
(2008) 07 KAR CK 0011
In the Karnataka High Court
Case No : Writ Petition No. 30024 of 2008

Shri Ismail P. Jalageri

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 18-07-2008

Acts Referred:

Karnataka Administrative Tribunal Act, 1985 — Section 19

Citation : (2011) 2 KarLJ 189

Hon'ble Judges : S.R. Bannurmath, J;A.N. Venugopala Gowda, J

Bench : Division Bench

Advocate : B.B. Bajentri, for the Appellant; C.S. Patil, AGA, for the Respondent

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—Petitioner had filed Application No. 404/2004 in the Karnataka Administrative Tribunal, Bangalore to direct the Respondents to consider his claim for appointment on compassionate grounds. Petitioner's father late Patesab R. Jalageri, while working as a peon in the office of the Agriculture Officer, Mudhol, has died on 15.1.1989. Petitioner's date of birth is 1.6.1983 and he was 6 years of age on the date of the death of his father. His mother had submitted a representation dated 5.6.1998 to the Respondents appraising the death of her husband, by leaving of the family in indigent circumstances and requesting to keep the Petitioner's claim for appointment on compassionate grounds pending, till the Petitioner attains the age of majority. Petitioner has passed S.S.L.C. examination during March, 2001. On 10.5.2002 he made an application to the 4th Respondent to consider his name for appointment on compassionate grounds. The 4th Respondent has forwarded the application of the Petitioner together with enclosures to the 3rd Respondent for necessary action, Thereafter the 4th Respondent has sent a communication dated 21.7.2003 informing the Petitioner that as per the existing rules, his case for appointment on compassionate grounds is not permissible. Questioning the said communication and for issue of the aforesaid direction, an application u/s 19 of

the Karnataka Administrative Tribunal Act, 1985 was filed. The Tribunal having found that a minor dependent of a deceased Government Servant will not be eligible to claim appointment on compassionate grounds under the Karnataka Civil Service (Appointment on Compassionate Grounds) Rules, 1996 if he does not attain majority within a year from the date of death of the Government Servant and that the fact that a request had been made by the guardian will not help him and that the applicant attained majority only after 111/2 years from the date of death of his father and the matter is squarely covered by the Division Bench decisions rendered in a similar matters, has dismissed the application. Questioning the order passed by the Tribunal and to grant the relief prayed for in the aforesaid application, this writ petition has been filed.

2. We have heard the learned Counsel for the Petitioner and perused the record of writ petition.

3. The first contention of the learned Counsel is that, the learned Member of the Tribunal ought to have followed the order passed by a Division Bench of the Tribunal in Application No. 8848/2001 dated 18.12.2001 in the case of Sri Manjunatha v. State of Karnataka and Ors. on the ground that the same was binding on him. We do not find merit in the contention. While passing the impugned order, learned Member of the Tribunal has followed the Division Bench decisions of the Tribunal rendered in the cases of Sri B. Somashekarappa v. State of Karnataka and Ors. in Application No. 2387/1999 decided on 11.6.2007, Sri V. Prakash v. State of Karnataka and Ors. in Application No. 10028/2002 decided on 12.6.2007 and in the case of Sri Venkatesh v. State of Karnataka and Ors. in Application No. 4913/2003 decided on 12.6.2007, wherein it was held that a minor dependent of a deceased Government Servant will not be eligible to claim appointment on compassionate grounds under the Karnataka Civil Service (Appointment on Compassionate Grounds) Rules, 1996, if he does not attain majority within a year from the date of death of the Government Servant and the fact that the request had been made by the guardian of the minor will not help him. The decision in the case of Manjunatha (supra) relied upon by the learned Counsel is one rendered on 18.12.2001, whereas the aforesaid Division Bench decisions, followed in passing the impugned order by the Tribunal, are those which have been decided by the Division Bench of the Tribunal on later date i.e., on 11th or 12th June, 2007. The issue, when there is a conflict between two decisions of the Court, is it the later of the two decisions that should be followed, is no more res-integra. In this connection it is useful to refer to the Full Bench decision of this Court in the case of Govindanaik G. Kalaghatigi v. West Patent Press Co. Ltd., and Anr. reported in AIR 1980 Kar. 92, wherein, while considering the question referred by a Pull Bench of three learned Judges to the effect that :

