

(2003) 04 AHC CK 0014
In the Allahabad High Court
Case No : C.M.W.P. No. 11035 of 2003

Sosan Laviniya and Another

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 09-04-2003

Acts Referred:

Constitution of India, 1950 — Article 136, 14, 16
Limitation Act, 1963 — Section 5

Citation : (2003) 5 AWC 4070

Hon'ble Judges : Ghanshyam Dass, J; B.S. Chauhan, J

Bench : Division Bench

Advocate : R.K. Nigam, for the Appellant; Vivek Singh, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.-

1. This writ petition has been filed against the judgment and order of the Central Administrative Tribunal, Allahabad Bench dated 10.12.2002 by which the delay in filing the application has not been condoned, more so, the claim of the Petitioner for employment on compassionate ground has been rejected being raised at a belated stage.

2. Facts and circumstances giving rise to this case are that one Anthony Briganza had been serving the Respondent railways and died in harness on 29.7.1989. As there has been some dispute regarding his succession for the reason that the said deceased employee in his statement dated 28.1.1977 had stated that the Petitioner was not his wife and he had no relation with her. Disputes regarding succession of the retiral benefits, etc. of the deceased employee in Case No. 232 of 1992 were decided by the District Judge, Jhansi, in favour of the Petitioner vide judgment and order dated 15.12.1993. Against the said order an appeal was preferred by the aggrieved party which was dismissed vide order dated 28.4.1997. Petitioner filed an application first time seeking employment for her

son-Petitioner No. 2 on 15.9.1998 (Annexure-9). Second application for same relief was filed on 24.10.1998 (Annexure-10). The authority concerned vide order dated 19.12.1998 (Annexure-11) rejected the said application on the ground that as per their circulars, etc. where an employee keeps more than one wife, second wife along with her children may share the dues with other widow due to the Court's order or otherwise on merit of each case but compassionate employment cannot be granted to the children of the second wife. Being aggrieved and dissatisfied, Petitioner along with her son filed the O.A.S. before the Tribunal along with an application for condonation of delay on 7.3.2002. The said application has been rejected on the ground of delay of more than three years. More so observations have been made that compassionate employment must be sought within reasonable time from the death of the employee and it cannot be claimed after expiry of 13 years vide judgment and order dated 10.12.2002. Hence this petition.

3. Learned Counsel for the Petitioner has submitted that it was a fit case where the delay ought to have been condoned by the Tribunal considering the facts and circumstances of the case as the matter remained pending before a civil court for a long time.

4. There is no force in the contention raised by the learned Counsel for the Petitioner for the reason that civil court has adjudicated upon the matter and decided finally on 15.12.1993 though the appeal was decided on 28.4.1997. There was no satisfactory explanation of delay for more than three years even after the order of the appellate court.

5. The Hon'ble Supreme Court in Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, , observed that when substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the reason that other side cannot claim to have vested right in injustice being done because of non-deliberate delay.

6. The law of limitation is enshrined in the maxim - interest reipublicae up sit finis litium (it is for the general welfare that a period be put to litigation). Rules of Limitation are not meant to destroy the rights of the parties, rather the idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

7. Time barred cases should not be entertained by Courts as the rights which have accrued to others by reason of delay in approaching the Court, cannot be allowed to be disturbed unless there is a reasonable explanation for the delay. The vested rights of the parties should not be disrupted at the instance of a person, who is guilty of culpable negligence. (Vide Ramchandra Shankar Deodhar and Others Vs. The State of Maharashtra and Others, and K.R. Mudgal and Others Vs. R.P. Singh and Others, The Privy Council in AIR 1941 6 (Privy Council) , relied upon the writings of Mr. Mitra in Tagore Law Lectures 1932 wherein it has been said that "a law of limitation and prescription may appear to operate harshly and unjustly in a particular case, but if the law provides for a

limitation, it is to be enforced even at the risk of hardship to a particular party as the Judge cannot, on applicable grounds, enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognised by law."

8. In *N. Balakrishnan v. M. Krishnamurthy* 1999 (1) AWC 15 (SC): (1998) 7 SCC 133 the Apex Court explained the scope of limitation and condonation of delay, observing as under:

The primary function of a Court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy for the redress of the legal injury so suffered. The law of limitation is thus founded on public policy.

