

(2017) 03 KAR CK 0117

In the Karnataka High Court

Case No : 24999 of 2016 AND 2697 of 2017 (S-KAT)

S.G.PRAVEEN GOWDA S/O LATE S.J.GANGEGOWDA

APPELLANT

Vs

STATE OF KARNATAKA REPRESENTED BY ITS PRINCIPAL
SECRETARY, EDUCATION DEPARTMENT, & ORS.

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

Constitution of India, Article 14, Article 16 - Appointment of Commission to inquire into and report on the administration of autonomous districts and autonomous regions - Dissolution of a Distr

Citation : (2017) 03 KAR CK 0117

Hon'ble Judges : Jayant Patel, A.N.Venugopala Gowda

Bench : DIVISION BENCH

Advocate : VIJAY KUMAR, D. NAGARAJ

Judgement

1. The petitioner's father Sri S.G. Gange Gowda was working as Assistant Teacher in a Primary School and died on 28.02.1994. He left behind a widowed wife and two children. At that point of time the petitioner was studying in 5th Standard. Petitioner's mother made an application on 21.09.1994 to provide appointment to the petitioner on he attaining the age of majority. The Assistant Education Officer, Kadur Taluk, Chikkamagaluru District issued an endorsement dated 08.02.1995 to the effect that the petitioner being a minor, he may make the application after becoming a major.

2. An application having been made by the petitioner on 04.12.2002, a memorandum dated 12.07.2004 was issued by the Block Education Officer, Kadur and it was notified that the proposal made by the Deputy Director, Department of Public Instructions on 23.01.2004 cannot be accepted as the petitioner did not attain the age of majority within one year period from the date of death of the deceased employee.

3. Assailing the said endorsement, an application under S.19 of the

Administrative Tribunals Act, 1985 was filed before the Karnataka Administrative Tribunal. By reason of the order dated 07.08.2015, application having been rejected by observing that the petitioner does not fulfil the eligibility criteria in accordance with Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Second Amendment) Rules, 2000, (for short "the Rules") and as amended on 28.05.2002, a Review Application was filed. The same having been dismissed by reason of the Order dated 09.09.2015, these petitions were filed to set aside the said orders and direct the respondents to consider the application submitted for giving appointment on compassionate ground.

4. Sri Vijay Kumar, learned advocate contended that there is wrong rejection by the respondents of the lawful claim made by the petitioner. He submitted that the Tribunal has failed to appreciate the case in the correct perspective and the orders passed by it vide Annexures - A and B are erroneous. The main thrust of arguments of Sri Vijay Kumar is that the Rules which came into being after 31.03.1999 has no application. According to the learned advocate, the Assistant Education Officer having issued the endorsement dated 08.02.1995 to the petitioner's mother to submit application through the petitioner, after the petitioner attaining the age of majority and the petitioner having submitted an application accordingly on 04.12.2002 and the case also having been recommended by the 4th respondent, there is illegality on the part of the 5th respondent in rejecting the claim. Learned advocate contended that the said action being arbitrary, the Tribunal has failed to consider the case in accordance with law and hence, impugned orders are liable to be set aside.

5. Sri D. Nagaraj, learned AGA on the other hand made submissions in support of the impugned orders and sought rejection of the petitions.

6. Perused the record of the case and considered the rival contentions. The point for consideration is whether the impugned orders are arbitrary or perverse and illegal?

7. It is trite that under the scheme of compassionate appointment, in case of an employee dying in harness, one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. Claim for appointment on compassionate grounds should be made without any loss of time, as an appointment made many years after the death of the employee would be directly in conflict with Articles 14 and 16 of the Constitution.

8. Appointment on compassionate grounds cannot be claimed as a matter of right. The Competent Authority, in case the claim has been made within the period allowed under law has to examine the penurious conditions of the family, if any 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. Mere death of a Government servant cannot be treated as

a bonanza and also as a right to get an appointment in Government service.

9. In the case of CHIEF COMMISSIONER, CENTRAL EXCISE AND CUSTOMS Vs. PRABHAT SINGH, (2012) 13 SCC 412, Apex Court has held that delay in making a claim for appointment on compassionate grounds is an anti-thesis for the purpose for which compassionate appointment was conceived. It has been further held that the delay in raising such a claim is contradictory to the objects sought to be achieved.

10. In this case, the petitioner was only 10 years old at the time of death of his father. The first application to provide appointment to the petitioner was made on 21.09.1994 by his mother, even while the petitioner was a minor. The petitioner made the application on 04.12.2002, after attaining the age of majority. As there is intervening period of more than 8 years i.e., from the date of death of petitioner's father, till the application was made by the petitioner, the appointment cannot be said to subserve the basic object and purpose of the Scheme to provide appointment on compassionate grounds in terms of the Rules. It is trite that there cannot be reservation of a vacancy till such time the claimant becomes a major after number of years. The Rules made by the Government of Karnataka does not provide for reservation of vacancy in case of a minor dependent being the claimant, till he attains the age of majority and acquires the eligibility.

11. The family of deceased S.G. Gange Gowda having survived for such long period, no direction could have been issued by the Tribunal to give compassionate appointment to the petitioner, in contravention of the provisions of the Rules, in as much as the provisions of the Scheme or the Rules have to be complied with mandatorily and any appointment given or ordered to be given in violation of the Scheme would be illegal as has been held by the Apex Court in the case of A. UMARANI Vs. REGISTRAR, CO-OPERATIVE SOCIETIES, (2004) 7 SCC 112.

