

(2016) 03 JH CK 0094
In the Jharkhand High Court
Case No : L.P. A. No. 59 of 2015

Santosh Mandal

APPELLANT

Vs

National Institute of Technology

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Citation : (2017) 1 AIRJharR 518 : (2016) 2 JCR 655

Hon'ble Judges : Virender Singh, C.J. and Shree Chandrashekhar, J.

Bench : Division Bench

Advocate : Shresth Gautam, Advocate, for the Appellant; Manish Mishra, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Virender Singh, C.J.—Being aggrieved of order dated 02.05.2014 of the learned Single Judge handed down in W.P.(S) No. 1524 of 2005, the appellant-writ petitioner (hereinafter to be referred as "petitioner") has filed the instant Letters Patent Appeal in which there was delay of 220 days which stands condoned while allowing I.A. No. 6021 of 2015 vide order dated 01.03.2016 and now taken on Board for its final consideration.

2. The father of the petitioner, who was Medical Attendant, died in harness on 07.07.1989. The petitioner was appointed on compassionate ground in the Regional Institute of Technology now National Institute of Technology, Jamshedpur by appointment letter dated 08.12.2001, admittedly after about 12 years of the death of his father. Such like appointments were taken note of in writ petition being W.P.(S) No. 680 of 2002 titled "Mithilesh Kumar v. R.I.T. & Ors." in which vide order dated 24.01.2002 while dismissing the writ petition, the learned Writ Court observed as under:

"If one or other person have been given appointment after long delay say after about 12 years of the death in recent past, say within last one year or some person has been illegally appointed giving wrong information petitioner may

bring the same to the notice of the Principal, R.I.T., Jamshedpur, who will take care. In such case, if any illegality is found in the matter of appointment, the authority after notice to the concerned party, may pass an appropriate order."

3. Since, the aforesaid order was not complied with, a contempt petition being Contempt Case (Civil) No. 866 of 2002 was filed, in which certain directions were issued. Thereafter, the concerned authorities issued notices in the individual cases. This is how the petitioner was served show-cause notice of the termination to which he responded and thereafter, order of termination dated 17.02.2005 was issued by the Director of National Institute of Technology, Jamshedpur which gave him cause to move the Writ Court through W.P.(S) No. 1524 of 2005 which now stands dismissed.

4. Heard the learned counsel for both the sides and perused the documents on record.

5. The learned counsel for the petitioner submits that in fact, after the death of his father, the mother of the petitioner moved an application for compassionate appointment for other brother of the petitioner, which was kept pending and thereafter, not considered on the ground that there was no scheme for compassionate appointment. The learned counsel submits that when the scheme was formulated somewhere in May 1997, the mother of the petitioner moved an application for his appointment on compassionate ground and consequently, the petitioner was appointed as Medical Attendant on temporary basis. The learned counsel contends that in the flash back of the aforesaid facts, the case of the petitioner is altogether different from other candidates who had got appointment. The learned counsel submits that in the case of "Anand Kumar" whose services were also terminated, his father, in fact, had not died in harness rather, his father was terminated from service and thus, reference to case of the petitioner in L.P.A. No. 125 of 2015 relating to "Anand Kumar" would have no effect upon the individual facts of the present case inasmuch as, the petitioner had got compassionate appointment on account of death of his father.

6. The learned counsel for the respondents reiterating the stand taken before the Writ Court submits that appointment of the petitioner on compassionate ground has, on scrutiny, been found beyond the scheme for compassionate appointment and therefore, his services have been terminated, after giving him proper opportunity to respond to the show-cause notice. The learned counsel referring to order passed in L.P.A. No. 125 of 2015 submits that in "Anand Kumar" case, termination of the service of the said employee has been approved by this Court.

7. It appears that at the time when the father of the petitioner died in harness, the petitioner was about 9 years old and the mother of the petitioner made a representation for appointment of the elder brother of the petitioner, namely, Sri Kant Mandal in the year, 1990. The petitioner got appointment on compassionate ground on 08.12.2001 i.e., after about 12 years of the death of his father. In compliance of orders passed in W.P.(S) No. 680 of 2002 and in Contempt Case

(Civil) No. 866 of 2002, the respondent-National Institute of Technology issued a show-cause notice to the petitioner. The petitioner in the aforesaid writ petition, namely, Mithilesh Kumar had furnished list of 17 persons who were appointed on compassionate ground much after the death of the employee and the name of the present petitioner finds mention in the said list. It appears that a Committee was constituted to examine the alleged illegality in appointments and thereafter, show-cause notices were issued to all such persons who were appointed recently on compassionate ground. The show-cause reply submitted by the individual appointees were again examined by the Committee and the Committee came to a conclusion that the petitioner did not fulfil the conditions of appointment under the Compassionate Appointment Scheme. Accordingly, show-cause notice dated 07.01.2005 was issued to the petitioner. No doubt, the petitioner did not make misrepresentation in so far as, the appointment of his brother namely, Shyam Sundar Mandal in the year 1983 is concerned, as his brother was employed under NIT much prior to the death of his father on 07.07.1989 however, the fact remains that appointment on compassionate ground after about 12 years of the death of the bread-earner of the family cannot be sanctioned in law. The plea taken by the petitioner that the letter of termination dated 17.02.2005 does not disclose application of mind, inasmuch as, no reason has been assigned for termination of the service of the petitioner, when examined in the context of the show-cause notice dated 07.01.2005 and the order passed by the Writ Court in W.P.(S) No. 680 of 2002, falls apart. In the aforesaid facts, the reliance placed by the learned counsel for the petitioner on decision in "Oryx Fisheries Private Limited v. Union of India and Others" reported in (2010) 13 SCC 427 does not advance the case of the petitioner. As noticed above, the show-cause notice dated 07.01.2005 itself discloses that the petitioner did not fulfil the conditions of appointment under the Compassionate Appointment Scheme. The petitioner cannot deny that he was offered appointment on compassionate ground after about 12 years of the death of his father. The termination order dated 17.02.2005 refers to the show-cause notices dated 07.01.2005 and 31.01.2005 and it records that the petitioner has failed to advance any justified reason for his appointment and accordingly, his explanation was found not satisfactory.

8. Viewed thus, finding no infirmity in the impugned order of the learned Single Judge, we hereby decline to interfere with the same. Resultantly, the instant Letters Patent Appeal merits dismissal. Ordered accordingly.