When there is conflict between two decisions of the Supreme Court, is it the later of the two decisions or the decision of the larger of the Benches which rendered those decisions that should be followed by High Court and other Courts in the country?

it has been held by the Pull Bench of Five learned Judges as follows :

If two decisions of the Supreme Court on a question of law cannot be reconciled and one of them is by a larger Bench while the other is by a smaller Bench, the decision of the larger Bench, whether it is earlier or later in point of time, should be followed by High Courts and other Courts. However, if both such Benches of the Supreme Court consist of equal number of Judges, the later of the two decisions should be followed by High Courts and other courts.

(emphasis is supplied by us)

The law declared by the Full Bench of this Court, squarely answers the contention raised by the learned Counsel. Learned member of the Tribunal while passing the impugned order has followed the later decisions of the Division Bench of the Tribunal which were binding on him in terms of the law of precedents and hence, he has not committed any error or illegality.

4. The second contention of the learned Counsel is that, the Petitioner's father having died on 15.1.1989 and the date of birth of the Petitioner being 1.6.1983, the Petitioner could not have complied with the condition that, he should have attained the age of majority and made application within one year from the date of death of his father and hence the decision in the case of Sri Manjunatha (supra) applies and ought to have been followed. There is no merit in the contention. In the case of Sri. K.M. Prakash Vs. The State of Karnataka, Department of Personnel and Administrative Reforms (Service Rules) and Zilla Panchayat, , the facts were, that one M. Shankarappa working as a secretary in the Gram Panchayat died on 7.1.2001 while in service leaving behind his wife, a son and two daughters. The widow of the deceased employee made an application on 8.6.2001 requesting to appoint her son on compassionate grounds after he attained majority. It was also stated by her that she was not keeping in good health and she was not in a position to take up the job and that her daughters whose marriage was to be performed in the near future, are also not in a position to accept any job. The son, whose date of birth is 2.4.1986 and who attained majority on 2.4.2004, made an application on 6.4.2004 for appointment on compassionate grounds, which was rejected on the ground that, as per Rule 5 of the Karnataka Civil Service (Appointment on Compassionate Grounds), Rules 1996, as amended in 2000, he was not entitled for appointment. Questioning the rejection, writ petition was filed, which was dismissed by a learned Single Judge holding that, in the light of the proviso to Rule 5, the application filed beyond the prescribed period cannot be considered. The said finding was questioned in writ appeal. Considering Rule 5 of the Rules as amended by the second amendment Rules 2000 it was held by the Division Bench as follows :

As can be seen from the first proviso the intention of the Rule Making Authority is that the right to claim compassionate appointment cannot be reserved in favour of a minor indefinitely until he attained majority. The Rule Making Authority in its wisdom has stipulated a period of one year from the death of the employee

within which the minor should have attained majority and thereafter he should make an application for appointment on compassionate grounds within a period of one year. Such a prescription cannot be regarded as arbitrary or illegal. Nor it be characterised as one violating Articles 14 and 16 of the Constitution.

In our view, the said decision squarely answers the contention urged before us. The Petitioner has become eligible for appointment only after becoming a major. The consideration of the claim can be only in accordance with the Rules in force, on the date he has become eligible for consideration. Since the Petitioner did not attain majority within one year from the date of death of his father, the first proviso to Rule 5 of the amended Rules, 2000 is not complied with and hence the Respondents were justified in rejecting the claim of the Petitioner and in issuing the communication dated 21.7.2003. The decision of the tribunal rendered in the case of Manjunatha (supra) is not good law, in view of the decision of this Court in the case of K.M. Prakash (supra) and hence was not rightly followed by the tribunal.

5. The third contention of the learned Counsel is that, non compliance of the provisions of law, the consequences of which has not been prescribed, has to be construed as directory. The contention is devoid of merit. In the case of Commissioner of Public Instructions and Others Vs. K.R. Vishwanath, , a similar contention advanced that, the rules are merely directory and no technical view should be taken, as the object is to provide sustenance to large number of members of the deceased Government servant, was not accepted by the Hon''ble Supreme Court.

