
(2012) 01 CAL CK 0053
In the Calcutta High Court
Case No : W.P.C.T. 298 of 2011

Smt. Arati Samanta and Another	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 25-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 01 CAL CK 0053

Hon'ble Judges : Subhro Kamal Mukherjee, J; Harish Tandon, J

Bench : Division Bench

Advocate : Tridib Kumar Sarkar and Mr. Arun Kumar Raha, for the Appellant;
Sudip Pal, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—The challenge in this writ application is made to the order dated August 24, 2011 passed by the Central Administrative Tribunal, Calcutta Bench, in Original Application No. 1866 of 2009 whereby and whereunder the original application challenging the order of rejection of an application for appointment on compassionate ground was rejected.

2. Admittedly, the employee died in harness and an application was made for appointment of one of his ward on compassionate ground. On earlier two occasions, the authorities concerned rejected the said application, which was, ultimately, set aside by the tribunal. Lastly, the said application was rejected on the basis of a government circular dated May 5, 2003, which provides that the maximum time for consideration of an application for appointment on compassionate ground is three years subject to the condition that the prescribed committee has reviewed and certified the penurious condition of the applicant at the end of the first and second year.

3. The aforesaid government circular was assailed before the Allahabad High Court in the case of Hari Ram vs. Food Corporation of India & ors. reported in

(2009) 3 U.P.L.B.E.C. 2212 and the same was quashed and set aside with the following observations :

... 17. In this case the placement in the waiting list for 5% DR quota has not been shown to be based on the penurious condition of the family of the deceased employee. His first and second review by the Prescribed Committee confirms that the application still needs and falls within the category of the family, which are in financial distress. In spite of such verification, the prescription of maximum period of three years for compassionate appointment may result into grant of appointment after long day, but has no object to be achieved except by permitting the family to continue to live under poverty, whereas new cases may be considered on their own merits in the first, second and third year.

18. in my opinion, the prescription of maximum period of three years after verification by the Prescribed Committee of the penurious condition of the dependents of the deceased is highly irrational and unreasonable. The compassionate appointment should not be kept in the realm of a chance and to become a gaming exercise subject to the availability of vacancies and the maximum number of years. It should be based on human and sympathetic consideration to the family of the deceased employee. Each case should be reviewed on its own merit and consideration should not be allowed to any number of years. If the family continues to be under financial distress, there should be no limit of maximum number of years for which an application may be considered.

19. The writ petition is allowed. The instructions contained in the Office Memorandum dated 5th May, 2003 of the Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pension, Government of India, fixing time limit of three years for offering compassionate appointment is declared to be irrational, arbitrary, unreasonable and violative of Articles 14 and 16 of the Constitution of India. The order of the Executive Director, North Zone, Food Corporation of India dated 5.10.2007 is quashed. The respondents are directed to consider the petitioner's case for appointment afresh without considering the maximum limit of the number of years for which consideration may be made, taking into account the extreme poverty in which the family is living and also give special consideration for the disability of the petitioner in seeking employment to save his family. The respondents shall consider the matter afresh within a period of one month from the date a certified copy of this order is produced before them.

4. When a particular government order has been quashed and set aside by a competent court, the authorities cannot lay foundation on the said circular while rejecting an application for appointment on compassionate ground. The reliance upon the said particular government circular is, therefore, apparently illegal.

5. The tribunal has rejected the original application as the family has received a sum of Rs. 3,90,000/- (Rupees three lakh ninety thousand) only as terminal

benefit and the family has cultivable land of about two bighas. It was, further, held therein that the widow of the deceased is also getting the family pension on the death of the employee.

6. Mere possession of the cultivable land without specifying the augmentation of the income therefrom cannot be a ground for rejection of the original application nor can be said that the family is not in penury. Furthermore, the deceased employee died of cancer and a considerable amount of money has been incurred for his treatment and, as such, the paltry sum of Rs. 3,90,000/-, which was received by the deceased family as terminal benefit, cannot be said to be enough money to mitigate the financial stringency of the family, which it suffered because of sudden death of the bread winner.

7. The respondents placed reliance upon a decision of the Apex Court in the case of Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, to the proposition that survival of a family for a considerable period of time envisages that the family is not in penury. It appears from the said decision that after the death of the employee, an application was made for appointment of one of the daughters on compassionate ground. Pending such application, the family members of the deceased employee arrived at a settlement that the son-in-law of the second daughter, who is an unemployed person, should be given appointment in stead and place of the said second daughter. In such factual matrix, it was held that keeping in view the object and purpose of providing compassionate appointment, more particularly, after a gap of 12 years from the date of death of the employee, such employment could not be offered to the said son-in-law.

8. The fact in the instant case is quite distinguishable. A little difference in the facts may change the complexion of the decision.

9. The circumstantial flexibility, one additional or different fact may make a world of difference between the conclusions in two cases.

10. In view of quashing and/or setting aside of the said government circular, the very basis of the said rejection of the application for appointment on compassionate ground is patently illegal and is hereby quashed and set aside.

11. The order of the tribunal is, therefore, liable to be set aside and the same is hereby quashed and set aside accordingly.

12. Since no other ground is assigned excepting the grounds of expiration of the period of three years and payment of retiral benefits while rejecting the application for appointment on compassionate ground, it would be an idle formality to relegate the matter back to the authority for re-consideration.

13. The concerned authority is, therefore, directed to empanel the petitioner No. 2 in the list for giving appointment to the candidates on compassionate ground and to give appointment to him as and when his turn comes.

14. With the aforesaid directions, the writ application is allowed without,

however, any order as to costs.

15. Xerox certified copy of this order, if applied for, will be made available to the applicant within a week from the date of putting in the requisites.

Subhro Kamal Mukherjee, J.

16. I agree.