
(2012) 08 CAL CK 0141
In the Calcutta High Court
Case No : W.P.S.T. No. 187 of 2012

Sk. Mojammel Haque

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 02-08-2012

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19

Citation : (2013) 137 FLR 271

Hon'ble Judges : Nishita Mhatre, J;Anindita Roy Saraswati, J

Bench : Division Bench

Advocate : Rameswar Bhattacharyya and Abdus Rakib, for the Appellant;Kamalesh Bhattacharyya, Mrs. Chaitali Bhattacharyya and Tapati Samanta, for the Respondent

Judgement

Nishita Mhatre and Anindita Roy Saraswati, JJ.—The petition has been preferred by the son of Joyanal Abedin Mondal, who was employed with the Land Revenue Department. He succumbed to cancer on 31st August, 1995, leaving behind his widow and three minor sons. On attaining majority, the petitioner submitted an application on 7th August, 1997 for being appointed on compassionate grounds on account of the demise of his father, in harness. The petitioner's mother also submitted an application on the same date in support of the petitioner's claim. Both the applications were, however, rejected on 19th November, 1998, by the Authorities. The reasons for the rejection were that the petitioner had not applied immediately after the death of the breadwinner and the income of the family was Rs. 500/- per month. The petitioner sought a review of this order. However, that prayer was rejected. He then moved the Administrative Tribunal by preferring an application u/s 19 of the Administrative Tribunals Act. That application was disposed of by setting aside the order passed by the Authorities. The Tribunal directed the Authorities to initiate a new enquiry and to consider the petitioner's prayer for appointment on compassionate grounds afresh. Accordingly, a fresh enquiry was instituted, which was conducted by the Director of Land Records and Surveys and Joint Land Reforms Commissioner, West Bengal. The prayer of the

petitioner was rejected on considering the report of the Deputy Director of Land Records. The order was based on the report submitted by the Agricultural Development Officer indicating that the petitioner's family income was Rs. 20,129/- per annum and that the petitioner had received Rs. 1,63,975/-, besides the income from his landed property of Rs. 8,141/- per year, the family of the deceased employee was receiving Rs. 3,900/- per month as family pension. The petitioner challenged this decision of the Authorities by preferring O.A. No. 385 of 2003. This application was disposed of on 24th February, 2012, by the Tribunal. It was held that the petitioner was not entitled to be appointed on compassionate grounds as he and his family had survived for 16 years after the death of the employee in 1995.

2. We have heard the learned Counsel for the parties at length, in 1998 a report was submitted by the Director of Land Records & Surveys after conducting an enquiry as to whether the petitioner should be appointed on compassionate grounds. It was stated therein that there was no immediate financial hardship which the family had to face as it had agricultural land of 1.38 acres. The joint income was Rs. 500/- per month and pension was being paid at Rs. 900/- per month, besides Rs. 1,08,000/- received as retiral dues.

3. The second enquiry, which was conducted pursuant to the decision of the Tribunal in the first application filed by the petitioner being O.A. No. 3377 of 1999, disclosed that the family owned a small dilapidated pucca house. They had in their possession 1.38 acres of agricultural land. The family had managed to save Rs. 30,000/- from the death-cum-retiral amount which was received after the death of the petitioner's father which earned them interest of Rs. 325/- per month. Besides this, the petitioner's mother received Rs. 3,900/- per month as pension which would be reduced by half after three months. The report also indicates that had the petitioner's father survived, the normal pension would have been Rs. 4,356/- per month. However, due to his demise, the fall in the income of the family was around Rs. 2,430/- per month. The report also reveals that about Rs. 82,000/- was spent by the family during the last days of the employee on account of the treatment administered to him for cancer

4. This report, however, has apparently not found favour with the Authorities and was rejected. The Director of Land Records, while deciding the petitioner's fate, after being directed to do so by the Tribunal, observed that the family was paid an amount of Rs. 1,63,975/- towards Gratuity, GPF, Leave Salary etc. on the employee's death. Besides, the family received family pension of Rs. 3,900/- per month which was to be reduced from 1st September, 2002. The Director of Land Records was of the opinion that this income was sufficient to mitigate the immediate hardship caused to the family on the death of the employee.