6. The last contention of the learned Counsel for the Petitioner is that, while considering the case of appointment on compassionate grounds, the approach of the authorities must be humane, reasonable and just, was not considered by the Tribunal and hence there is arbitrariness. We do not find merit in the contention. All appointments to public services have to be made by strict application of Articles 14 and 16 of the Constitution of India. The appointment on compassionate grounds is an exception on the basis of sudden crisis occurring in the family of the civil servant who served the State and died while in service. The appointment on compassionate grounds have to be made strictly in terms of the Rules, Regulations, Scheme or Administrative orders, which can stand the test of Articles 14 and 16 of the Constitution of India. Time and again, Hon''ble Supreme Court has held that, an appointment on compassionate grounds cannot be claimed as a matter of right and the scheme framed in that regard cannot be made applicable to all types of cases irrespective of the nature of service rendered by the deceased employee. The object of the Rules, Regulations, Scheme providing for the appointment on compassionate grounds, is to enable the family to get over the sudden financial crisis and as such, any appointment made should have to be strictly in accordance with Rules, Regulations, Scheme or Administrative Orders/ instructions and not otherwise, Since the Respondents have considered the claim of the Petitioner in accordance with the Rules, there is

no arbitrariness on their part nor any illegality on the part of the tribunal.

7. From a perusal of the record it is clear that, the Petitioner's father who was working as a Group D employee in the agricultural department, Government of Karnataka, died while in service on 15.1.1989. On the date of the death, the Petitioner was 6 years of age. Petitioner having passed S.S.L.C. examination in March 2001 has submitted an application on 10.5.2002 to the 4th Respondent for appointment on compassionate grounds. In between the date of death and the application submitted, nearly 12 years had elapsed. The family of the deceased has survived from 15.1.1989 till now i.e. for about 19 years. Since the appointment on compassionate grounds cannot be claimed as a matter right, the same being not hereditary and if the family of the deceased civil servant has tide over the crisis for more than 18 years as on date, the claim for appointment on compassionate grounds is clearly untenable.

8. In the case of Director, Defence Metal Research Laboratory and Anr. v. G. Murali, (2003) 9 SCC 247 , Hon''ble Supreme Court has held that, if the writ Petitioner and his family had coped without compassionate appointment for about. 18 years, there was no warrant in such circumstances for directing the writ Petitioner's appointment on compassionate grounds.

9. In the case of State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , Hon''ble Supreme Court has held that, the date of death of the civil servant and the date on which the application is filed for appointment on compassionate grounds, to be a relevant and material fact to consider the claim.

10. In the case of National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, Hon''ble Supreme Court has held that, the purpose of providing employment to the dependent of a Government Servant dying in harness in preference to anybody else, is to mitigate the hardship caused to the family of the deceased on account of his unexpected death while in service and such conditions should operate when the application is made.

11. In the case of Sanjay Kumar Vs. The State of Bihar and Others, , Hon''ble Supreme Court has held that, there cannot be reservation of a vacancy till such time the Petitioner becomes a major after number of years, unless there is some specific provision in the Rules, since the very basis of compassionate appointment is to see that the family gets immediate relief.

12. Taking into consideration the legal principles settled by the Hon''ble Supreme Court in the matter of consideration of the application/claim for appointment on compassionate grounds, we hold that, the Petitioner is not entitled to claim appointment on compassionate grounds, in view of the fact that he was less than 6 years old when his father died while in service i.e., on 15.1.1989 and the application for appointment was submitted by him only on 10.5.2002 and as on date more than 18 years have elapsed. Thus the prayer of the Petitioner is contrary to Rules and law and hence no direction can be issued to consider his claim by the Respondents. The Tribunal has not committed any error or illegality

in dismissing the application filed by the Petitioner. The impugned order passed by the Tribunal is justified.

In view of the above, writ petition is devoid of merit and hence is hereby rejected.