
(2016) 04 MEG CK 0005
In the Meghalaya High Court
Case No : Writ Petition (C) No. 256 of 2015

Shri Pawan Kumar Ojha

APPELLANT

Vs

State of Meghalaya

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Citation : (2016) 4 NEJ 126

Hon'ble Judges : Mr. Dinesh Maheshwari, CJ.

Bench : Single Bench

Advocate : Mr. N.D. Chullai, Senior G.A, for the Respondent; Mr. S.P. Sharma, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. Dinesh Maheshwari, C.J. - The petitioner herein is aggrieved of the order dated 13.08.2014 (Annexure-IX) as issued by the respondent-Superintendent of Police East Khasi Hills, Shillong, informing him of rejection of his claim for employment on compassionate ground as being time-barred, per Para 10 of the Government Office Memorandum (O.M.) No. PER(AR) 154/178/147 dated 11.12.1984.

2. Put in brief, the relevant factual aspects of the matter are that the petitioner's father (L) Lalan Prasad Ojha, who was working with the Meghalaya Police in the rank of UBC, expired on 04.12.1994 while in service and when the petitioner was only 7 years of age. From the material placed on record, it appears that the date of birth of the petitioner is 12.05.1987; and the petitioner acquired educational qualification of Secondary in the year 2003 and Intermediate on 07.06.2005. The case of the petitioner is that after attaining the age of 18 years, he submitted an application on 20.08.2006 for employment on compassionate ground in place of his deceased father; and, as advised, also submitted his bio-data along with the duly filled in standard form of application. The petitioner has averred that since the year 2006, himself and his mother had been pursuing the matter with the respondents, but of no avail; and ultimately, he received the impugned letter

dated 13.08.2014 returning the application in original while alleging that his claim was time-barred as per Para 10 of the O.M. dated 11.12.1984, but without disclosing at all as to how the claim was barred by time.

3. The petitioner has further averred that as per the Notification dated 02.12.2010, the scheme for employment on compassionate ground, as provided under the said O.M. dated 11.12.1984, stood abolished from 24.11.2010, but then, specific exception was made to the effect that the pending proposals, including those arising upto 24.11.2010, will be examined on merit by the Government. According to the petitioner, as per this Notification dated 02.12.2010, the applications made until 24.11.2010 were to be considered on their merit and hence, the application made by him on 20.08.2006 could not have been rejected as time-barred. The petitioner has further submitted that as per the information collected under the Right to Information Act, the respondents have extended appointment on compassionate ground in various districts and in various offices from the year 2006 and until the date to as many as 213 candidates and there was no justified reason for rejecting his claim for such appointment.

4. The respondents have filed their affidavit-in-opposition, essentially contending that the application of the petitioner was rejected in accordance with Para 10 of the O.M. dated 11.12.1984, as it was found after thorough checking of the papers that the petitioner was 7 years of age at the time of demise of his father and acquired Intermediate qualification in the month of June, 2005 but then, he submitted the application for appointment on compassionate ground only on 12.07.2007 i.e., after a lapse of two years from the date of his attaining majority and hence, his application was not within the stipulated time of one year.

5. The learned counsel for the petitioner has strenuously argued that the measures for appointment on compassionate ground are based on the concept of socio-economic justice so as to provide relief to the distressed family of a deceased employee; and the claim for appointment on compassionate ground, when made as per the applicable guidelines, ought not be denied only on the ground of some alleged discrepancies or on hyper-technical considerations. Learned counsel submitted that the petitioner made the application way back in the year 2006 and it was entirely unjustified on the part of the respondents to reject his prayer after about 9 years and that too, on an uncertain basis.

6. Learned counsel further submitted that the respondents had been entirely unjustified in declining the prayer of the petitioner even while extending such relief to several other applicants more or less similarly situated. Learned counsel yet further submitted that the family of the petitioner is not possessed of sufficient means and his case deserves to be considered on humanitarian grounds and, if necessary, with relaxation over harsh provisions. Learned counsel has referred to and relied upon on the decisions of the Hon"ble Supreme Court in the case of Director General of Posts and Others v. K. Chandrashekar Rao, (2013) 3 SCC 310 and Bhawani Prasad Sonkar v. Union of India and Others:

(2011) 4 SCC 209.

7. Learned Sr.GA appearing for the respondents has contended, per contra, that the petitioner having completed 18 years of age in the month of May, 2005 and even having acquired the qualification of Intermediate in the month of June, 2005, chose to make the application only on 12.07.2007 although he was required to make the application within one year of his acquiring majority and educational qualification. Thus, according to the learned Sr.GA, the application had rightly been rejected as time-barred.

8. Having given thoughtful consideration to the rival submissions and having examined the record, this Court is clearly of the view that the petitioner is not entitled to the relief as claimed.

