
(2002) 05 DEL CK 0038
In the Delhi High Court
Case No : CW 5459 of 2001

Satyawati

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 64 DRJ 827

Hon'ble Judges : Sanjay Kishan Kaul, J

Bench : Single Bench

Advocate : N.S. Dalal, for the Appellant; Jagat Arora, for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, J.—The husband of the petitioner Sh. Ravi Datt was working as a Peon with the respondent - Punjab National Bank and passed away on 26.2.1999. Petitioner applied for appointment on compassionate grounds and the same was rejected vide letter dated 7.4.2002. Petitioner has thus filed the present writ petition for quashing of the said letter and for her appointment on compassionate grounds.

2. A perusal of the letter dated 7.4.2000 shows that the ground for rejection stated therein is the financial condition of the petitioner. However, learned counsel for respondents 2 and 3 appearing today states that apart from the said reason the petitioner also does not fulfill the minimum qualifications of metriculation. Learned counsel for respondents 2 and 3 has placed before this court the "Scheme of employment of dependants of the employees who died in service of the bank on compassionate grounds" and the relevant paragraph dealing with the qualifications is as under :-

"8. QUALIFICATIONS: i) (a) To qualify for appointment in the clerical cadre, a dependant including SSC/SSLC/Matriculation or its equivalent examination. For the posts of Stenographer, Machine Operators or posts requiring technical

qualifications etc the other criteria regarding speed, accuracy of technical qualification will be same as in the case of general candidates."

3. A reading of the aforesaid paragraph shows that there is a requirement of metriculation which according to learned counsel for the respondents the petitioner does not possess. Learned counsel for the petitioner has, however, contended that this ground is not mentioned in the impugned letter dated 7.4.2000 where the only issue mentioned is of the financial condition of the petitioner. Learned counsel relies upon judgment of the Supreme Court delivered by a Bench of two Hon"ble Judges in *Balbir Kaur and Anr. v. Steel Authority of India Limited and Ors. And Smt. T K Meenakshi and Anr. v. Steel Authority of India Ltd. and Ors.* AIR 2000 SC 1596. The said case dealt with the interpretation of the family benefit scheme as introduced in NJSC tripartite Agreement of 1989 and the consequence thereof on the existing welfare measures as contained in NJSC Agreement in 1983. The request for compassionate appointment had been negated in view of the family benefit scheme in terms whereof in case retiral benefits were not taken or returned, the heirs of the deceased employee would be entitled to the same salary as the deceased employee was getting till the national date of his superannuation. The Supreme Court was of the view that the grant of compassionate appointment has no correlation with the said scheme and observed further in respect thereof that if some lump sum amount is made available at that stage the same would not be a replacement for compassionate employment.

In the present case the learned counsel for respondents states that the petitioner had been paid an amount of approximately Rs. 1,70,000/- on account of the death of her husband and has been granted family pension of Rs. 2590/- per month.

The issue of compassionate employment was considered by a three Judges Bench of the Supreme Court in *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, as also by a two Judges Bench of Hon"ble Supreme Court in *Sanjay Kumar Vs. The State of Bihar and Others*, . The Supreme court was of the view that compassionate appointment is a digression from the normal scheme of employment and the purpose is to meet the immediate exigency arising out of the death of the deceased employee. The Supreme Court observed as under in the case of *Director of Education (Secondary) and Anr. case (Supra)*:

"8. The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the

general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana* this Court has taken note of the object underlying the rules providing for appointment on compassionate grounds and has held that the Government of 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. In that case the Court was considering the question whether appointment on compassionate grounds could be made against posts higher than posts in Classes III and IV. It was held that such appointment could only be made against the lowest posts in non-manual categories. It was observed :140 SCC 2

"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 favorable 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 favor 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 aforesaid judgment was followed in *Sanjay Kumar's* case(supra).

5. It is thus apparent from the reading of the aforesaid judgments that the financial condition of a person would be a material consideration. The observations made by the Supreme Court in *Balbir Kaur's* case(supra) was in the context of issue of a particular family benefit scheme. In my considered view in a case of compassionate employment like the present one the principles laid down in *Directorate of Education's* case(supra) would have to be followed. The immediate needs of the petitioner have been met with the provision of the lump sum payment of Rs. 1,70,000/- and a family pension has also been provided. The case of the petitioner has been considered within the parameters of the scheme of employment of the respondent bank. Thus the decision taken vide the

impugned letter dated 7.4.2000 cannot be stated to be illegal and arbitrary.

6. It may also be noted that though the said impugned letter does not mention the ground of ineligibility on account of the petitioner's lack of qualifications the scheme itself provides the minimum qualifications and thus a person who does not fall within the scheme and does not fulfill the minimum qualifications cannot have a right to be even considered for compassionate employment.

7. In view of the aforesaid facts and circumstances I see no reason to interfere under Article 226 of the Constitution of India.

8. Dismissed.