

(2010) 07 KAR CK 0054
In the Karnataka High Court
Case No : Writ Petition No. 81385 of 2010

Smt. Sulochana Duttargi

APPELLANT

Vs

The Manager, National Insurance Co. Ltd. and Others

RESPONDENT

Date of Decision : 19-07-2010

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2010) ILR (Kar) 4041

Hon'ble Judges : A.N. Venugopala Gowda, J

Bench : Single Bench

Advocate : Prakash Yeli, for the Appellant;

Final Decision : Dismissed

Judgement

A.N. Venugopala Gowda, J.—This writ petition is to direct the Respondents to consider the applications/representations of the Petitioner dated 30.09.1994, 02.04.1998, 03.01.2002, 24.05.2002 and 09.10.2003 vide Annexures-A, C, E, G and H seeking appointment of her son Girishankar on compassionate ground and for consequential reliefs.

2. In brief, the facts of the case are: the husband of the Petitioner Sri. Subhashchandra Duttargi (hereinafter referred to as "deceased employee" for short) was working as a clerk in the office of the Respondent No. 1 on temporary basis from 1969 and he was appointed on permanent basis in the year 1976. Husband of the Petitioner-deceased employee died on 08.04.1994. Petitioner submitted a representation to the Respondents seeking appointment of her son Girishankar on compassionate ground. Respondent No. 3 issued a reply letter dated 23.01.1995 instructing the Petitioner to submit the application in the prescribed format in duplicate, along with the certified copies of relevant documents. Petitioner submitted application, enclosing the documents. Respondent No. 3 sent a reply dated 04.03.1999 stating that the application for appointment of minor will be considered, if the appointment is sought within one year of his/ or attaining the age of 21 years. Petitioner subsequently, submitted

letters requesting the Respondents for appointment of her son on compassionate grounds. The Petitioner's son Girishankar attained majority on 02.10.2006. Respondents, by their communication dated 08.07.2004 (Annexure-J), informed the Petitioner that her request for appointment of her son Girishankar on compassionate ground was not considered favourably by the competent authority. Thereafter, the Petitioner got issued a legal notice followed by seeking information under the Right to Information Act and hence, she has filed this writ petition for the relief stated supra.

3. Heard Sri. Prakash Yeli, the Learned Advocate for the Petitioner and perused the writ papers.

4. Learned Counsel, by taking me through the writ papers, contended that the Respondents are not justified in not appointing the son of the Petitioner on compassionate ground and that they have failed to follow the guidelines issued by the Hon'ble Supreme Court in the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, and hence, the prayer in the writ petition is required to be granted.

5. In view of pleadings made in the writ petition and the submissions made by the Learned Counsel for the Petitioner, the point that arises for my consideration is:

Whether, in the facts and the circumstances of the case, the claim of the Petitioner for appointment made after a lapse of about 16 years would negate the very object of appointment on compassionate ground?

6. So far as the nature and object of appointment on compassionate ground is concerned, it is just and necessary to refer to the dictum laid down by the Hon'ble Supreme Court on this aspect.

In the case of Umesh Kumar Nagpal v. State of Haryana (Supra) it has been held as follows.

Compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the Rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

In the case of Jagdish Prasad Vs. State of Bihar and Another, , it has been held as follows:

The very object of appointment of a dependent of the deceased employees who die-in-harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning members of the family.

In the case of Managing Director, MMTC Ltd., New Delhi v. Pramoda Dei alias Nayak, (1997) 11 SCC 390 , it has been held as follows:

As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee does not entitle his family to compassionate appointment.

In the case of *S. Mohan Vs. Government of T.N. and Another*, , it has been held as follows

The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time, and after the crisis is over.

In the case of *Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others*, it has been held as follows

The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee. In *Umesh Kumar Nagpal v. State of Haryana*, this Court has taken note of the object underlying the Rules providing for appointment on compassionate grounds and has held that the Government or the public authority concerned has to examine the financial condition of the family of the deceased and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family.

In the case of *Sanjay Kumar Vs. The State of Bihar and Others*, the Court has stated that:

This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden

crisis resulting due to death of the bread-earner who had left the family in penury and without any means of livelihood.

In the case of Punjab National Bank and Others Vs. Ashwini Kumar Taneja, it has been held as follows:

It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis.

In the case of Union of India (UOI) and Others Vs. Bhagwan Singh, , it has been held as follows:

It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September 1972. At the time Ram Singh died on 12.09.1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty in this background. We are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the Respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable.

In the case of Haryana State Electricity Board v. Naresh Tanwar (1196) 8 SCC 23, it has been held as follows:

It has been indicated in the decision of Umesh Kumar Nagpal that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad case, it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

In the case of State of Uttar Pradesh v. Paras Nath (1998) 2 SCC 142 it has been held as follows:

The purpose of providing employment to a dependant of a government servant dying-in-harness in preference to anybody else, is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for

such appointment. The purpose is to provide immediate financial assistance to the family of a deceased Government servant. None of these considerations can operate when the application is made after a long period of time such as seventeen years in the present case.

