
(2014) 07 SHI CK 0181
In the High Court Of Himachal Pradesh
Case No : LPA No. 89 of 2013

State of H.P.

APPELLANT

Vs

Vikas Kumar Sharma

RESPONDENT

Date of Decision : 07-07-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 16

Citation : (2014) 07 SHI CK 0181

Hon'ble Judges : Mansoor Ahmad Mir, C.J.;Tarlok Singh Chauhan, J

Bench : Division Bench

Advocate : Shrawan Dogra, Advocate General and Romesh Verma and V.S. Chauhan, Addl. A.Gs, Advocate for the Appellant; V.D. Khidta, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Mansoor Ahmad Mir, C.J.—This Letters Patent Appeal is directed against the judgment and order, dated 16th June, 2012, made by the Writ Court/learned Single Judge in CWP No. 6180 of 2011, titled Vikas Kumar Sharma vs. State of H.P. and another, whereby the respondents (appellants herein) have been directed to consider the case of the writ petitioner (respondent herein) for appointment against Class-III post i.e. daily-wage Clerk from the date he was initially appointed as daily-wage Beldar, which is a Class-IV post, with all consequential benefits, (for short, the impugned judgment).

2. During the course of hearing, Mr. Romesh Verma, learned Additional Advocate General, argued that the impugned judgment is non-speaking one and is not in accordance with the Policy occupying the field, read with the Apex Court judgments.

3. On the other hand, Mr. V.D. Khidta, learned counsel for the respondent (writ petitioner), while supporting the impugned judgment, argued that the writ petitioner initially applied for being appointed on compassionate ground against a

Class-III post of daily wage Clerk, but the appellants/writ respondents, instead, appointed him against the Class-IV post of daily wage Beldar. He further argued that the respondent was offered appointment on compassionate grounds against the Class-IV post on the ground that no post in Class-III category was available at the relevant time.

4. The impugned judgment, on the face of it, is non-speaking and is not in accordance with various pronouncements of the Apex Court and the Policy occupying the field. In terms of the policy annexed with the writ petition (Annexure P-5), the dependant of an employee, who dies in harness, is to be provided employment on compassionate grounds in the lowest rung of Class-III/ Class-IV posts as per his qualification and eligibility.

5. It is beaten law of the land that the compassionate appointment is an exception to the general rule of appointments. Thus, it is the discretion of the State to offer compassionate appointment to the applicant/writ petitioner against the post in the lowest rung, in case he fulfills the eligibility criteria.

6. The purpose of granting compassionate appointment is to mitigate the hardship of the family, caused due to the death of bread earner in the family and is to be granted within a short span of time. The Apex Court in *National Hydroelectric Power Corporation and Another Vs. Nanak Chand and Another*, *Amrit Vanaspati Co. Ltd. Vs. Khem Chand and Another*, *Steel Authority of India Ltd. Vs. Madhusudan Das and Others*, *Abid Bashir Tayubi vs. State of Jammu and Kashmir and others*, 2002 (8) SLR 762 and *MGB Gramin Bank Vs. Chakrawarti Singh*, has discussed the purpose of granting compassionate appointment. It is apt to reproduce hereunder paragraphs 5, 6, 7, 9 and 13 of the judgment rendered in *MGB Gramin Bank supra*:

5. Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. 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 without providing 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. More so, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right.

The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds.

Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years.

6. In *Umesh Kumar Nagpal Vs. State of Haryana and Others*, , this Court has considered the nature of the right which a dependant can claim while seeking employment on compassionate ground. The Court observed as under:-

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..... 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..... 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)

7. An "ameliorating relief" should not be taken as opening an alternative mode of recruitment to public employment. Furthermore, an 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.

