
(2014) 02 MP CK 0016
In the Madhya Pradesh High Court
Case No : W.P. No. 1642 of 2014

Shilpi Mishra

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 15, 16

Citation : (2014) 3 LLJ 211

Hon'ble Judges : Sanjay Yadav, J

Bench : Single Bench

Advocate : Sankalp Kochar, Advocate for the Appellant; S.S. Bisen, Government Advocate, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Yadav, J.—Heard on admission. While seeking quashment of order dated 28.02.2013, petitioner also seeks quashment of clause 2.2 of order dated 22.01.2007.

2. Whereas, by order dated 28.02.2013 claim of the petitioner for appointment on compassionate ground in lieu of death of her father has been negated on the ground that she does not fall in the category of person who are entitled for appointment on compassionate ground as stipulated in clause 2.2 of the circular No. C-3-7-2000-3, d Bhopal dated 22.01.2007. Clause 2.2 of the circular dated 22.01.2007 stipulates:

Vernacular matter omitted.

3. Father of the petitioner employed as Assistant Grade -II, District Treasury Officer, Mandla died in harness on 16.11.2012. He left behind two married daughters and a widow. That the widow of the deceased employee on 06.01.2013 gave an application for appointment of her married daughter (the petitioner) on compassionate ground that she (the widow) being dependent on the petitioner daughter and the daughter's husband being unemployed. The

claim was turned down on the basis that as per policy in vogue (as per clause 2.2) the petitioner is not eligible. The petitioner, therefore, seeks quashment of clause 2.2 of the policy dated 22.01.2007 on the ground that the same is violation of Article 14, 15 and 16 of the Constitution of India as it discriminates between sons and married daughters. That, there is no material nexus with the object sought to be achieved in enunciating clause 2.2 of the circular dated 22.01.2007. That, the petitioner was even otherwise dependent on her father as her husband is unemployed. That, there being no opposition of other family members, non-grant of compassionate appointment is arbitrary. Petitioner has placed reliance on the decision by Division Bench of Bombay High Court Swara Sachin Kulkarni v. Supdt. Engineer in writ petition No. 11987/2012 decided on 06.12.2013.

4. Trite it is that compassionate appointment is an exception to the general rule that appointment to public service should be on merits and through open invitation. In Haryana State Electricity Board and another Vs. Hakim Singh, it is held:

8. The rule of appointments to public service is that they should be on merits and through open invitation. It is the normal route through which one can get into a public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception belief is provided to the bereaved family of a deceased employee by accommodating one of his dependents in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the ultimately death of its sole bread-winner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

5. In State of Haryana and Another Vs. Ankur Gupta, it has been held :

6. As was observed in State of Haryana and Others v. Rani Devi it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependent on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Articles 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right. Die-in harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In State of Haryana and Others v. Rani Devi (supra) case it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot

be justified on constitutional grounds. In *LIC of India v. Asha Ramchandra Ambekar* it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana* that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

6. Does clause 2.2 of the policy violates Article 14 and 16 of the Constitution of India. It includes within its fold not only a son and unmarried daughter but also a widowed daughter and a divorced daughter. These class of persons, if are dependent on a government servant who die in harness, are eligible for consideration for appointment on compassionate ground. Merely because the clause does not include the married daughter whose husband is alive will not render the provision a violation of Article 14 and 16 of the Constitution of India. In *R.S. Joshi, Sales Tax Officer, Gujarat and Others Vs. Ajit Mills Limited and Another*, it has been held:

10....A law has to be adjudged for its constitutionality by the generality of cases it covers, not by the freaks and exceptions it martyrs....

7. What is prohibited under Article 14 of the Constitution of India is a "class legislation" and not "classification for the purpose of legislation".

8. In *State of Andhra Pradesh and Others Vs. Nallamilli Rami Reddi and Others*, it has been observed:

8. What Article 14 of the Constitution prohibits is "class legislation" and not "classification for purpose of legislation". If the legislature reasonably classifies persons for legislative purposes so as to bring them under a well-defined class, it is not open to challenge on the ground of denial of equal treatment that the law does not apply to other persons. The test of permissible classification is two fold: (i) that the classification must be founded on intelligible differentia which distinguishes persons grouped together from others who are left out of the group, and (ii) that differentia must have a rational connection to the object sought to be achieved. Article 14 does not insist upon classification, which is scientifically perfect or logically complete. A classification would be justified unless it is patently arbitrary. If there is equality and uniformity in each group, the law will not become discriminatory, though due to some fortuitous circumstance arising out of peculiar situation some included in a class get an

advantage over others so long as they are not singled out for special treatment. In substance, the differentia required is that it must be real and substantial, bearing some just and reasonable relation to the object of the legislation.

9. Thus, if the policy for appointment on a compassionate ground has been brought in vogue where certain class of dependents are recognized for consideration for appointment on compassionate grounds, the same, in the considered opinion of this Court will, not be violative of Article 14 and 16 of the Constitution of India, because it does not include certain other categories. A married daughter whose husband is alive cannot be treated to be dependent on her father merely because her husband is unemployed. In that case it is the son-in-law who would be dependent on his father-in-law rather than the daughter dependent on her father.

10. In view whereof, since clause 2.2 of the policy stand the test of reasonable classification, it does not violate Article 14 and 16 of the Constitution of India.

11. In Bench of Bombay High Court Swara Sachin Kulkarni v. Supdt. Engineer (supra) the policy as it exist in the present case is not adverted at. What has been relied upon is the government resolution dated 26th October, 1994 and dated 22nd August, 2005. And though the name of petitioner was included in the list, however, later on her name was dropped on the ground of her being married. It was in these factual background that observation has been made that a welfare state is not expected to take a stand that a married daughter is ineligible to apply for compassionate ground.

12. At the cost of repetition the compassionate appointment since is an exception to general rule and must be effected under a scheme which should be in consonance with Article 14 and 16 of the Constitution of India. In the case at hand there being a policy which does not include a married daughter whose husband is alive, the observation in Bench of Bombay High Court Swara Sachin Kulkarni v. Supdt. Engineer (supra) is of no assistance to the petitioner.

13. Furthermore, there is no material on record to establish that the petitioner and her husband were dependent on deceased government servant. Thus, non-consideration of the petitioner for appointment on compassionate ground cannot be faulted with. Consequently, petition fails and is dismissed. No costs.