
(2019) 11 JH CK 0014

In the Jharkhand High Court

Case No : Letter Patent Appeal No. 714 Of 2018

State Of Jharkhand And Ors

APPELLANT

Vs

Ved Prakash Bhagat

RESPONDENT

Date of Decision : 14-11-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 16, 141, 142, 226

Citation : (2019) 11 JH CK 0014

Hon'ble Judges : Aparesh Kumar Singh, J;Kailash Prasad Deo, J

Bench : Division Bench

Advocate : Anup Kumar Agarwal, Neha Bhardwaj

Final Decision : Allowed

Judgement

1. Heard learned counsel for the appellant and the respondent on the prayer for condonation of delay of 105 days in preferring the memo of appeal, made through I.A. No. 10723 of 2018.

2. Learned counsel for the appellant State submits that there are no willful or deliberate laches in preferring the memo of appeal. After obtaining the certified copy of the impugned judgment and preparation of the grounds of appeal, on approval of the competent authority, memo of appeal was drafted and filed.

3. It is submitted that learned Single Judge has set aside the decision of District Compassionate Appointment Committee dated 26.12.2017 rejecting the claim of the writ petitioner and directed the Deputy Commissioner, Pakur - Respondent no.2 to take necessary steps for assessing suitability of the petitioner and if he is found fit, issue necessary directions for his appointment on a suitable post, within two months. It is further submitted that on admitted facts, the petitioner had attained the age of 17 years 11 months and 20 days on the last permissible date when an application for compassionate appointment could be submitted. However, on the date when decision was taken by the Committee i.e., 26.12.2017, petitioner had attained the age of 18 years. It is submitted that the

relevant date to reckon the eligibility of the applicant is the date of application of that applicant provided it should be made within the prescribed period of 5 years from the date of death of the employee. In the instant case petitioner's mother died in harness on 5th February 2012 while working as Assistant Teacher in Harischandra Middle School, Pakuria, Pakur. At the time of expiry of prescribed period of 5 years from the date of death, writ petitioner was minor. However, the writ court, by relying upon the decision of the Apex Court in the case of Madan Singh Shekhawat Vrs. Union of India & others reported in (1999) 6 SCC 459, was of the view that such beneficial provision ought to be interpreted liberally so as to give a wider meaning rather than a restrictive meaning.

4. It is submitted that the learned writ court has also relied upon the judgment rendered by the Apex Court in the case of Syed Khadim Hussain Vrs. State of Bihar reported in (2006) 9 SCC 195. However, direction in the case of Syed Khadim Hussain (supra) was issued in exercise of powers under Article 142 of the Constitution of India to do substantial justice to the parties. The concluding para 6 of the judgment is referred to on behalf of the appellant to show that directions to consider the application of the appellant therein and give him appropriate appointment within reasonable time were issued in the peculiar facts and circumstances of the case. It is submitted that reliance on the said decision would be misplaced as no such power is conferred under Article 226 of the Constitution of India upon the High Court. Moreover, directions issued under Article 142 of the Constitution of India do not constitute precedent under Article 141 of the Constitution of India. Further the decision in the case of Sanjay Kumar Vrs. State of Bihar & others reported in (2000) 7 SCC 192 is squarely on the point. Para 3 thereof has been relied upon and quoted hereunder:

"3. We are unable to agree with the submissions of the learned Senior Counsel for the petitioner. This Court has held in a number of cases that compassionate appointments 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 fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar. It is also significant to notice that on the date when the first application was made by the petitioner on 02.06.1988, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appoint is to see the family gets immediate relief".

As such, impugned judgment deserves to be set aside. Learned counsel for the appellant further submits that delay in preferring the memo of appeal may be condoned as the appellant has good case on merits and the impugned decision, if not interfered in such circumstances, would have wider ramification throughout the State.

