

(2005) 08 KAR CK 0055
In the Karnataka High Court
Case No : Writ Petition No. 3862 of 2004

Shri R. Narayan

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-08-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 16 (1)

Citation : (2005) 107 FLR 586 : (2005) ILR (Kar) 4543 : (2006) 2 KarLJ 595 :
(2005) 4 KCCR 331 SN

Hon'ble Judges : B.S. Patil, J

Bench : Single Bench

Advocate : M.S. Anandaramu, for the Appellant; Huleppa Heroor, A.G.A. for R-1 to R-3, for the Respondent

Judgement

B.S. Patil, J.—The petitioner is calling in question the endorsement dated 31-10-2003 issued by the 3rd respondent- The Joint Director of Collegiate Education, a copy of which is produced at Annexure-C, rejecting his request for appointment on compassionate ground. He has further sought for a direction to the respondents to provide him an appointment to any of the Group-B post on compassionate ground in view of the death of his father in harness.

2. It is the contention of the petitioner that his father Sri R. Rangaswamy who was working as Group-D employee in the M.E.S. College, Bangalore, died on 13.4.1999 while he was in service. At the time of the death of his father the petitioner was a minor. He attained the age of majority on 26.11.2000. Immediately after attaining the age of majority, he applied seeking appointment on compassionate ground. When his representation was not considered, he approached this Court by filing W.P. No. 44854/2001. This Court disposed of the said Writ Petition on 21.12.2001 directing the respondents to consider the representation made by the petitioner within a period of 8 weeks and pass appropriate orders thereon. In spite of a direction being issued by this Court, when the respondents did not consider the request, petitioner made another

representation on 20.8.2003. Thereafter, the Joint Director of Collegiate Education, has issued the endorsement dated 31.10.2003 as per Annexure-C informing him that there is no provision to provide appointment on compassionate ground. The endorsement rejecting the request for compassionate appointment is issued on the basis of the Government Order dated 1.3.2001, a copy of which is produced by the petitioner at Annexure-D.

3. Learned Counsel for the petitioner contends that by the Government Orders dated 25.3.1987 and 28.11.1998, copies of which are produced at Annexure-E and F respectively, the Rules of recruitment framed by the State Government known as Karnataka Civil Services (Appointment on Compassionate Ground) Rules, 1996 are made applicable to the Private aided educational institutions. These Government Orders have not been withdrawn and they still hold the field. That being the position, the counsel contends the Government Order dated 1.3.2001 cannot be made applicable to deny appointment on compassionate ground. It is the further contention of the petitioner that the Government Order dated 1.3.2001 is inapplicable to the facts and circumstances of the present case as the death of the father of the petitioner has taken place on 13.4.1999 and the application itself was submitted by the petitioner prior to the issue of the said Government Order dated 1.3.2001. Learned counsel for the petitioner has further contended that the Government Order dated 1.3.2001 is unjust, arbitrary and violative of Article 14 and 16(1) of the Constitution. Learned Counsel for the petitioner has placed reliance on several judgments of the Apex Court to contend that a request for compassionate appointment deserves to be considered immediately as the very purpose of providing such an appointment is to come to the aid of the family which is in distress.

4. The respondents-State and its authorities have filed the statement of objections. The learned Additional Government Advocate reiterating the stand taken in the statement of objection contends that though the Rules pertaining to compassionate appointments, as framed by the State Government, are made applicable to the private aided institutions by issue of Government Orders dated 25.3.1987 and 28.11.1998 and though these orders are not withdrawn but the Government Order dated 1.3.2001 categorically states that the vacancy in both the teaching and non-teaching posts created in any aided institutions on account of the retirement, resignation and death of the employee after 1.3.2001 have to be breathed as per the said Government Order. Therefore, he contends that the vacancies that arise even on account of death of the employee shall have to be treated as unaided and have to be filled up by the management concerned at their own expense and to be met and borne by their own resources.

5. I have heard the learned counsel appearing for the parties. The only point that arises for consideration in this writ petition is:

"Whether the authorities are justified in refusing the request made by the petitioner for seeking compassionate appointment and as to whether the Government Order dated 1.3.2001 would have the effect of denying such a

benefit to the petitioner? "

6. It is not in dispute that the Rules framed regarding grant of compassionate appointment have been extended to the employees of the aided institutions. In fact, the respondent-State authorities have admitted in their statement of objections that Government Orders are issued extending the said benefit of the Rule to the employees of the aided educational institutions. However, what is contended by the State is that in view of the subsequent Government Order dated 1.3.2001 such a benefit is not available to the petitioner. In fact, the impugned endorsement is issued rejecting the request of the petitioner only on the basis of the said Government Order. A perusal of the Government Order dated 1.3.2001 would not disclose that the earlier Government Orders issued in the years 1987 and 1998, copies of which are produced along with the petition by the petitioner at Annexure-E and F respectively are withdrawn. What the Government Order dated 1.3.2001 purports to state is that, in the private aided institutions any vacancy arising out of the retirement, resignation or death shall be filled by only on the condition that the same shall be permanently unaided and the salary and allowances payable shall be borne out of the resources of the management. Two things emerge from this Government Order. First of all the vacancies arising after the issue of the Government Order dated 1.3.2001 shall be filled up by the management on condition that they shall remain permanently unaided and the funds for payment of salary and allowances shall be borne by the resources of the management. Secondly, there is no reference to the vacancy that is required to be filled up due to the death of an employee in harness and by way of compassionate appointment. In this view of the matter, whether the bar created shall be understood to include even compassionate appointment is one aspect of the matter regarding which arguments are advanced. Admittedly, rules regarding compassionate appointment are made specifically applicable by issuing Government Orders particularly for this purpose by way of Annexure-E and F. No reference is made to these Government Orders in the later Government Order dated 1.3.2001. Admittedly, the previous Government Orders extending the benefit of compassionate appointment to the legal representatives of the deceased employees are not withdrawn. Therefore, it has to be construed that the said benefit which is expressly extended is left undisturbed. Any other construction of this Government Order would result in stretching, its purport and import to an extent that is unwarranted and unintended. Therefore, the rejection of the request of the petitioner on the strength of the Government Order dated 1.3.2001 is not tenable.

7. The second aspect of the matter which has bearing on the facts of the present case is that the death of the employee has taken place on 13.4.1999 and the petitioner who was a minor at that time has attained majority on 26.11.2000. He has made the representation seeking compassionate appointment soon thereafter and when the same was not considered he has approached this Court on an earlier occasion by filing writ petition bearing W.P. No. 44854/2001 which was disposed of on 21.12.2001 with a direction to the respondent authority to

consider the case of the petitioner with in a period of eight weeks. The present endorsement is issued on 31.10.2003 stating that as per the Government Order issued in the Interregnum the case of the petitioner cannot be considered. The approach adopted by the respondent authority is totally untenable. The Government Order dated 1.3.2001 cannot be made applicable to the case of the petitioner who had preferred his application and made a claim much prior to the date when the said Government Order came to be issued. Therefore the authorities were not justified in rejecting the request for compassionate appointment made by the petitioner. As a result, I pass the following order:

ORDER

Writ Petition is allowed in part impugned endorsement dated 31.10.2003 is set aside. Respondents No. 2 and 3 are directed to consider the representation made by the petitioner seeking compassionate appointment in accordance with law and in the light of the observations made hereinabove and pass appropriate orders within eight weeks from the date of receipt of a copy of this order.

Petition stands disposed off in terms stated above with no order as to costs.