5. A Circular has been issued by the Government on 16th April, 1988 with respect to appointments being made on compassionate grounds. Clause 4 of this Circular prescribes the points, which are to be examined, before making such appointments. They are:

(i) Whether the family of the deceased or incapacitated employee is in immediate need of assistance.

(ii) Whether the petitioner concerned was solely dependent on the earnings of the deceased or incapacitated employee.

(iii) Whether the purpose of giving assistance to the family will actually be served by offering employment to the petitioner, i.e. the near relation or dependent concerned.

6. It is true that the application for employment was not submitted by the petitioner immediately on his father's demise. However, it was made before the expiry of two years from the death, after the petitioner attained majority. It is impossible to accept that merely because there was a time lag of less than two years in applying for the appointment that the family did not require such concession to be made or that the petitioner was not entitled to appointment on compassionate grounds. It cannot be said that the petitioner dithered over his right, to seek appointment on compassionate grounds. He applied with reasonable alacrity. There is no doubt that the petitioner was solely dependent on his father's income. Thus there has been no delay on the part of the petitioner in applying for the appointment.

7. The financial condition of the family cannot be said to be such that they would be able to tide over the difficulties faced by them on the death of the employee. It must be borne in mind that the employee was suffering from cancer during his last days. Judicial notice can be taken of the fact that the treatment for cancer is exorbitantly expensive. For a family of a Group "D" staff to be able to secure the best possible treatment for the cancer patient would certainly lead it into financial doldrums. There is sufficient material on record to show that about Rs. 82,000/- approximately was spent for the treatment of the employee. This amount had been secured as loan by the family. On receipt of the Death-cum-Retirement Benefits, the loans were repaid, obviously with interest. Thus, it is impossible to accept that the family was not in penury when the petitioner sought employment. The reports also show that the petitioner and his family are living in a dilapidated house. The earning was about Rs. 325/- per month as agricultural income, besides the meager amount of approximately Rs. 1,500/- as family pension. One cannot expect a family of four to survive on this income without facing untold hardship.

Therefore, in our opinion, the grant of compassionate appointment to the petitioner would certainly bring succor to the family which is faced with the spectre of impoverishment and privation.

8. In the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, , the Supreme Court observed that the scheme for compassionate appointment must be strictly construed as it is an exception to the general rule public employment. Bearing this principle in mind it would be necessary for us to determine whether the petitioner is entitled to any relief.

9. The question whether a person can be denied appointment compassionate grounds if the family draws pension has been considered on several occasions both by the Supreme Court and by this Court. In the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, , the Apex Court considered whether because a person has been paid an amount under the Family Benefit Scheme, he could be denied appointment on compassionate grounds. The Apex Court held that the payment of gratuity was not in the realm of charity, but a right given to an employee. Similarly payments made under the Employees Provident Fund and Miscellaneous Provisions Act, 1952, act as a buffer when an employee retires or dies. The Court held that the Family Benefit Scheme introduced by the Government could not be equated with compassionate appointment.

10. A similar view has been reiterated by the Supreme Court in the case of Govind Prakash Verma v. LIC of India (2005) 10 SCC 289.

11. In WPST 116 of 2010 a Division Bench of this Court has held that although a certain amount had been paid to the family of a deceased-employee on account of the dues payable to him, the applicant could not be denied the benefits of being appointed on compassionate grounds. The Court followed the decisions of the Supreme Court in the cases of Balbir Kaur v. Steel Authority of India Ltd. (supra), and Govind Prakash Verma v. LIC of India (supra).

12. Mr. Kamallesh Bhattacharyya, the learned Counsel, for the State, has relied on several judgments of the Supreme Court, namely, (1) Union of India (UOI) and Another Vs. B. Kishore, , (2) Punjab National Bank and Others Vs. Ashwini Kumar Taneja, (3) General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, (4) State Bank of India and Another Vs. Somvir Singh, (5) Kendriya Vidyalaya Sangathan and Others Vs. Shri Dharmendra Sharma, (6) State Bank of India and Others Vs. Jaspal Kaur, (7) Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, (8) Jagdish Prasad Vs. State of Bihar and Another, and (9) Sanjay Kumar Vs. The State of Bihar and Others, .