12. The Government of Karnataka in exercise of the powers conferred by sub-section (1) of S.3 read with S.8 of Karnataka State Civil Services Act, 1978 has made the Karnataka Civil Services (appointment on compassionate grounds) Rules, 1996. Dependent of a deceased Government servant and the family in relation to deceased Government servant have been defined under Rule 2(1)(a) & (b). Rule 3 is with regard to eligibility for appointment. Sub-rule (1) makes clear that appointment on compassionate grounds under the Rules shall not be claimed as a matter of right and shall not be given as a matter of course. Sub-Rule (2) makes clear that the appointment under the Rules shall be restricted to the dependent of a deceased Government servant in the order of preference shown thereunder. Widow of the deceased Government servant comes first in the order of preference followed by a son, if widow is not eligible or for any valid reason she is not willing to accept the appointment. Rule 4 provides the conditions of appointment. Sub-rule (1) makes clear that appointment on compassionate grounds under the Rules shall be subject to the condition that the

family of the deceased Government servant should be in a financial crisis or destitution. Sub-rule (2) shows that the person seeking appointment shall be within the age limit specified for the post in the relevant rules of recruitment specially made in respect of a service or a post read with sub-rule (3) of Rule 6 of the Karnataka Civil Services (General Recruitment) Rules, 1977. Sub-Rule (3) makes clear that the persons seeking appointment should possess the minimum qualification specified for the post in the relevant rules of recruitment specially made in respect of a service or a post. The proviso thereunder makes clear that nothing in sub-rule (3) of the Rules, sub-rule (5) of Rule 5 of the Karnataka Civil Services (General Recruitment) Rules, 1977, so far as it relates to educational qualification shall apply to appointment to any Group-D post, under the Rules. Rule 5 enables every dependent of a deceased Government servant from seeking appointment under the Rules to make an application within one year from the date of death of Government servant to the Head of the Department under whom the deceased Government servant was working. Rule 5 provides for the period of limitation. Rule 9 is the transitional provision. Sub-rule (1) of Rule 9 makes clear that all applications for appointment on compassionate grounds made prior to 20th October, 1994 and the applications made on or after that date but before the date of commencement of the Rules and which are pending on the date of commencement of the Rules shall be disposed of in accordance with the Rules within a period of 3 months. However, the said sub-rule was amended as per Notification No.DPAR 11 SCA 97 dated 31.03.1999 with effect from 01.04.1999 introducing a deeming clause to the effect "deemed to have been made within the period specified in Rule 5 and shall be considered for appointment subject to other provisions of the Rules". Sub-rule (1-A) was inserted by Notification No.DPAR 11 SCA 97 dated 31.03.1999 with effect from 01.04.1999 and the same is extracted hereinbelow:

"[(1-A) Where any application made under sub-rule (1) is rejected on the ground that it is not made within the period specified in Rule 5, it shall be reconsidered for appointment subject to other provisions of these rules.]"

13. The Rule 5 was amended by the Amendment Rules with effect from 01.04.1999 by substituting the existing proviso in the following manner:

" Provided that in the case of a minor he must have attained the age of eighteen years within one year from the date of the death of the Government servant and he must make an application within one year thereafter:

Provided further that nothing in the first proviso shall apply to an application made by the dependent of a deceased Government servant, after attaining majority and which was pending for consideration on the date of commencement of the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998."

14. A reading of the second proviso makes the position clear that unless the application is pending at the time of commencement of the Amendment Rules,

the same can have no application. If the second proviso has no application, then the question of any subsequent application made being considered does not arise.

15. In COMMISSIONER OF PUBLIC INSTRUCTIONS AND OTHERS Vs. K.R.VISHWANATH, (2005) 7 SCC 206, respondent's father, who was a Government servant died on 21.12.1977. Respondent was born on 20.10.1977 and was about two months old at the time his father died. Having attained majority on 20.10.1995, he submitted an application on 02.12.1996 seeking appointment on compassionate grounds, under the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996. The said application was rejected on 13.11.1997 on the ground that it had not been filed within one year of attaining the majority. Another application was made on 22.04.1998 and the same was not entertained. Amendments having been made to the 1996 Rules, which were operative with effect from 01.04.1999, the respondent filed another application on 29.11.1999 and the same was rejected on 09.06.2000 by stating that no application was pending when the amended Rules came into force and therefore, Rules as amended, has no application to his case. The said order having been assailed in the Karnataka Administrative Tribunal, by an order dated 19.09.2001 the application was allowed and the Government was directed to consider the case for appointment on compassionate grounds, without regard being had to any period of limitation referred to in the order of rejection dated 09.06.2000. The said order having been upheld by this Court and Apex Court having been approached by the Government, it was held that the Tribunal and the High Court were not justified in directing the respondent's case for consideration of the claim made for appointment in terms of the Rules without taking note of the limitation prescribed.

16. At the cost of repetition it is to be pointed out that the first application was made by the petitioner's mother on 21.09.1994 and the same was disposed of by issuance of the endorsement dated 08.02.1995. The date of birth of the petitioner is 07.11.1984. The application was made by him on 04.12.2002, obviously, after the Amendment Rules came into force. Thus, it cannot be said that the application was pending as on the date of commencement of the Amendment Rules i.e., 01.04.1999. The second proviso, reproduced in para-13 supra being inapplicable, question of second application made being considered did not arise. Thus, the action of the respondents in declining to consider the case of the petitioner for providing job on compassionate grounds is neither arbitrary nor illegal.

17. The petitioner has staked his claim on the basis that his father was an employee of the Government and he having died while in service, he has a vested right to obtain the job on compassionate grounds. The Rules make it clear that there is no vested right for a person to claim appointment on compassionate grounds. The case of the petitioner does not come under the scheme of compassionate appointment as per the Rules made by the Government of Karnataka. Thus, the respondents are right in declining to provide appointment

on compassionate grounds.

For the reasons stated supra, the orders of dismissal passed by the Tribunal do not warrant any interference. Consequently, the petitions being devoid of merit are dismissed with no order as to costs.