
(2013) 11 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18527 of 2011

Sanjay Kumar

APPELLANT

Vs

The Senior Regional Manager F.C.I. and Others

RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2014) 1 UPLBEC 478

Hon'ble Judges : Abhinava Upadhyaya, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Abhinava Upadhyaya, J.—By means of this writ petition the petitioner has come up to this Court challenging the order dated 5.3.2011 by which the claim of the petitioner for being appointed in the Food Corporation of India (in short "F.C.I.") on compassionate ground has been rejected. The facts of the case are that the father of the petitioner. Late Ram Dular was appointed in the F.C.I. as "Handling Labour" in 1973. Subsequently he was promoted to the post of "Mandal". He died on 8.11.2004 leaving behind his wife and four children. It is relevant to mention here that at the time of appointment of Late Ram Dular in 1973 he had already lost his mother and father and, therefore, he made his uncle a nominee in his service record. Upon the death of Ram Dular on 8.11.2004 since the nominee in the service record was his uncle, therefore, his widow (mother of the petitioner) was asked to produce succession certificate for payment of terminal dues. It is not disputed that at the time of death of the father of the petitioner i.e. on 8.11.2004 the petitioner was a minor. The succession certificate was subsequently produced vide letter dated 10.2.2006 and terminal dues were paid thereafter. In the meantime, it appears that the petitioner also attained majority and applied for being appointed under the dying-in-harness provision vide application dated 25.4.2006. The said application was not being considered, therefore, the petitioner was compelled to file a writ petition before this Court being Writ Petition No. 72901 of 2010, which was disposed of by the order of this

Court dated 16.12.2010, directing the authorities of the F.C.I. to consider the claim of the petitioner by passing a reasoned order within a period of six weeks from the date of submission of the certified copy of the order. Pursuant to the aforesaid order the impugned order dated 5.3.2011 has been passed, denying the claim of the petitioner firstly on the ground that under the relevant orders the application for compassionate appointment ought to have been made within a period of six months from the date of the death of the employee, secondly that immediately after the death the terminal dues were given for a sum of Rs. 6,86,167/- and, therefore, the family was in comfortable financial condition and thirdly there is a ceiling that compassionate appointments cannot be made beyond 5% of the vacancy available. Upon these grounds the claim of the petitioner was rejected.

2. Learned Counsel for the petitioner submits that at the time of death of the father of the petitioner the family consisted of mother and three other minor children apart from the petitioner and the mother was busy in procuring the succession certificate for receiving terminal dues, as in the service record of the father of the petitioner the nominee that was mentioned was his uncle, but after his employment he got married, but his uncle continued as nominee in the service record, therefore, the authorities directed the mother of the petitioner to obtain succession certificate which was finally submitted on 10.2.2006.

3. For asserting that there is a provision for compassionate appointments the learned Counsel for the petitioner has relied upon a circular dated 2.2.1977. For ready reference the same is quoted herein below:

No. 24(8)/75-IR(P)

Dated 2.2.1977

Circular

Sub: Recruitment procedure-Appointment of next kin of deceased workers or workers retired on medical ground in relaxation of the procedure of getting them sponsored through employment exchange.

The demand of the departmental workers, both of the departs as well as the Food Storage Depots that the dependents of a deceased worker or a worker who is retired on medical grounds may be employed directly without going through the Employment Exchange has been under consideration.

It has now decided that this benefit may be extended to the departmental workers subject to the following conditions:

(i) of the dependents (son/daughter/widow who has not remarried/close relative who gives an assurance of looking after the family of medical grounds and whose family is left indigent circumstances needing immediate assistance, there being no other earning member in the family, will be given appointment without following the formalities or sponsoring by the Employment Exchange, subject to

the availability of the vacancy, and further subject to the fact that he or she is duly qualified for the post.

(ii) Time limit for submitting applications will be six months from the date of death/retirement on medical grounds, and this in no case should be extended.

(iii) This benefit will come into effect from the 1.1.1977.

4. Learned Counsel for the petitioner has further relied upon a subsequent circular dated 3.7.1996. The paragraph 7 of which provides that the authority, in certain cases can relax the period for making application for compassionate appointment. For ready reference the circular dated 3.7.1996 is quoted herein below:

No. IR(L)/31(27)/87

Dated 3.7.1996

Circular

Sub: Recruitment procedure for appointment of next kin of Departmental Workers who seek retirement on medical grounds at their own request in relaxation of the procedure of getting sponsored from Employment Exchange.

According to the existing instructions as contained in Hqrs. Circular letter No. 24(8)/15-IR(P) dated 2.2.1977, 27.11.1980 and 14.4.1981, the dependents of the deceased departmental workers who dies while in service and the dependent of the departmental workers retired on medical grounds by FCI can be appointed on compassionate grounds without sponsoring their names through the employment exchange.

The question of extending the benefit of compassionate ground appointment to the departmental labour retired on medical grounds at their own request in relaxation of the procedure of getting them sponsored through Employment Exchange has been under consideration.

It has been decided with the approval of the Board of Directors in this 248th meeting held on 10.6.1996 that the benefit of compassionate ground appointment shall be extended to the dependent of the departmental workers who seek voluntary retirement on medical grounds at their own request subject to the following conditions:

(i).....

(ii).....

(iii) The benefit of compassionate ground appointment shall be given only in Handling Labour Category that too for male dependent only.

(iv).....

(v).....

(vi).....

(vii) Application for such compassionate grounds appointment shall be made within 3 months from the date of retirement and this period may be relaxed by the competent authority in exceptional and deserving cases.

(viii).....

(ix).....

General:

Notwithstanding anything contained in the above, the compassionate ground appointment is not as a matter of right but purely at the discretion of the competent authority taking into the account the circumstances and conditions of the family of the medically retired workers and also subject to availability of the vacancy.

