

(2019) 06 CHH CK 0107
In the Chhattisgarh High Court
Case No : Writ Petition S No. 4279 Of 2018

South East Central Railway And Ors

APPELLANT

Vs

Rakesh Kumar Jangde Amd Ors

RESPONDENT

Date of Decision : 26-06-2019

Acts Referred:

Indian Succession Act, 1925 — Section 372
Constitution Of India, 1950 — Article 14, 16, 226, 227

Citation : (2019) 06 CHH CK 0107

Hon'ble Judges : P.R. Ramachandra Menon, CJ; Sanjay K. Agrawal, J

Bench : Division Bench

Advocate : H.S. Ahluwalia, Vivek Kumar Agrawal

Final Decision : Allowed

Judgement

Sanjay K. Agrawal, J

1. This writ petition is directed against the order dated 11.04.2018 passed by the Central Administrative Tribunal, Jabalpur Bench, Circuit Sitting at Bilaspur (hereinafter to referred as "the Tribunal") in OA No. 203/00291/2016, by which the application filed by the Respondent herein has been granted directing the Petitioners herein to consider his case for grant of compassionate appointment.

2. In order to decide the lis brought before this Court, following essential facts are required to be noticed.

3. Shri Uttam Kumar Jangde, while working as a Co-Driver in the South East Central Railway, died in harness on 10.11.1996. Thereafter, the Railways, on 28.08.2000 directed the three wives of the deceased Railway servant namely, Smt. Ganga Bai, Smt. Premlata Jangde and Smt. Savita Bai to produce the Succession Certificate for payment and settlement of retiral dues including Provident Fund, CGDGIS, Saving Fund, DCRG, Family Pension etc. At that very time, the Respondent was minor as his date of birth is 14.04.1989. The Respondent herein became major only on 13.04.2007. On receiving the memo

dated 28.08.2000, the private Respondent along with his brother and sister namely Tarun Kumar and Ku. Sangeeta filed an application for grant of Succession Certificate on 18.10.2000, which was granted to them on 12.11.2009 and retiral dues were thereafter appear to have been settled by the Railways to the private Respondent and his brother and sister. Thereafter, only on 05.07.2011, the Respondent herein made an application for grant of compassionate appointment to him, which was rejected by order dated 22.11.2011 stating inter alia on ground of delay as the Railway servant died on 10.11.1996 and after a period of 11 years, the application for grant of compassionate appointment cannot be considered and further the Respondent, being the son of the 2nd wife of the deceased Railway servant, was not eligible for compassionate appointment.

4. The Respondent herein questioned the said order dated 22.11.2011 before the Tribunal. The Tribunal, after considering the pleadings of the parties and after taking into account of the submissions of the parties, by the impugned order set aside the order / communication dated 22.11.2011 passed by the Petitioners / Railways and directed them to consider the case of the Respondent herein for grant of compassionate appointment within a period of 60 days. Feeling aggrieved and dissatisfied with the order of the Tribunal, this writ petition under Article 227 of the Constitution of India has been preferred by the Railways stating inter alia that the application for grant of compassionate appointment could not have been directed to be considered by the Tribunal in view of delay of more than 14 years in claiming the appointment and further that the Respondent being the child of the 2nd wife of the deceased Railway servant, who had performed second marriage without prior permission of the Railways and relying circular dated 01.12.1992 bars such compassionate appointment, is not entitled for grant of compassionate appointment.

5. No return has been filed by the Respondent.

6. Mr. H.S. Ahluwalia, learned counsel for the Petitioners, would submit that the learned Tribunal is absolutely unjustified in allowing the application on merits with inordinate delay in submitting the application and incorrectly extended the period for filing the application and by holding that the Petitioners / Railways have directed on 28.08.2000 to the Respondent and other legal representatives of the deceased Railway servant to obtain Succession Certificate under Section 372 of the Indian Succession Act for granting compassionate appointment and thereafter his case for compassionate appointment will be considered. As such direction was issued on 28.08.2000 in order to settle the retiral dues as mentioned in the aforementioned letter / memo, only the Succession Certificate was rightly sought for and which was also granted by the Succession Court, and thereafter issue of retiral dues was settled. Therefore, the impugned order is liable to be set aside.

7. Mr. Vivek Kumar Agrawal, learned counsel for the Respondent, submits that though the Respondent's father died in harness, not only for the retiral dues, but

also for the privilege of compassionate appointment, which the Respondent is legally entitled, he has been made to run to the authorities, but when he was not granted compassionate appointment, then ultimately on 05.07.2011, he made the written application, which was also rejected on 22.11.2011, the same was assailed before the Tribunal and the Tribunal after consideration has rightly directed for consideration for appointment on compassionate ground, which is strictly in accordance with law and no exception can be taken by the Petitioner too in impugned order directing consideration of his case for grant of compassionate appointment.

8. We have heard learned counsel for the parties, considered the rival contentions raised hereinabove and went through the record with utmost circumspection.