In the case of Haryana State Electricity Board Vs. Krishna Devi, it has been held as follows:

As the application for employment of her son on compassionate ground was made by the Respondent after eight years of death of her husband, we are of the opinion that it was not to meet the immediate financial need of the family. The High Court did not consider the position of law and allowed the writ petition relying on an earlier decision of the High Court.

In case of National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another, it has been held as follows:

It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crises.

In case of State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , it has been held as follows:

Normally, an employment in the 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 from except where compelling circumstances demand, such as, death of the sole breadwinner and livelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye"" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

In the case of State of Karnataka and Others Vs. K.G. Sowbhagya and Others, it has been held as follows:

All appointments to Public Services have to be made by strict application of Articles 14 and 16 of the Constitution of India. The appointment on compassionate grounds is an exception on the basis of sudden crisis occurring in the family of the civil servant, who has served the State and has died while in service. The appointment on compassionate grounds have to be made strictly in terms of the Rules, Regulations, Scheme or Administrative orders, which can stand the test of Articles 14 and 16 of the Constitution of India. As has been made clear by the Apex Court, appointment on compassionate grounds cannot

be claimed as a matter of right and schemes framed in that regard cannot be made applicable to all types of posts irrespective of nature of service referred by the deceased employee. Appointment on compassionate grounds being an exception to the scheme of appointment under open invitation, taking into consideration the effect of death of the employee while in service, leaving his family in penury. The object of the Rules, Regulations, Scheme providing for appointment on compassionate grounds is to enable the family to get over the sudden financial crisis and as such, any appointment made should have to be strictly in accordance with Rules, Regulations, Scheme or Administrative Orders/ instructions.

Appointment on compassionate grounds being purely on humanitarian consideration and having regard to the fact that unless some source of livelihood is provided, the family of the deceased would not be able to make both ends meet, provisions made for appointment on compassionate grounds to one of the dependants of the deceased, who may be eligible for appointment, have been upheld by the Courts, even though such appointments are in the teeth of Articles-14 and 16 of the Constitution of India. Appointment on compassionate grounds to the dependent family members of the deceased is only to mitigate the hardship caused to the family of the deceased on account of the unexpected death, while in service. It is only to alleviate the distress of the family, appointments on compassionate grounds are permissible, provided there are statutory Rules, Regulations, Scheme or Administrative Instructions.

In the case of Director, Defence Metal Research Laboratory and Anr. v. G. Murali, (2003) 9 SCC 247 , the facts were that, one G. Murali has made an application for appointment on compassionate ground on attaining majority and his claim was rejected by the concerned authority. In the said case, the family has been managing somehow for a period of 18. years after the death of the government servant. The rejection of claim of the applicant for appointment on compassionate ground was questioned before the Central Administrative Tribunal which had held that the case is not covered under the existing instructions issued by the Government. When the order of the Tribunal was questioned by filing the writ petition in the High Court, the writ petition was allowed and it was held that the Tribunal should have appreciated that the Petitioner was aged 02 years at the time of death of the employee and the application for appointment on compassionate ground has been made upon the attainment of majority by the writ Petitioner and no refusal, even on the ground of non-availability of post was not the cause for rejection of the claim and the High Court passed an order directing the authority concerned to create the post. The said order, when questioned in the Apex Court, it has held as follows:

We do not find any flimsy ground or technicalities in the Tribunal's order. In fact, we find the High Court's order to be unsustainable. There has been a failure to appreciate what the Tribunal has rightly taken into account, namely that the writ Petitioner and his family had coped without the compassionate appointment for

about eighteen years. There was no warrant in such circumstances for directing the writ Petitioner's appointment on compassionate grounds and that too with the direction to the Respondents to the writ petition to create a post to accommodate him.

7. From the catena of the decisions of the Hon"ble Apex Court referred supra, it is clear that the compassionate appointment is not a vested right, which could be exercised at any point of time in future. The compassionate employment can be claimed within the reasonable time and it cannot be claimed and offered after a long lapse of time and after the crisis in the family is over.

8. Indisputably, in the case on hand, the date of death of employee was 08.04.1994 on which the date, the son of the deceased (Girishankar) was aged about five years and after a long lapse of time viz., nearly 16 years, the Petitioner is before this Court, seeking writ of mandamus to direct the Respondents to consider her application for appointment of her son Sri. Girishankar on compassionate grounds. The Respondents have sent a communication as at Annexure-J dated 08.07.2004. Thereafter, the Petitioner has taken another six years to this file writ petition. As such, the writ petition is hopelessly barred by delay and laches. Keeping in view the object and purpose of providing appointment on compassionate ground, the long lapse of 16 years and the dictum laid down by the Hon"ble Supreme Court in the catena of decisions referred supra, the prayer of the Petitioner cannot be granted.

In the said view of the matter, the writ petition is untenable and shall stands rejected.

Ordered accordingly.