9. In *Smt. Prabha v. Ramprakash Kalara* [, (1987) Supp SCC 339), , the Supreme Court took the view that the Court should not adopt an injustice oriented approach in rejecting the application for condonation of delay.

10. In *Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others*, , the Apex Court made a distinction in delay and inordinate delay observing as under:

In exercising discretion u/s 5 of the Limitation Act, the Courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the otherwise will be a relevant factor so the case calls for a more cautious approach....

11. In *P.K. Ramachandran Vs. State of Kerala and Another*, , the Hon"ble Apex Court held as under:

Law of limitation harshly affect a particular party but it has to be applied with all its rigour when the statute so prescribes and the Courts have no power to extend the period of limitation as equitable grounds. The discretion exercised by the High Court was, thus, neither proper nor judicious. The order condoning the delay cannot be sustained.

12. In *New India Insurance Co. Ltd. Vs. Smt. Shanti Misra, Adult*, Supreme Court held that discretion given by Section 5 should not be defined or crystallized so as to convert a discretionary matter into a rigid rule of law. The expression "sufficient cause" should receive a liberal construction. In *Brij Inder Singh v. Kanshi Ram* AIR 1917 PC 156 , it was observed that true guide for a Court to exercise the discretion u/s 5 is whether the Appellant acted with reasonable diligence in prosecuting the appeal. In *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, , the Supreme Court held that unless want of bona fides of such inaction or negligence as would deprive a party of the protection of Section 5 of the Limitation Act is proved, the application must not be thrown out or any delay

cannot be refused to be condoned. Similar view has been reiterated in *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*,

13. In *State of Kerala v. E.K. Kuriyipe and Ors.*, it was held that whether or not there is sufficient cause for condonation of delay is a question of fact dependent upon the facts and circumstances of the particular case. In *Smt. Milavi Devi v. Dina Nath* (1982) 3 SCC 366, it was held that the Appellant had sufficient cause for not filing the appeal within the period of limitation. The Supreme Court under Article 136 can reassess the ground and in appropriate case set aside the order made by the High Court or the Tribunal and remit the matter for hearing on merits. It was accordingly allowed, delay was condoned and case was remitted for decision on merits.

14. In *O.P. Kathpalia Vs. Lakhmir Singh (Dead) and Others*, the Hon'ble Supreme Court held that if the refusal to condone the delay results in grave miscarriage of justice, it would be a ground to condone the delay.

15. In *G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore*, it was observed that the expression "sufficient cause" must receive a liberal construction so as to advance substantial justice and generally delay in preferring the appeal is required to be condoned in the interest of justice where no gross negligence or deliberate inaction or lack of bona fides is imputable to the party seeking condonation of delay.

16. In *Ram Nath Sao @ Ram Nath Sahu and Others Vs. Gobardhan Sao and Others*, the Apex Court observed as under:

Thus, it becomes plain that expression "sufficient cause" within the meaning of Section 5 of the Act...should receive a liberal construction so as to advance substantial justice when no negligence or inaction or want of bona fides is improbable to a party. In a particular case whether explanation furnished would constitute "sufficient cause" or not will depend upon facts of each case...while considering the matter, Courts have to strike a balance between resultant effect of the order if it is going to pass upon the parties either way.

Thus, while deciding such an application justice oriented approach is required to be adopted.

17. Justice is the virtue, by which the Society/Court/Tribunal gives to a man what is his due, opposed to injury or wrong. (Wharton's Law Lexicon, 1976 Reprint Edn., p. 552). Justice is an act of rendering what is right and equitable towards one who has suffered a wrong. Therefore, while tampering the justice with mercy, the Court has to be very conscious that it has to be justice in exact conformity to some obligatory law for the reason that human actions are found to be just or unjust as they are in conformity with or in opposition to the law. In *Delhi Administration Vs. Gurdip Singh Uban and Others*, the Hon'ble Apex Court observed as under:

The words "justice" and "injustice", in our view, are sometimes loosely used and

have different meanings to different persons, particularly to those arrayed on opposite sides.... Justice Cardozo said, "the Web is tangled and obscure, shot through with a multitude of shades and colours, the skeins irregular and broken." Many hues that seems to be simple, are found, any when analysed, to be complex and uncertain blend. Justice itself, which we are wont to appeal to as a test as well as an ideal, may mean different things to different minds and at different times. Attempts to objectify its standards or even to describe them, have never wholly succeeded.