5. Learned counsel for the writ petitioner / respondent has strongly opposed the submission of learned counsel for the appellant. It is submitted that appellant has failed to provide any plausible explanation for the delay. No reference of any intra departmental communication has either been made. The writ petitioner has earned a valuable right, which has now become vested on expiry of period of limitation and should not be easily disturbed. The writ court has taken a correct liberal view in interpreting the beneficial provisions of the scheme for compassionate appointment in favour of the dependent of the deceased employee since its ultimate object is to help the family to ward over the crises on the death of the bread earner in order to survive. The writ petitioner had made application within time, though on the cutoff date i.e., expiry of 5 years of period, he had not become major. However, on the date on which decision was taken, writ petitioner had attained majority. Therefore, if appointment is denied, ultimately the object of compassionate appointment scheme would suffer and the dependent of such employee dying in harness would be reduced to penury. It is also submitted that in the case of Syed Khadim Hussain (supra) the Apex Court was seized with an identical matter. The employee, Peon in the PWD Department died in harness in 1991 leaving his widow and five minor sons. The widow submitted an application for compassionate appointment in 1993 but her application was rejected merely because it was not in prescribed format. Appellant son applied for compassionate appointment in the year 1995. However, his application was rejected also on the ground that at the time of filing application he was aged 13 years. The Apex Court has, in those circumstances, held that rejection of appellant's application was not justified as at the time of rejection appellant had attained 18 years of age. In those facts and circumstance, which are identical to the facts of the present case, the Apex Court had issued direction upon the State of Bihar to consider the application of the appellant and give appropriate appointment within a period of 3 months. Therefore, the decision of the writ court does not suffer from any error of law and does not require interference.

6. We have considered the submission of learned counsel for the parties on the point of delay and also on merits. The factual matrix of the case noted above, shows that admittedly the writ petitioner was not a major till the last date for making an application for compassionate appointment i.e., 5 years from the date of death. On the date of decision i.e., 26.12.2017, though he had become major, but that was after the expiry of period of 5 years. Eligibility for appointment on compassionate ground is to be reckoned as per the scheme on the date of application, provided the application is made within the period of 5 years from the date of death as per letter bearing memo no. 11328 dated 13.11.2017 issued by the Department of Personnel, Administrative Reforms and Rajbhasha, Government of Jharkhand (Annexure-2). The same position operated as per the circular dated 05.10.1991 also which has been replaced by the 2015 Rules. Though a liberal interpretation to such beneficial provision are to be accorded as the objective is to enable the dependent of the employee dying in harness to

ward of the immediate crises, but it cannot be stretched beyond the contours of the scheme. It is well settled that appointment on compassionate grounds is an exception to the general rule under Article 14 and 16 of the Constitution of India of equality in opportunity in matters of public employment.

7. Though, facts of the case of the writ petitioner appears to be similar to that of Syed Khadim Hussain (*supra*) but a perusal of para 6 of the decision rendered by the Apex Court shows that directions were issued in the peculiar facts and circumstances of the case i.e., by invoking the powers under Article 142 of the Constitution of India.[see *State of Punjab vrs. Rafiq Masih*, (2014) 8 SCC 883, para 12 and *Bir Singh Vrs. Mukesh Kumar* (2019) 4 SCC 197]. On the other hand, learned counsel for the appellant has relied upon a decision in the case of Sanjay Kumar (*supra*) on similar facts, para 3 thereof quoted above, contains the opinion of the Apex Court. It is categorically laid down that there cannot be reservation of a vacancy till such time as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis for compassionate appointment is to see that the family gets immediate relief.

8. Considered thus, we find merit in the appeal. Learned Single Judge has failed to take note of the position of law applicable to cases for compassionate appointment. Similar view has been taken by a co-ordinate Bench of this Court in L.P.A. No. 391 of 2016 dated 19.07.2017 in the case of Ashok Gope. On the conspectus of facts and circumstances and the discussion made herein above, we are inclined to interfere in the judgment of the learned writ court. At the same time having considered the plea raised by the appellant for condonation of delay and being satisfied therefrom, delay of 105 days in preferring the instant memo of appeal is condoned. I.A. No. 10723 of 2018 stands disposed of.

9. Accordingly, the appeal is allowed and the impugned judgment dated 18.07.2018 passed in W.P.(S) No. 1289 of 2018 is set aside. Pending I.A. is closed.