

(2006) 08 KAR CK 0049
In the Karnataka High Court
Case No : Writ Petition No. 45590 of 2001

Shri H.V. Mohan Kumar

APPELLANT

Vs

The Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 28-08-2006

Acts Referred:

Constitution of India, 1950 — Article 14
Industrial Disputes Act, 1947 — Section 2 (p)
Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 — Section 2 (t), 47

Citation : (2006) 08 KAR CK 0049

Hon'ble Judges : Anand Byrareddy, J

Bench : Single Bench

**Advocate : M. Narayana Bhat, for Subbarao and Company, for the Appellant;
S.N. Aswathanarayan, for the Respondent**

Final Decision : Dismissed

Judgement

Anand Byrareddy, J.—The facts are as follows:

The father of the petitioner was employed as a driver with the respondents. He had suffered a paralytic stroke, while on duty, in the year 1993. In

September 1993 he was discharged from hospital and was advised to do light work. The petitioner's father had accordingly sought for alternative

duty with the respondents as per representation dated 22.8.1994. In the meanwhile the respondents had called upon the petitioner's father to join

duty at the earliest. The request to assign light duties was reiterated. The respondents refused to assign light duties and on the other hand advised

taking voluntary retirement

2. In April 1996 the petitioner's father was called upon to appear for a medical examination and it was certified that he was not fit for carrying on

the work of a driver. The petitioner's father was compulsorily retired by an order dated 3.5.1996.

3. The above action of the respondents was challenged by way of a writ petition in W.P. No. 3001/1997 before this Court. It was contended that

the action was repugnant to the settlement arrived at u/s 2(p) of the Industrial Disputes Act 1947, dated 28.4.1979. In terms of the settlement, an

employee who becomes physically disabled, while in service, was to be allotted light duties if he was not capable of performing regular duties,

either in the same cadre or in a lower post. However, the workman died during the pendency of the petition. The legal representatives came on

record, seeking an alternative relief of appointment on compassionate grounds. The petition was disposed of on 9.10.1997 with a direction to

consider the case of the petitioner.

4. The petitioner had made yet another representation. This was however, rejected by an endorsement dated 8.8.2001. It is in this background

that the present writ petition is filed.

5. The counsel for the petitioner contends that notwithstanding the C and R Regulations of the respondents - the petitioner's father having become

disabled during the course of his employment was protected u/s 47 read with Section 2(t) of the Persons with Disabilities (Equal Opportunities,

Protection of Rights and Full Participation) Act (1995) and relies on the case of Kunal Singh Vs. Union of India (UOI) and Another, . He further

contends that the respondent has acted in breach of a settlement u/s 2(p) of the Industrial Dispute Act. The petitioner's father having become

disabled for the respondents were required to re-categorize him to an equivalent post and assign light duties. In any event the workman having died

during the pendency of the proceedings challenging the action - his death ought to be treated as being whilst in service and therefore the petitioner,

as his legal heir, ought to be provided employment on compassionate grounds as the petitioner's father is the sole bread earner of the family.

6. Per contra the counsel for the respondents contends that the settlement under the Industrial Dispute Act, nor the Cadre and Recruitment

Regulations of the respondents could be pressed into service as the workman had not become disabled as a result of any accident or injury arising

during the course of employment to claim re-categorization and the workman

having been compulsorily retired in accordance with the regulations

there was no scope for appointment of the petitioner on compassionate grounds.

7. Reliance is placed on several authorities: *Gayathri Vs. Managing Director, Ksrtc*, wherein it is held that a scheme formulated by the respondent

to provide alternative employment to workman who become disabled in the course of employment would not apply to workmen, who, on account

of health reasons, are required to be retired from services.

Punjab National Bank and Ors. v. Ashwini Kumar Taneja 2004-III-LLJ 536 - which is to the effect that where the family of a deceased workman

had received substantial retiral benefits, there was no scope for providing employment on compassionate grounds.

Umesh Kumar Nagpal Vs. State of Haryana and Others, : To the effect that compassionate appointment is made to enable a family of the

deceased employee to come out of a state of penury and not to provide employment. And that grant of such appointment after a considerable

lapse of time, is not permissible.

8. On these rival contentions, even if the contentions of the petitioner could be accepted, the fact that by sheer efflux of time, the object of

providing employment to the legal representative of deceased employee not being present and as held by the Supreme Court in a more recent

Judgment in the case of *State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir*, that compassionate appointment is an exception to the

general rule. Normally, employment in the Government or other public sectors should be open to all eligible candidates who can come forward to

apply and compete with each other. It is in consonance with Article 14 of the Constitution. This general rule ought not to be departed from except

where compelling circumstances demand, such as, death of the sole bread winner and livelihood of the family suffering because of the setback.

Once it is shown that in spite of the death of the bread winner, the family survived and a reasonable time has elapsed, it would be violative of

Article 14 of the Constitution of India to show favour to any such claimant at the cost of the interests of several others who are in equally dire need

of employment for their livelihood.

9. Hence in my opinion the petitioner is no longer entitled to claim employment on compassionate grounds and accordingly the petition is

dismissed.