(Selected Writings of Cardozo, pp 223-24; Fallon Publications, 1947) Therefore, the Court must consider all pros and cons and inconvenience caused to the other side as well as to the Courts which are over-burdened with this kind of litigations for the fault of the litigants not taking proper care in due time.

18. Thus, in view of the above as the Petitioner has filed the claim petition after inordinate delay and no satisfactory explanation had been furnished. Application for condonation of delay contains the details of the dispute before the civil court but there is no explanation as to why the Tribunal could not be approached within limitation or reasonable period even after dismissal of the appeal on 28.4.1997. It was a case of gross negligence on the part of Petitioners. No fault can be found with the order impugned and the claim petition has rightly been rejected.

19. Even otherwise, husband of the Petitioner No. 1 and father of Petitioner No. 2 died on 29.4.1998. His application for compassionate employment had been filed on 15.9.1998, i.e., after expiry of about 9-1/2 years. In fact, every appointment in public office must be made in strict adherence to the mandatory requirement of Articles 14 and 16 of the Constitution. An exception to provide employment on compassionate ground has been carved out in order to remove the financial constraints on the grieved family which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family the source of livelihood. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that but for the provisions 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. Thus, the consistent view taken by the Court had been that compassionate employment cannot be claimed as a matter of right, not being the vested right.

20. In Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , the Apex Court held as under:

It can be stated unequivocally that in all claims for appointment on compassionate ground, there should not be any 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 appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for

appointment, supernumerary post should be created to accommodate the applicant.

The aforesaid judgment was approved and the principle laid down therein was reiterated by the Hon''ble Supreme Court in Smt. Phoolwati Vs. Union of India and Others,

21. In Umesh Kumar Nagpal Vs. State of Haryana and Others, , the Hon''ble Apex Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court has observed as under:

It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying-in-harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration 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 in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. 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.... The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased, there are 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 expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.... Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the

deceased.... The decision does not justify compassionate employment either as a matter of course.... The only ground which can justify compassionate employment is the penurious condition of the deceased's family.... The consideration for such employment is not a vested right.... The object being to enable the family to get over the financial crisis. (Emphasis added) The same view has been reiterated in Jagdish Prasad Vs. State of Bihar and Another, ; State of Bihar and others etc. Vs. Samsuz Zoha etc., ; Himachal Road Transport Corporation Vs. Dinesh Kumar, and Hindustan Aeronautics Ltd. Vs. Smt. A. Radhika Thirumalai, .It has categorically been held that compassionate employment cannot be claimed as a matter of course not being a vested right.

22. In Haryana State Electricity Board and another Vs. Hakim Singh, , the Hon"ble Apex Court placed reliance upon the judgments referred to above and observed that the object of providing for compassionate employment is only to relieve the family from financial hardship, therefore, an "ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

23. Similarly, in Haryana State Electricity Board Vs. Naresh Tanwar and Another, , the Hon"ble Apex Court reiterated and followed the law laid down in Umesh Nagpal's case (supra) and directed the applicants involved therein to apply for employment on compassionate ground "by giving full details of the family circumstances and the economic conditions.

24. In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , the Apex Court has observed as under:

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 the 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. 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 provision, 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 for the dependant of a deceased employee.

(Emphasis added)

25. In *Chairman, Bihar Rajya Vidyut Board Vs. Chhathu Ram and Others*, , the Hon''ble Supreme Court held that in absence of the statutory provisions, an adopted son cannot claim appointment on compassionate ground. Similarly, in *General Secretary, American Express Bank Union v. American Express Bank Ltd.* (1999) SCC 1235 , the Hon''ble Supreme Court held that mere adoption of recruitment policy in pursuance of a settlement between the union and the employer for compassionate employment of the specified categories of relations of employees on their retirement, death or incapacitation, cannot be enforced unless adopted by the employer by bringing the Standing Order/Statutory Rule. Similarly, in *West Bengal State Electricity Board and Others Vs. Samir K. Sarkar*, , the Hon''ble Apex Court held that embargo on compassionate employment in case of death of employee within two years prior to reaching the age of superannuation, was not invalid.

26. Undoubtedly, in *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, , the Hon''ble Supreme Court held that appointment on compassionate ground is not a vested right but it should not be denied in deserving cases for the reason that it would be tantamount to denial of economical and social justice as enshrined in the Constitution and law must be, in its adaptability and flexibility, applied depending upon a situation for the benefit of the society.

