

(2008) 02 KAR CK 0048
In the Karnataka High Court
Case No : Writ Appeal No. 2106 of 2006

State of Karnataka and Others

APPELLANT

Vs

K.G. Sowbhagya and Others

RESPONDENT

Date of Decision : 22-02-2008

Acts Referred:

Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 — Rule 5

Citation : (2008) ILR (Kar) 2022 : (2008) 5 KarLJ 576 : (2008) 2 KCCR 1112

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

Bench : Division Bench

Advocate : N. Dinesh Rao, AGA, for the Appellant; B.M. Halaswamy, for the Respondent

Final Decision : Allowed

Judgement

A.N. Venugopala Gowda, J.—This appeal is by the respondents in the writ petition. The respondents herein are the writ petitioners. For convenience, the parties will be referred with reference to their rank in the writ petition.

2. Petitioner No. 1 is the wife, petitioners No. 2 and 3 are the son and daughter respectively of one Somasundara, who, while working as an Assistant Teacher in Government Higher Primary School, has died on 16.12.1988 leaving behind him, the petitioners. The 1st petitioner had submitted a representation dated 20.12.1990, to provide a job to her son, the 2nd petitioner, who was then aged about 6 years. Considering the said representation, a reply dated 19.1.1991 was issued to the effect that the information furnished in the application is incomplete, the date of birth of the son of the 1st petitioner being 19.2.1982, since he has not completed 18 years of age, to submit all records in triplicate later. The petitioners have submitted a representation dated 20.3.2000 seeking appointment to the 2nd petitioner on compassionate ground. The said representation was rejected on the ground that since the application was not made within one year from the date of death, the same cannot be entertained as

per the Government Notification dated 31.3.1999. Questioning the endorsement, writ petition was filed. Learned Single Judge, after hearing the parties, holding that the respondents -Authorities are not justified in rejecting the representation, has allowed the writ petition in part, by quashing the impugned endorsement and has directed the 3rd respondent, to consider the representation submitted by the 2nd petitioner, seeking appointment on compassionate ground in accordance with the Rules and in the light of the observations. The order passed by the learned Single Judge has been questioned in this appeal.

3. Sri N. Dinesh Rao, learned Additional Government Advocate appearing for the appellants, contended that, learned Single Judge is not justified in allowing the writ petition and issuing the direction. He contended that the death of employee having taken place on 16.2.1988 and nearly two decades having lapsed thereafter, there can not be any claim for appointment on compassionate ground, much less, any consideration at this length of time. He cited the decision in the case of Sri. K.M. Prakash Vs. The State of Karnataka, Department of Personnel and Administrative Reforms (Service Rules) and Zilla Panchayat, . He contended that, the law laid down by the Apex Court in catena of decisions has to be taken into consideration, which has not been done by the learned Single Judge and hence, the impugned order is liable to be set aside.

4. Per contra, Learned Counsel, Sri B.M. Halaswamy, appearing for the writ petitioners, submitted that the order passed by the learned Single Judge is justified considering the fact that the Authorities had earlier indicated that after the 2nd petitioner attains the age of 18 years, all the documents were required to be submitted in triplicate, which having been done, it was not open to the Authorities, to reject the representation on the ground of delay etc. Learned Counsel generally supported the order passed by the learned Single Judge.

5. In view of the rival contentions and considering the record, the point that arises for our consideration is:

Whether a claim, for appointment on compassionate ground, can be directed to be considered by the authorities, when there is an intervening period of more than 18 years, from the date of death of the bread earner Government Servant?

6. Facts which are not in dispute are that, husband of the 1st petitioner and father of 2nd and 3rd petitioners, Somasundara, who was working as a teacher in Govt. School, has passed away on 16.12.1988. The date of birth of the 2nd petitioner is 12.2.1982 and he was hardly about 6 years old at the time when his father expired. He has attained majority on 13.2.2000. The petitioners had submitted a representation dated 20.12.1990 seeking appointment on compassionate grounds purportedly under the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1990 (in short "Rules"). The said application was declined, as could be seen from the reply dated 19.1.1991 on the ground that the 2nd petitioner had not attained the majority. Another representation was submitted on 20.3.2000, which was considered and the

endorsement dated 28.1.2002 was issued declining to appoint him on compassionate grounds.

7. 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 alluviate the distress of the family, appointments on compassionate grounds are permissible, provided there are statutory Rules, Regulations, Scheme or Administrative Instructions.