9. In *A. Umarani Vs. Registrar, Cooperative Societies and Others*, , while dealing with the issue, this Court held that even the Supreme Court should not exercise the extraordinary jurisdiction under Article 142 issuing a direction to give compassionate appointment in contravention of the provisions of the Scheme/ Rules etc., as the provisions have to be complied with mandatorily and any appointment given or ordered to be given in violation of the scheme would be illegal.

13. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *State Bank of India & Anr. (supra)*, this Court held that in such a situation, the case under the new Scheme has to be considered.

7. Keeping in view the ratio laid down by the Apex Court, it can be concluded that it is the discretion of the State/Department to offer appointment on compassionate grounds against any post in the lowest rung, the purpose of which is to ameliorate the hardship of the dependants who have lost their bread earner. The dependants cannot, as a matter of right, claim appointment on compassionate grounds against a specific post, in higher cadre or in a particular Department.

8. In the case in hand, the writ petitioner has accepted the appointment against Class-IV post without any demur and after lapse of about five years, has invoked the jurisdiction of the Writ Court for grant of compassionate appointment against Class-III post. The writ petitioner cannot claim appointment against a Class-III post as a matter of right and also cannot make a U-turn after accepting the offer of appointment against class-IV post. He is caught by law of estoppel and conduct. The Apex Court in I.G. (Karmik) and Others Vs. Prahalad Mani Tripathi, has laid down the same principle. It is apt to reproduce paragraphs 13 and 14 of the said decision hereunder:

13. Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power.

14. The pre-requisite for making such a appointment by granting relaxation has been laid down by this Court in Indian Drugs and Pharmaceuticals Ltd. Vs. Devki Devi and Others, . See also Kendriya Vidyalaya Sangathan and Others Vs. Sajal Kumar Roy and Others, .

9. The Apex Court in case A.P.S.R.T.C., Musheerabad & Ors. vs. Sarvarunnisa Begum, 2008 AIR SCW 1946, has held that once the dependant has accepted additional monetary benefits for not claiming appointment, she cannot thereafter claim appointment on compassionate ground. It is apt to reproduce paragraph 4 of the said decision hereunder:

4. In the present case, the additional monetary benefit has been given to the widow apart from the benefits available to the widow after the death of her husband to get over the financial constraints on account of sudden death of her husband and, thus, as a matter of right, she was not entitled to claim the compassionate appointment and that too when it had not been brought to the notice of the Court that any vacancy was available where the respondent could have been accommodated by giving her a compassionate appointment. That apart, the Division Bench of the High Court has committed an error in modifying the direction of the Single Judge by directing the Corporation to appoint the respondent when no appeal was preferred by the respondent challenging order of the Single Judge.

10. One of us (Justice Mansoor Ahmad Mir, C.J.), as Judge of Jammu and Kashmir High Court, while dealing with the issue of compassionate appointment in case Parvez Ahmad Bhat Vs. State of Jammu & Kashmir and Others, , have

held that once appointment on compassionate ground is accepted against a lower post, the appointee cannot claim that he/she should be appointed against a higher post.

11. In the present case, the writ petitioner also claimed that the appellants/writ respondents have offered appointment, on compassionate grounds, to so many other persons against higher post and, thus, sought parity. In the given circumstances of a case, if somebody is offered appointment against higher post, that cannot be a ground to claim parity and seek appointment against higher post. Equality has to be claimed among equals. And is available if order is legal one and same cannot be enforced in illegality. Our this view is fortified by the judgment of the Apex Court rendered in Ghulam Rasool Lone Vs. State of Jammu & Kashmir and Another, . It is profitable to reproduce paragraph 11 of the said judgment hereunder:

11. There cannot be any doubt whatsoever that keeping in view the equal protection clause contained in Articles 14 of the Constitution of India as also Article 16 thereof, all the employees should be treated equally. Equality clause, however, must be enforced in legality and not illegality.

12. Having said so, the appeal merits to be allowed and the same is allowed, the impugned judgment is set aside and consequently, the writ petition is dismissed.

13. Pending applications, if any, also stand disposed of.