
(2004) 01 MP CK 0024

In the Madhya Pradesh High Court

Case No : Writ Petition (S) No. 2826 of 2003

Shailendra Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 29-01-2004

Acts Referred:

Citation : (2004) 4 MPHT 422 : (2004) 4 MPLJ 571

Hon'ble Judges : Arun Mishra, J

Bench : Single Bench

Advocate : K.K. Pandey, for the Appellant;

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner in this writ petition has prayed that respondents be directed to give compassionate appointment to him.

Father of the petitioner namely late Shri Rampati Singh was in the service of State of M.P. He worked as Upper Division Clerk in the Weight and Measurement Department. It appears that near the age of superannuation he was given retirement on 2-3-98 w.e.f. 7-1-98 as per Order (P-4). He died on 11-7-99. Initially Shri Shailendra Singh applied in the life time of Shri Rampati Singh for appointment on compassionate ground. His case was rejected by the State Govt. Thereafter present petitioner Shailendra Singh applied for compassionate appointment which prayer too has been rejected as per Order (P-6), dated 8-10-2003. This writ petition has been filed for quashment of Order (P-6), dated 8-10-2003. Order (P-6) is assailed on the ground that deceased employee was disqualified on the medical ground and retirement was ordered, thus, the claim of the petitioner ought to have been considered and appointment ought to have been ordered. Action is illegal and arbitrary.

Shri K.K. Pandey, learned Counsel for the petitioner, has submitted that action of

the respondents in rejecting the case of the petitioner is illegal and arbitrary. Appointment ought to have been ordered in accordance with the modified policy which has been placed on record by the petitioner with the list of documents. He has further submitted that when retirement was ordered on medical ground, the respondents ought to have appointed the petitioner on compassionate basis.

A perusal of the policy contained in memo dated 17-1-2002 indicates that the appointment can be given only in case an employee has died while he was in service and the family is in penurious condition and suffering financial distress. The compassionate appointment has not been provided in case of an employee has been retired on medical unfitness. In the instant case, it has been fairly stated by learned Counsel for the petitioner that employee was retired at the age of 57 years, thus employee was on the verge of age of superannuation and he has died in the year 1999. The deceased was in receipt of admissible pension and other retiral dues were also paid. Deceased employee has rendered services for long period and was retired on medical ground just on the verge of superannuation. There is no provision to offer compassionate appointment in the case when an employee has been retired on medical ground, in my opinion, it is not open to the petitioner to claim compassionate appointment. It can not be said that family was in penurious condition. Employee has utilized the services to the maximum and was on the verge of retirement. He was in receipt of pension etc. Thus, it can not be said that there is any such unforeseen situation faced by the family of the employee so that family was not able to maintain itself. Compassionate appointment can not be ordered by the Court de hors of the policy. It is not for this Court to frame policy. It can not be said that rejection of the case of petitioner suffers with any illegality or arbitrariness.

In *Managing Director, MMTC Ltd., New Delhi v. Pramoda Dei alias Nayak*, (1997) 11 SCC 390, the Apex Court has held that mere death of the employee does not entitle his family to claim compassionate appointment. The Apex Court has further laid down that rehabilitation appointment has not to be given in all cases where it become due because of death of an employee in harness or by his permanent disability. The object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis.

In *Sanjay Kumar Vs. The State of Bihar and Others*, , the Apex Court has laid down that compassionate appointment is intended to enable the family of the deceased employee to "tide over sudden crisis" resulting due to death of the breadearner who had left the family in penury and without any means of livelihood.

In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , the Apex Court has laid down that compassionate appointment can not be claimed as of right. As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public

authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased.

In *S. Mohan Vs. Government of T.N. and Another*, , the Apex Court has laid down that the object of the compassionate appointment is to get over the financial crisis which it faces at the time of the death of the sole breadwinner. The compassionate employment Can not be claimed and offered whatever the lapse of time and after the crisis is over.

In *Jagdish Prasad Vs. State of Bihar and Another*, , the Apex Court has laid down that the very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected "immediate hardship and distress" caused to the family by sudden demise of the earning member of the family.

In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , the Apex Court has held that compassionate appointment "can not be granted after a lapse of a reasonable period. The consideration for such employment is not a vested right which can be exercised at any time in future". The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate appointment can not be claimed and offered whatever the lapse of time and after the crisis is over. The Apex Court has further laid down that it must be remembered in the matter of compassionate appointment 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 favour 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.

In the facts of case deceased employee has utilized service to maximum, was retired on medical ground on the verge of superannuation. In policy, there is no provision for grant of compassionate appointment to dependent of such an employee. Six years have passed since retirement of employee. In totality of circumstances, refusal to appoint on compassionate ground can not be said to be illegal or arbitrary.

In view of above discussions, I find no ground to make interference in this writ petition. Same is dismissed. No costs.