
(2009) 09 AHC CK 0142
In the Allahabad High Court

Smt. Saraswati Devi

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 18-09-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2009) 09 AHC CK 0142

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

V.K. Shuila, J.—In the present case earlier petitioner had filed Civil Misc. Writ Petition 22217 of 2009 before this Court and this Court on 28.4.2009 passed following order, which is being extracted below:

Heard counsel for the parties and perused the record.

The husband of the petitioner, who was employee of the Allahabad Bank, died in harness on 15.5.1994. The grievance of the petitioner is that she has not been paid death -cum-retiral benefits and other dues of her late husband. In this regard she has moved a representation dated 3.3.2009 before the authority concerned, which is still pending.

2. The only prayer of the counsel for the petitioner is that the representation of the petitioner dated 3.3.2009 may be directed to be decided by the authority concerned within a time bound frame.

3. The Standing counsel has no objection to prayer.

4. In the facts and circumstances of the case and without entering into the merits of the case, the petition is disposed of finally with a direction to the authority concerned to decide the representation of the petitioner dated 3.3.2009 by a reasoned and speaking order, in accordance with law, within a period of six weeks from the date of production of a certified copy of this order after giving an

opportunity of hearing to all the parties.

5. No order as to costs.

6. It is made clear that this Hon"ble Court has not decide the case on merit and the representation of the petitioner is to be decided by the authority concerned by independent mind without being influenced by this order of the court.:

After the said order has been passed, on 18.6.2009 compassionate appointment has been refused. At, this juncture present writ petition has been filed. Relevant portion of the order is being extracted below:

In terms of the then scheme for compassionate appointment circularized, vide instruction Circular No. 3715 dated 19.3.2994, laying down that an widow of a deceased employee, having minimum 18 years of age but below the age of superannuation and possessing simple knowledge of reading and writing English or any other Regional Language, shall be eligible for appointment for the post of peon-cum-Farrash on compassionate ground. The application for appointment in bank"s service should be made within a period of one year from the date of death of the employee. In case the member of the family to be offered appointment is a minor, the offer of appointment may be kept open till the minor attains majority provided a request to that effect is made to the bank, within the stipulated time limit i.e. within one year from the date of death of the employee.

7. Whereas the petitioner at the first instance had applied for compassionate appointment for relief, vide her representation dated 6.5.1997. Subsequently, the petitioner changed her mind and submitted another undated representation together with supporting documents in respect of age, educational qualification of her son who was minor at the relevant point of time, seeking his appointment under compassionate ground on attaining majority. However, no request for compassionate appointment of the petitioner"s minor son on his attaining majority was ever made, within the stipulated time limit of one year from the date of death of the employee.

8. Upon further perusal of copy of her unsigned representation dated 3.3.2009, without any documents evidencing submission of application for compassionate appointment within the time limit of one year from the date of death of her husband, it transpires that the petitioner has failed to apply in writing for compassionate appointment either for herself or sponsoring her minor son for compassionate appointment on his attaining majority within the prescribed time limit of one year from the date of death of petitioner"s husband i.e. 17.5.1994.

9. As regards the claim of family pension made in the petitioner"s representation dated 3.3.2009, it is asserted that the records available do not speak about exercising of option for family pension on the part of the petitioner at the relevant point of time in terms of pension Regulation, 1995 i.e. within 120 days from the notified date culminating on 27.1.1996. So much so the related provisions of the pension Regulations further lays down that any claimant for

family pension needs to refund the Banks Contribution to provident fund, already received, together with further interest from the date of receipt till the date of refund @ 6 p.a. (simple) within sixty days from 27.1.1996. Nothing reveals from the record that the petitioner, in the instant case had exercise option for family pension and refunded the amount towards employer's contribution to provident fund of her deceased husband together with interest from the date of settlement of provident fund within the stipulated period i.e. 27.3.1996. As such, the claim of the petitioner for family pension after lapse of more than 13 years is not sustainable either by fact or by law.

10. Finally, it is observed that the petitioner, being aggrieved, preferred to file the instant writ petition after expiry of 15 days from the date of death of her husband, with a view to over come her financial crises, which is neither reasonable nor acceptable as per provisions of the scheme of the Bank. The consideration for such employment is not a vested right which can be exercised at any point of time in future. The object of compassionate appointment, if otherwise eligible, is to enable the family to come over the financial crisis which it faces at the sudden death of the sole bread-winner. As such, the employment on compassionate ground and/or financial assistance, if any, in lieu of such employment cannot be claimed and offered after a long lapse of time, as in that case the very spirit of the scheme gets defeated.

11. In view of the forgoing and upon application of mind, I find that the petitioner's requests for compassionate appointment of her son as well as for family pension do not hold good after long lapse of time in accordance with the rules and regulations.

12. Let a copy of this order be served upon Smt. Saraswati Devi in compliance of the judgment and order dated 28.4.2009 passed by the Hon'ble High Court in writ Petition, bearing No. 22217 of 2009.

13. Sri Vimlendu Tripathi, Advocate contended with vehemence that in the present case claim of the petitioner could not have been rejected as has been done in the present case, as such order which has been passed is unsustainable.

14. Smt. Archana Singh, Advocate on the other hand contended that rightful view has been taken in the matter and no interference should be made by this Court.

15. After respective arguments have been advanced factual position on which there is no dispute that husband of the petitioner petitioner No. 1 and father of petitioner No. 2 died on 17.5.1994. The Bank authority have rejected the claim of the petitioner mentioning therein that after expiry of 15 years from the date of death of her husband it would be unreasonable to provide compassionate appointment. View, which has been taken by the authority concerned cannot be said to be arbitrary or unreasonable view, inasmuch the object to provide compassionate appointment is to save the family from immediate crisis.

16. Hon"ble apex Court in the case of State of J. & K. v. Sajjad Ahmed Mir reported in 2006 AIR SCW 3706, 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 twenty 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. Even 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 a 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, therefore, the learned single Judge was right in dismissing the petition on the ground of delay and laches 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.

17. On the touchstone of the principle enunciated above, here in spite of death of bread earner in the family, petitioner has survived and substantial period of 15 years is over, then there is no necessity to say good bye to normal rule of appointment, and show favour to petitioner.

18. Consequently, no interference is warranted as such writ petition being devoid of substance, is dismissed.

19. No order as to cost.