All the concerned are advised to follow the above guidelines while making compassionate ground appointment on the next kin of the medically retired FCI workers. This facility is applicable to the Departmental Workers who are on the time scale of pay.

(Authority 248th meeting of the Board of Directors)

5. Learned Counsel for the petitioner then relied upon a scheme of the compassionate appointment filed alongwith the supplementary affidavit with the covering letter dated 16.1.2013 which provided for compassionate appointment under the Central Government. Learned Counsel for the petitioner has further relied upon a circular dated 26.3.2013 by which the scheme of compassionate appointment under the Central Government has been adopted by the F.C.I.

6. It is submitted that under the aforesaid scheme five years period has been prescribed for making application for compassionate appointment, as such the order impugned cannot be sustained wherein it has been stated that the petitioner has not made application within six months from the date of death of the employee.

7. Refuting the assertion made by learned Counsel for the petitioner, learned Counsel appearing for the respondents submits that the scheme of compassionate appointment filed alongwith the supplementary affidavit with the covering letter dated 16.1.2013, which has subsequently been adopted by the F.C.I. vide circular dated 26.3.2013, will not be applicable upon the petitioner as the date of determination of the claim of the petitioner at the time of death of his father is 2004. It is submitted that in the circular prevailing at the time of the death of the father of the petitioner is dated 2.2.1977 wherein it has been categorically provided that an application for compassionate appointment will have to be made within six months from the date of death/retirement of the deceased employee and this in no case should be extended. The said circular came into effect from 1.1.1977. It is submitted that at the time of death of the

father of the petitioner i.e. in 2004, the petitioner was a minor, as such he could not have applied but his mother could have applied, but she did not apply and the petitioner finally applied when he was major in the year 2006 which was way beyond the maximum limit of six months, therefore, the claim of the petitioner has been rejected.

8. Learned Counsel for the respondents has further pointed out that the relaxation in the period for making of application for compassionate appointment, as mentioned in circular dated 3.7.1996, is not applicable in the case of death of an employee, but it is only for seeking compassionate appointment of a regular employee being retired on medical ground on his own request. It is submitted that both these circulars cannot be equated and since there is no power to relax the period for making application under circular dated 2.2.1977, the claim of the petitioner has rightly been rejected.

9. Learned Counsel for the respondents further submits that the subsequent scheme of compassionate appointment, as filed alongwith the supplementary affidavit with the covering letter dated 16.1.2013, will not be applicable. The same cannot be applied with retrospective effect. It operates prospectively, therefore, the provision of extension of period upto five years was not available to the petitioner at the time when his application was being considered.

Learned Counsel for the respondents further submits that the said scheme of compassionate appointment would also not be applicable since the same has been adopted only for such employees and the staff of the Corporation, who are governed by the provision of the Food Corporation of India (Staff) Regulations, 1971. The aforesaid regulations are applicable to all the employees of the Corporation other than the persons governed by the Industrial Employment (Standing Orders) Act, 1946 (Act 20 of 1946) and/or the Food Corporation of India (Industrial Establishments) Standing Orders framed under the said Act. Since the father of the petitioner was governed by the later, the Dying-in-Harness Rules of 2013 would not be applicable to the case of the petitioner.

10. I have considered the submissions of the learned Counsel for the petitioner as well as learned Counsel for the respondents.

11. The clear provision of law as per the circular dated 2.2.1977 is that the application for compassionate appointment has to be made within six months from the date of death of the deceased employee. This period cannot be extended. The relaxation that the petitioner has claimed, is under another circular of dated 3.7.1996, which circular is applicable only upon compassionate appointment on the ground of retirement of the employees on medical ground upon their own request and, therefore, both the circulars are distinguishable and operate in different set of employees.

12. However, learned Counsel for the petitioner then point out the paragraph 3 of the impugned order wherein the authorities below have relied upon the said circular dated 3.7.1996 to state that for making compassionate appointment

financial condition of the family must necessarily be gone into. According to the learned Counsel for the petitioner since the authorities themselves have relied upon the said circular, it cannot be said that the circular dated 3.7.1996 operates in a different field.

13. I am unable to accept the contention of learned Counsel for the petitioner. The relaxation provided under clause (7) of the circular dated 3.7.1996 are specifically and only for those candidates who have sought retirement on medical ground and it does not talk of appointment on death.

14. Compassionate appointments are made ignoring the regular mode of appointment which are made after following the constitutional scheme of appointment, therefore, it is absolutely necessary that strict adherence to the rules and orders should be made for making such an appointment.

15. So far as application of 2013 scheme for compassionate appointment is concerned, apart from the objection of the learned Counsel for the respondents that the said scheme is not applicable to the employees who are covered by the Industrial Employment (Standing Orders) Act, 1946 and the Food Corporation of India (Industrial Establishments) Standing Orders framed under the said Act and the petitioner was governed by the aforesaid standing orders, yet in my view the compassionate appointment scheme would not be applicable to the petitioner as the same has been framed in the year 2013 and it would operate prospectively unless the contrary is provided under the scheme itself. Nothing has been shown that the said scheme would operate retrospectively to cover the case of the petitioner as the cause of action arose at the time of death of his father in the year 2004. Indisputably the provision for making compassionate appointment was provided under the circular dated 2.2.1977, but the said circular casts an embargo that no application can be entertained beyond the period of six months from the date of the death of the employees of the Corporation. The application was made in 2006 whereas the death occurred in 2004. Therefore, the petitioner was not entitled to the appointment under the circular of 2.2.1977.

16. Under the aforesaid facts and circumstances of the case, I am not inclined to interfere in the order impugned as the petitioner did not apply within the stipulated time for compassionate appointment. The writ petition is, accordingly, dismissed.