9. It remains trite that compassionate appointment, an exception to the general rule of open recruitment, is intended to meet with the immediate financial problems, if so faced by the bereaved family of the deceased employee. The very object of providing compassionate appointment to a dependent of the employee who dies in harness is to relieve the family of hardship and distress caused due to sudden demise of its bread-earner. Such provisions for compassionate appointment, by their very nature, are in exception to the general procedure prescribed for making appointments; and are required to be applied while keeping in view the fact that by making such appointments, other eligible persons are deprived of their chance to seek employment. The Hon'ble Supreme Court in the case of Director of Education (Secondary) v. Pushpendra Kumar, (1998) 5 SCC 192 has pointed out:

"The object underlying a provision for grant of compassionate employment is to enable the family of deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to 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 for giving gainful appointment to one of the dependent of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependent of a deceased employee."

10. Compassionate appointment is not that of a vested right, rather it is a concession and not a right (vide *Steel Authority of India Limited v. Madhusudan Das and Ors.*, (2008) 15 SCC 560); and the employer cannot be held bound to provide for such concession whenever a member of the family of the deceased employee would ask for the same. In the case of *Umesh Kumar Nagpal v. State of Haryana and Ors.*, (1994) 4 SCC 138, the Hon'ble Supreme Court observed:

"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 employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

11. These settled principles have been reiterated by the Supreme Court in *Bhawani Prasad Sonkar's* case (Supra) while observing, inter alia, as under:-

"15. Now, it is well settled that compassionate employment is given solely on humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve."

12. The other decision referred to by the learned counsel for the petitioner where the Hon'ble Supreme Court declined to withdraw the relief granted on the ground of some alleged discrepancies which had not been supported by any data, proceedings on its own fact situation, has no direct application to the present case. On the other hand, after applying the principles above-referred to the facts of the present case, this Court is unable to find any reason where for the petitioner could be granted the relief of consideration of his claim for compassionate appointment.

13. True it is that the respondents have not stated in clear terms in the order dated 13.08.2014 as to how the application of the petitioner was treated as time-barred, but it appears that the applications of as many as five applicants, including the petitioner, were returned as being time-barred. The respondents had not rejected the application of the petitioner with reference to the said O.M. dated 02.12.2010 but it is clear on the face of the record that the application of the petitioner was not in conformity with Para 10 of O.M. dated 11.12.1984,

which requires making of such application within one year from the date of demise of the Government servant or within one year from the date of acquiring the necessary educational qualification by the applicant, if none of the relatives of the deceased Government servant was educationally qualified at the time of his death. The said Para 10 of O.M. dated 11.12.1984 reads as under:-

"10. Application in the Standard forms in the Annexure, for such employment should be made to the Chief Secretary to the Government of Meghalaya through the Head of Department/Office in which the Government servant was last employed. The Head of Department/Office should send the application with his remarks to the concerned Administrative Department which will refer it to the Chief Secretary. The application must be submitted within one year from the date of premature death of the Government servant or from the date of acquiring the necessary educational qualification if none of the relatives is educationally qualified at the time of such death, as the case may be."

14. The facts of the present case make it clear that the petitioner, with date of birth as 12.05.1987, completed 18 years of age on 11.05.2005. Admittedly, he acquired the qualification of Intermediate in the month of June, 2005 (Certificate Annexure-V). The petitioner alleges to have made the application on 20.08.2006, seeking employment on compassionate ground (Annexure-III) whereas, according to the respondents, he made the application in the standard form only on 12.07.2007. The copy of the standard form application, placed on record by the petitioner as Annexure-IV, clearly carries the date of making as 12.07.2007. On the material placed on record, it is difficult to find if the application in the standard form was indeed submitted by the petitioner before 12.07.2007. In any case, even if the application made on 20.08.2006 (Annexure-III) is taken into consideration and it is assumed that the petitioner submitted the standard form of application along with the same, as a matter of fact, this application was also beyond the period of one year from the date of the petitioner completing 18 years of age (01.05.2005) and from the date of his acquiring qualification of Intermediate (07.06.2005).

15. In the given fact situation, when the application of the petitioner stood beyond the time prescribing by the O.M. dated 11.12.1984, the respondents cannot be faulted in rejecting the same as time-barred. In this fact situation, any reference to other applicants and appointments remains rather misplaced and any such appointment does not enure to the benefit of the petitioner.

16. True it is that the respondents had not promptly dealt with the application made by the petitioner and returned the same only on 13.08.2014, but that delay, by itself, does not provide any ground for granting relief to the petitioner for appointment on compassionate ground. Though learned counsel for the petitioner has made a fervent plea for relaxation and sympathetic consideration for the purpose of family in distress but such submissions also do not make out a case for interference for the reason that, as noticed above, the scheme for compassionate appointment, being exception to general rule, is required to be

construed strictly and ordinarily, no deviation therefrom could be permitted.

17. Moreover, in the present case, the petitioner's father expired on 04.12.1994. In the totality of circumstances, it is difficult to accept that appointment on compassionate ground is required to be considered in this case at this length of time.

18. For what has been discussed herein above, the writ petition fails and is, therefore, dismissed.