9. The Railway servant Uttam Kumar Jangde died in harness on 10.11.1996 leaving behind his three wives and Respondent herein, who is son of deceased Railway servant out of his wedlock with 2nd wife, namely, Ganga Bai. Though with some delay, the Railways on 28.08.2000 directed all the three wives of the deceased Railway servant to obtain Succession Certificate in accordance with law to settle the dispute relating to the fact that all the three wives were claiming the retiral dues, but from the memo dated 28.08.2000, it is quite evident that no direction was made by the Railways to obtain Succession Certificate to them or their son or daughter for grant of compassionate appointment. Admittedly, the date of birth of the Respondent is 14.04.1989 and he became major, in between, on 13.04.2007, but he did not make any application for grant of compassionate appointment. He and his one brother Tarun Kumar and sister Ku. Sangeeta made an application for grant of Succession Certificate under Section 372 of the Indian Succession Act on 18.10.2000, which was ultimately granted by the Succession Court on 12.11.2009, till then, the Respondent herein, though he had become major way back on 13.04.2007, did not make any representation for grant of compassionate appointment and thereafter admittedly, he only made the application for compassionate appointment on 05.07.2011. Assuming that the Respondent was minor on the date when the deceased Railway servant died on 10.11.1996, but he became major in April, 2007 and further adding three years for claiming appointment till April, 2010 also he did not make any application till then and thereafter he made an application on 05.07.2011, which the Petitioners have taken exception to and have vehemently pleaded that the grant of compassionate appointment is not a regular source of appointment and it is an exception of Articles 14 and 16 of the Constitution of India and therefore, not being the regular source of recruitment, the learned Tribunal is absolutely justified in condoning the delay by wrongly holding that the Petitioner/Railway Authority ever sought for the Succession Certificate to grant the compassionate appointment.

10. It is well settled principle of law as held by their Lordships of the Hon'ble Supreme Court in several authoritative pronouncements including recent

pronouncement in the case of State of Himachal Pradesh and Another vs. Shashi Kumar; (2019) 3 SCC 653 in which reiterating and revisiting the law, their Lordships clearly held that there is no right to compassionate appointment and the compassionate appointment is exception to general rule that appointment to any public post in service of State must be made in accordance with Articles 14 and 16 of the Constitution of India. It has been further held by their Lordships that basis for the policy is immediacy of need for financial assistance faced by family of the deceased employee consequent to his untimely death. Their Lordships have also considered and held that delay of more than seven years in approaching the Court evidently lost sense of immediacy by delay on part of dependant in seeking compassionate appointment and held as under :

"35. Insofar as the individual facts pertaining to the respondent are concerned, it has emerged from the record that the Writ Petition before the High Court was instituted on 11 May 2015. The application for compassionate appointment was submitted on 8 May 2007. On 15 January 2008 the Additional Secretary had required that the amount realized by way of pension be included in the income statement of the family. The respondent waited thereafter for a period in excess of seven years to move a petition under Article 226 of the Constitution. In Umesh Kumar Nagpal {(1994) 4 SCC 138}, this Court has emphasized that the basis of a scheme of compassionate appointment lies in the need of providing immediate assistance to the family of the deceased employee. This sense of immediacy is evidently lost by the delay on the part of the dependant in seeking compassionate appointment.

36. We are not impressed with the submission that delay should not be taken into account since Paragraph 8 of the Scheme contemplates that in a situation where all the dependant children of the deceased employee have yet to attain the age of majority, the time limit for submission of an application is extended until the first of the children attains the age of twenty one years. A case where each of the children is a minor falls in a different class altogether. This cannot be equated with a situation where a dependant of a deceased employee who was a major on the date of death fails to submit an application within a reasonable period of time from the death of the employee. This aspect of delay has been dealt with in other decisions of this Court, including State of J&K Vs. Sajad Ahmed Mir {(2006) 5 SCC 766} and Local Administration Department Vs. M. Selvanayagam {(2011) 13 SCC 42}.

37. We see no reason or purpose in now directing the State to reconsider its decision in the case of the respondent which would only result in another round of fruitless litigation. In our view, the respondent is debarred from seeking compassionate appointment by the delay as well as by the lapse of time which has taken place."

11. The principle of law laid down in the aforesaid case of Shashi Kumar (supra) is squarely and factually applies to the facts of the present case. The Respondent herein though he was minor at the time of unfortunate death of his father and

became major way back on April, 2007, though he applied for and granted Succession Certificate and on being major on 13.04.2007, he did not consider it appropriate to make application for grant of Compassionate Appointment at that time and conveniently made application on 05.07.2011. By that time four years from the date of his becoming major that is more than reasonable time for making Compassionate Appointment had already passed and thus, it can clearly be held that sense of immediacy for grant of Compassionate Appointment for which such Appointment is granted to give financial assistance is lost. Delay cannot be said to be on the part of the Petitioners/Railways, the Respondent is not entitled to be considered for Compassionate Appointment on the ground of unreasonable delay in claiming the said appointment as Compassionate Appointment is not a regular source of appointment. We have already held stating that the Tribunal is absolutely unjustified in shouldering the responsibility on the part of the Petitioners holding that the Railways directed the Respondent herein to obtain Succession Certificate to extend the benefit of Compassionate Appointment. That direction was only and only for settlement of retiral dues as the three wives of the Government servant were claiming the retiral dues payable to the legal representatives of the deceased Railway servant, and finding recorded by the learned Tribunal is contrary to the record.

12. The submission of learned counsel for the Petitioner is that Respondent being child of deceased Railway servant out of his second marriage, therefore, he is not entitled for Compassionate Appointment is unacceptable to this Court in view of judgment rendered by Supreme Court in the matter of Union of India vs. V.R. Tripathi (AIR 2019 SC 666) and accordingly answered against the Petitioners.

13. We are of the opinion that the order passed by the Tribunal is contrary to the facts and law available on record and therefore it is liable to be set aside and is accordingly set aside and application for Compassionate Appointment filed by Respondent herein stands rejected.

14. Finally, the writ petition is allowed to the extent stated hereinabove leaving the parties to bear their own cost(s).