.12.2012 to the petitioner to the effect that in the light of Exhibit P21 policy decision, the case of the petitioner would also be considered and that for the said purpose the petitioner would be required to submit all the necessary documents.

6. Thus, having obtained a fresh lease of life to the issue, the petitioner submitted Exhibit P23 representation supplying all the information sought through Exhibit P22. Under those circumstances, the petitioner filed additional material including Exhibits P21 and P22 documents, before this Court in W.P. (C)

No. 20482/2012. Thus, essentially having taking note of the subsequent developments, this Court, per a learned single Judge, issued a further direction to the respondent corporation to consider the case of the petitioner afresh. As a result, the impugned Exhibit P25 order of rejection, the fourth one, was passed by the authorities. Strangely, though, without adverting to any of the earlier developments, especially of repeated rejections, the third respondent supplies new reasons in paragraph 9 of Exhibit P25 order. In essence, the rejection is on the ground that the petitioner does not possess Graduation and presently the appointment under DDE quota is confined to Graduates.

7. With all these multiple rounds of litigations and repeated rejections, given the inexplicable conduct of the respondent authorities of supplying a new reason in every order of rejection, the learned counsel for the petitioner, with some justification, has contended that all along the established policy in so far as the compassionate appointments are concerned is that the dependent member of the family shall be provided employment as a measure of immediate relief in the lowest cadre of the organization. As such, the respondent authorities insistence, according to the learned counsel, that the petitioner ought to have possessed Graduation to be appointed to a higher post is totally unsustainable. In that respect, the learned counsel has placed reliance on *Umesh Kumar Nagpal Vs. State of Haryana and Others*, .

8. The learned Standing Counsel for the respondent corporation in tune with the averments made in the statement filed on behalf of respondents 1 to 5, has strenuously contended that the petitioner is not entitled to the benefit of compassionate appointment at this later hour for more than one reason. To begin with, the petitioner is not placed under penurious circumstances, only to tide over which the very scheme has been brought out. In elaboration of his submissions, the learned counsel has submitted that on the death of the petitioner's father in harness, substantial amounts were paid as terminal benefits under various heads. According to him, in subsequent representations when this aspect has been pointed out by the authorities, the petitioner supplied reason for further consideration of his application that the entire amount had been spent on the wedding of his Sister, i.e. the daughter of the deceased employee. According to him, once the respondent corporation, as an employer, has provided sufficient financial benefit to the dependent members of the deceased employee, it is not the concern of the employer for what purpose the said family has spent the money.

9. The learned Standing Counsel has eventually submitted, what could have been from the beginning the ace in the sleeve of the respondents, that the petitioner's elder brother, i.e. the other son of the deceased employee, has been gainfully employed in the service of the Union of India. To be more explicit, the petitioner's elder brother is an employee in the Ministry of Defence, New Delhi. At this juncture, the learned counsel for the petitioner has intervened and submitted that the petitioner's elder brother gets only a meager salary.

10. All through the conduct of the petitioner is relentless and cannot be blamed since he has an ambition of securing Government employment, to secure which he has done all in his capacity, namely incessantly making representations to the authorities without any let. For this strange state of affairs of subjecting the issue to multiple rounds of litigation and dragging the matter for about 17 years, the authorities have to blame themselves. The first rejection through Exhibit P3 in 1998 was categoric. Despite that the authorities went on entertaining the representations of the petitioner. Though the petitioner would not fall within the scope of Exhibit P6 circular, still his representations were considered and a second order of rejection was passed on 09.01.2010. There afterwards, when the petitioner took recourse to judicial remedies, apart from submitting representations, the respondent authorities have failed to point out to this Court at the earliest point of time the circumstances under which the petitioner's case was rejected to be considered for compassionate appointment. When eventually Exhibit P10 representation was issued intending to reopen only the cases which were rejected on the ground of limitation, one fails to understand why Exhibit P22 communication was issued by the fifth respondent requiring the petitioner to submit a fresh application with all the details. Eventually, in the light of the judgment of this Court in Exhibit P24, though the third respondent passed Exhibit P25 rejection, even the said authorities have failed to point out, as was now contended by the learned Standing Counsel, that the fifth respondent is not competent to issue Exhibit P22 communication requiring the petitioner to submit a fresh application once again. There is force in the contention of the learned counsel for the petitioner that the compassionate appointment is intended to ameliorate the penurious conditions of the dependent family of the deceased employee and the employment to be provided should be in the lowest possible position in the organization.

11. Be that as it may, to put a quietus to the issue, it can be observed that the petitioner's elder brother is gainfully employed and this factum is not denied by the petitioner. Coupled with the fact that earlier substantive death benefits were extended to the petitioner's family. Since the petitioner's very own brother is in Government service, the beneficial scheme of compassionate appointment cannot come to the aid of the petitioner. Under those circumstances, the writ petition stands dismissed. No order as to cost.