
(2008) 05 AHC CK 0228
In the Allahabad High Court

Smt. Ambika Devi and Others

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

Date of Decision : 06-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2008) 05 AHC CK 0228

Hon'ble Judges : V.K. Shukla, J

Bench : Single Bench

Judgement

V.K. Shukla, J.—Petitioner has filed present writ petition praying therein following relief which is being quoted below:

(1) Issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 04.12.2007 passed by opposite party No. 1 as is contained in Annexure No. -1 to this Writ Petition.

(2) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to release all the retrial dues of late husband Mahesh Prasad e.g. the amount of General provident fund, Group Insurance Scheme, leave encashment and all the amounts due to be payable to the petitioner No. 1 be paid alongwith interest @ 18% p.a.

(3) Issue a writ, order or direction in the nature of mandamus commanding the opposites parties to consider the case of the petitioner No. 2 for making appointment on compassionate ground on any suitable post as per his qualification taking into consideration the judgment and order (Annexure No. 9) in case of Sunil Kumar Srivastava v. the Collector/District Magistrate, Sulatanpur and Ors. in the interest of justice.

(4) Issue a writ, order or direction which this Hon''ble Court deems just and proper under the circumstances of the case.

(5) To allow the present writ petition, with cost in favour of the petitioner.

2. Undisputed position is that father of the petitioner has died on 12.12.1972. U.P. Government Servant Recruitment of Dependent Dying in Harness Rules, 1974 has been promulgated on 21.12.1973. Claim for grant of compassionate appointment has been rejected on 04.12.2007 by Sub-Divisional Magistrate, District Sitapur. As far as claim of grant of compassionate appointment is concerned same cannot be accepted by any means because since the date of death, as on date 36 year periods have elapsed. Object of providing compassionate appointment is to save family from immediate crisis and said appointment cannot be made for all times to come.

3. Hon''ble Apex Court in the case of State of J. & K.vs. Sajad Ahmed Mir AIR 2006 SCW 3708 has taken the view that compassionate appointment cannot be claimed as matter of right, at the cost of others, and when matter was taken up fifteen years period had already passed from the date of death, and said fact was relevant and material fact that family survived, in spite of death of employee. Relevant extract of aforementioned judgment (paragraphs 10, 11, 12, 13,14,and 15) dated 17.07.2006 is being quoted below:

10. Having heard the learned Counsel for the parties, in our opinion, the appeal should be allowed. Certain facts are not in dispute. The father of the applicant who was in service, died-in-harness in March, 1987 and for the first time, the application was made by the applicant after more than four years i. e. in September, 1991. The family thus survived for more than four years after the death of the applicant's father. Event at that time, the applicant, under the relevant guidelines, could not have been appointed and hence relaxation was prayed. It is no doubt true that the case of the applicant was favourably considered by the Departments and recommendation was made, but it is also la fact which has come on record that in March, 1996, a decision was taken by the authorities not to give appointment to the applicant on compassionate ground. From the affidavit-in-reply filed by the authorities in the High Court as also from the finding of the learned single Judge, it is clear that the applicant had knowledge about rejection of his application in 1996 itself. Nothing was done by the applicant against the said decision. Considerable period elapsed and only in 1999, when there was some inter-Departmental communication and Administrative Officer informed the Chief Engineer vide a letter dated 8th June, 1999 that the applicant could not be appointed on compassionate ground that the applicant woke up and filed a writ petition in the High Court. It is also pertinent to note that the letter of 1999 itself recites that the case of the applicant for compassionate appointment was considered and the prayer had already been turned down by the Administrative Department and the said fact had been communicated to the office of the Chief Engineer. A copy of the said letter was also annexed to the letter of 1999. In our opinion, there ore, the learned single Judge was right in dismissing the petition on the ground of delay and latches by holding that the applicant had not done anything for a considerable period after March, 1996 when his claim was rejected even though he was informed about the decision and was very much aware of it. The Division

Bench, in our view, was not justified in setting aside the said order and in directing the authorities to consider the case of the applicant for compassionate appointment and by giving directions to give other benefits.

11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought "compassion", the Bench ought to have considered the large issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in 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. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the setback. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say "goodbye" to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.

12. In *State of Haryana and Others Vs. Rani Devi and Another*, it was held that the claim of applicant for appointment on compassionate ground is based on the premise that he was Dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 and 16 of the Constitution. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame Rules, Regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

13. In *Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another*, it was indicated that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplate such appointments.

14. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with Rules, Regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the Dependant of the deceased employee must have clear nexus

with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

15. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, it was observed that in claims of appointment on compassionate grounds, there should be no delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress.

4. On the touchstone of the principle enunciated above, here in spite of death of bread earner in the family, petitioners have survived and substantial period of 36 years is over, then there is no necessity to say goodbye to normal rule of appointment, and show favour to petitioner. Compassionate appointment is not reservation for all times to come and the same is not vested right. Refusal to compassionate appointment after expiry of 36 years cannot be termed to be arbitrary and unreasonable. Consequently, as far as rejection of grant of compassionate appointment is concerned qua the same no interference is being made.

5. Second prayer is in released of post death retrieval dues of late Mahesh Prasad such as amount of General provident fund, Group Insurance Scheme, leave encashment and all the amounts due to be payable. For this prayer liberty is given to the petitioner to make fresh representation within four weeks from today alongwith certified copy of this order before District Magistrate, Sitapur who shall consider the claim of the petitioner as per Rules preferably within three months from the date of presentation of certified copy of this order and thereafter whatever decision is so taken, copy of the same be communicated to one of the petitioners.

6. Consequently, prayer Nos. 1 and 3 are refused and as far as prayer No. 2 is concerned qua the same direction mentioned above are being given by this Court, as such writ petition is thus, disposed of with the above direction.