8. It is clear from the fact on record that Somasundara has passed away on 16.12.1988 and more than 18 years has passed away, now in between. The family of the deceased has survived for the past 18 years. The 2nd petitioner to whom the appointment sought on 20.12.1990 was a minor, being 6 years old, on the date of the death of his father. Appointment on compassionate grounds cannot be claimed, as a matter of right, much less, is it hereditary. If the family has tied over the crisis for more than 18 years, the claim for appointment on compassionate ground is totally untenable. An application submitted for appointment, while the person was just 6 years old, after the lapse of about more than one and half decades, can not be directed to be considered.

9. Learned Single Judge though has noticed the Rules, vide notification dated 31.3.1999 to the effect that an application seeking compassionate appointment

shall be made within one year from the date of death and the applicant should have attained majority within the said period of one year, holding that the amendment has come into force on 31.3.1999 and the same cannot be given retrospective effect, relying upon a decision in W.A. No. 2941/2003 (DD 10.6.2005), has held that the cause of action for claiming compassionate appointment occurs on the date of the death of the employee and the Rules that were in force at the relevant point viz., Rule 5 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 stipulated that in the event the applicant being a minor at the time of the death, he could apply within the period of one year on attaining majority, the case should be considered with reference to Rule as it stood prior to the amendment, has issued direction to consider the representation in the light of the observation made in the order.

10. Merely because a legal point is made out, a writ shall not follow is the law laid down by the Apex Court. As already noticed, more than 18 years has been elapsed from the date of death of the government servant. Considering the catena of decisions of the Hon''ble Supreme Court, wherein it has been held that appointment on compassionate ground is not a matter of right and should be sought and made immediately after the death of the deceased civil servant and in view of a long lapse of time that has intervened, the claim could not have been directed to be considered. Because of the intervening period, the claim has become state, the cause of action does not continue to subsist and has come to an end because of efflux of time.

11. In the case of the Director, Defence Metal Research Laboratory and Anr. v. G. Murali, (2003) 9 SCC 247 , wherein the facts were that, one G Murali had made an application for his employment on compassionate ground; the family had managed somehow for about 18 years after the death; the claim was declined by the employer; which was questioned in the Central Administrative Tribunal; which had held that the case is not covered under the instructions issued by the government. When the order of the Tribunal was challenged by filing a writ petition in the High Court, the writ petition was allowed holding that the Tribunal should have appreciated that the writ petitioner was aged about two years at the time of death of his father and that the application for compassionate appointment had been made upon the attainment of majority by the writ petitioner, any refusal, even on the ground of non-availability of posts, was not an excuse and a post had to be created, if not available. The order allowing the writ petition, when questioned in the Apex Court, it was held as follows:

4. 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 had 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.

(Underlining is by us for emphasis)

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

17. In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September. 1991 which was rejected in March. 1996. The writ petition was filed in June. 1999 which was dismissed by the learned single Judge in July. 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned Single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal.

(Underlining is by us for emphasis)

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

8. In State of U.P. and Others Vs. Paras Nath, it was held that the purpose of" providing employment to the dependant of a government servant dying-in harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

9. These aspects were highlighted in State of Manipur Vs. Md. Rajaodin, , State of Haryana and Another Vs. Ankur Gupta, , Haryana State Electricity Board Vs. Naresh Tanwar and Another, and Haryana State Electricity Board and another Vs. Hakim Singh, and Punjab National Bank and Ors. v. Ashwini Kumar Taneja Civil Appeal No. 5256 of 2004 decided on 16.8.2004.

10. Above being the position, we find die judgment of the High Court to be unsustainable. The same is, therefore, set aside.

(Underlining is by us for emphasis)

14. In the case of Sanjay Kumar Vs. The State of Bihar and Others, , it has been held as follows:

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

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 fact such a view has been expressed in the very decision cited by the petitioner in Director of Education v. Pushpendra Kumar supra. It is also significant to notice that on the date when the first application was made by the petitioner on 2.6.88. 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 is some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief.

(Underlining is by us for emphasis)

15. When the case of the petitioners is considered in the panorama of the aforesaid legal principles, the inevitable conclusion is that they are not entitled to claim appointment on compassionate grounds and the learned Single Judge has erred in issuing the direction to consider their case. Both on facts and in law, the prayer made in the writ petition can not be directed to be considered.

16. In view of the foregoing reasons, the order passed by the learned Single Judge cannot be upheld and writ appeal deserves to be allowed and consequently the order passed by the learned Single Judge impugned herein is set aside and writ petition stands dismissed. No cost.