13. The learned Counsel for the State has further submitted that after a passage of 16 years from 1995 there would not be any need to grant employment to the petitioner on compassionate grounds. According to him, the immediate hardship, which the members of the family had faced in 1995, could not have survived till today. He contends that the very fact that the family had been able to live for 16 years without employment being granted to the petitioner would indicate that they were able to mitigate the void which occurred due to the sudden death of the employee. To buttress this submission, the learned Counsel relies on the judgment in the case of Jagdish Prasad Vs. State of Bihar and Another, , where the Supreme Court has noted that a family, which managed to tide over the crisis at the time of the death of the breadwinner for 23 years, was not entitled to appointment on compassionate grounds. The learned Counsel then submits that the petitioner was a minor when the father passed away. There is no specific provision in the scheme for compassionate appointment stipulating the

reservation of a vacancy because the applicant is a minor. He has fortified his submission by relying on a judgment of the Supreme Court in the case of Sanjay Kumar Vs. The State of Bihar and Others,

14. In our opinion, the petitioner had applied within a reasonable time after his father's demise. The father expired on 31st August, 1995, and the application was submitted on 7th August, 1997, no doubt after the petitioner attained majority. The enquiry reports submitted by the office of the Director of Land Records indicate that the family had a hand to mouth existence and was certainly in penury. The financial stringency of a family of a person, who is fatally affected by cancer, is unimaginable. To suggest that a member of such a family would not need to be considered for compassionate appointment shows the callous and insensitive attitude of the Officers of the Government. The mere receipt of Death-cum-Retirement Benefits or the pension would not, in our opinion, mitigate the financial stringency which the family of the employee would have to face on account of the fatal disease with which he was afflicted.

15. In these circumstances, in our opinion, the petitioner would be entitled to be considered for compassionate appointment.

16. Another argument has been advanced on behalf of the State, that with the passage of time of 16 years, there is no need to consider the petitioner's case. This shows a complete disregard for compassion and sympathy on the part of the State and its Officers. The petitioner applied within two years of the death of his father. His case was rejected in November, 1998, in our opinion, wrongly. He preferred an application before the Tribunal after the review was rejected in March, 1999. The Tribunal disposed of that application in February, 2002. Therefore, the petitioner had to wait for three years before the Tribunal remanded the matter to the Authorities for a fresh hearing. On completion of the enquiry in December, 2002, the petitioner's case was rejected once again. He filed an application u/s 19 of the Administrative Tribunals Act immediately thereafter in 2003. However, shockingly and distressingly, the Tribunal took nine years to dispose of the application. To deny employment on compassionate grounds because of the court's delays would, in our opinion, be a travesty of justice. The inordinate delay in tribunal cannot be attributed to the petitioner and therefore he cannot be faulted for the same. Fortunately the petitioner has not buckled down by attrition because of the procedural delays. Therefore, in our opinion, the judgments, cited at the Bar on behalf of the State, where the Supreme Court has held that due to the passage of time compassionate appointment need not be granted, are not relevant in this case. The petitioner here has been diligent. He has been pursuing his cause assiduously. In the cases before the Supreme Court the applicant had approached the Authorities after several years and had, therefore, been denied compassionate appointment. The fact that the petitioner and his family have survived to tell the tale cannot act to their detriment.

17. In Subimal Sarkar v. State of West Bengal and others, (WPST 90 of 2012),

we have decided this matter on 30th April, 2012, where we had taken a conspectus of several decisions of the Supreme Court including some which have been cited before us today. We have held that compassionate appointment, though not a source of regular recruitment must be given to a person in distress and faced with deprivation. He cannot be denied appointment only because the family draws pension on the death of the employee if the family is living in penury.

18. In view of the facts and circumstances of this case, we do not think that the Tribunal was right in denying the petitioner the relief that he had claimed. The judgment and order of the Tribunal is set aside. The petition is allowed.

19. The respondents shall appoint the petitioner on compassionate grounds if he fulfils all the eligibility criteria like educational qualification etc. In case the petitioner is over aged because of the passage of time, the upper age limit must be relaxed to accommodate him.

20. No order as to costs.

21. The Civil Application, being CAN No. 7405 of 2012, has been filed for recalling the order passed by the Bench of Mhatre & Mrinal Kanti Sinha, JJ on 24th July, 2012. That application must be placed before the same Bench. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocates for the appearing parties.