27. In *Sanjay Kumar Vs. The State of Bihar and Others*, , the Hon''ble Supreme Court again reiterated that the purpose of the rules providing for compassionate employment is only 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, but such an appointment cannot be held as if a reservation for the dependents of the deceased Government servant, who died in harness. In *Regional Manager, A.P.S.R.T., Nellore v. C.M. Pawana Kumari* 2001 AIR SCW 4779, the Apex Court held that direction cannot be issued to appoint a person on compassionate ground dehors the scheme framed by the employer nor the Court has a power to modify the scheme or rules framed in this regard. Similar view has been reiterated in the *Divisional Manager, A.P.S.R.T.C. v. K. Radha Krishna* 2001 AIR SCW 5190, while deciding a case of appointment on compassionate ground under Re-employment Children Quota provided under the Circular issued by the Corporation.

28. In *Surya Kant Kadam v. State of Karnataka and Ors.* 2001 (2) AWC 1128 (SC): AIR 2001 SC 3145, the Apex Court held that in absence of any statutory rules, appointment on compassionate ground can be governed by the executive instructions and in spite of the fact that the said instructions may not have a statutory force, the same are bound to be observed by the employer.

29. In *State of Haryana and Others Vs. Vipin Kumar*, , the Apex Court held that compassionate employment is not given to offer a status on a family and no person can claim to have the same post and if rules/executive instructions

provide that appointment shall be made on one stage below, it can be made not only next below post but to any other lower post as the rules provide only that the appointment may be offered at least one step below the post the deceased Government employee was holding and there can be no bar in offering still a lower post for the reason that the purpose of appointment on compassionate ground is to redeem the family from financial constraints and not to confer any other benefit or status.

30. In *Sail and Another Vs. Awadhesh Singh and Others*, the Hon'ble Supreme Court held that if rule prohibits an appointment on compassionate ground if any other member of the family is already in service, the said rule is valid and no direction can be issued against such a scheme.

31. While reiterating the purpose of making appointment on compassionate ground, the Hon'ble Supreme Court, in *Haryana State Electricity Board v. Krishna Devi* 2002 (2) AWC 1411 (SC): 2002 (2) LLJ 773, held that the main object behind giving such employment is to provide immediate financial help to the family of the deceased employee. Such appointment cannot be made in absence of Rules or Instructions. Application for such employment must be made within the period prescribed by the Rules/Instructions. Application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

32. Thus, it is evident that such employment cannot be claimed as a vested right. The concept of vested right has been explained by the Apex Court in *Masammatt Bibi Sayeeda and Others etc. Vs. State of Bihar and Others*, wherein it has been described as under:

The word "vested" is defined in Black's Law Dictionary (6th Edition) at page 1563, as "vested", fixed; accrued; settled; absolute; complete. Having the character or given in the rights of absolute ownership; not contingent; not subject to be defeated by a condition precedent." Rights are "vested" when right to enjoyment, present or prospective, has become property of some particular person or persons as present interest; mere expectancy of future benefits, or contingent interest in property founded on anticipated continuance of existing laws, does not constitute vested rights. In Webster's Comprehensive Dictionary (International Edition) at page 1397, "vested" is defined as (Law held by a tenure subject to no contingency; complete; established by law as a permanent right; vested interest.

33. Thus, vested right is a right independent of any contingency and it cannot be taken away without consent of the person concerned. Vested right can arise from contract, statute or by operation of law.

34. The case requires to be examined in the light of aforesaid settled legal propositions. The Tribunal has made the following observations:

The object of giving compassionate appointment is to provide immediate help to

the family which is rendered breadless on sudden demise of the bread earner. In the present case, death took place on 29.7.1989. More than 13 years have passed. The crucial period where help was required has thus passed and the applicants have successfully crossed that.

35. The purpose of providing such an employment has been to render the financial assistance to the family, which has lost the bread earner immediately after the death of the employee. If the application has been filed after expiry of 9-1/2 years, the element of immediate need stood evaporated and there was no occasion for the Respondents to consider the case of the Petitioner for such a relief. The observation made by the learned Tribunal are in consonance with the law laid down by the Hon''ble Apex Court and no exception can be taken out.

36. Petition is devoid of any merit and is accordingly dismissed.