
(2014) 05 MEG CK 0008
In the Meghalaya High Court
Case No : Writ Appeal No. 33 of 2013

State of Meghalaya

APPELLANT

Vs

Sellina N. Marak

RESPONDENT

Date of Decision : 21-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 4 GLT 328

Hon'ble Judges : Prafulla C. Pant, C.J;T. Nandakumar Singh, J

Bench : Division Bench

Judgement

Prafulla C. Pant, C.J.—This writ appeal is directed against judgment and order dated 08.08.2013, passed by the learned single Judge in W.P.(C) No. 312 of 2011, whereby, writ respondent authorities (present appellants) have been directed to regularize the services of the writ petitioner within a period of three months from the date of the order. Heard learned counsel for the appellants and perused papers on records.

2. The writ petitioner did not turn up to contest the appeal.

3. Brief facts of the case are that Late Nazmul Hoque (husband of the writ petitioner Smti Selina N. Marak) was Work Charge Khalasi in Public Health Engineering Department, Govt. of Meghalaya, Simsangiri Division, Williamnagar. He died during the service on 23.02.1995 leaving behind his widow (writ petitioner) and his children. After the death of said employee, the Public Health Engineering Department of the State sanctioned a lump sum family pension to the writ petitioner and also provided her a job of casual cleaner. She sought her regularization in service by filing the writ petition.

4. The writ respondents No. 1 to 4 (present appellants) filed their counter affidavits and pleaded that the writ petitioner was not entitled to appointment on compassionate ground. It is further pleaded that since Late Nazmul Hoque was a member of Work Charge staff as such there was no question of appointment on

compassionate ground.

5. The case of the writ petitioner in the writ petition is that as the Work Charge service of Late Nazmul Hoque had been regularized, the writ petitioner could be appointed on compassionate ground under the Office Memorandum of the Govt. of Meghalaya dated 11.12.1984 (i.e. O.M. relating to employment on compassionate ground of the son/daughter/near relatives of the Govt. servant who dies while in service). In the affidavit-in-opposition filed by the respondents there is no denial of the fact that the Work Charge service of Late Nazmul Hoque had been regularized, as work charge employee.

6. The Apex Court in Local Administration Department and Another Vs. M. Selvanayagam @ Kumaravelu, , clearly held that the object of compassionate appointment under Dying-in-harness scheme is to provide immediate succour to the family of the deceased employee, and allowing of employment to the son of the deceased after 7 1/2 years after the death of his father cannot be said to succour, the basic object and the purpose of the scheme, as such belated appointment would be in conflict with Articles 14 and 16 of the Constitution of India.

Para 7 of the SCC in M. Selvanayagam"s case (supra) reads as follows:

"7. *****

It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying-in-harness one of his eligible dependents is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the bread winner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependents and the financial deprivation caused to the dependents as a result of his death, simply because the claimant happened to be one of the dependents of the deceased-employee would be directly in conflict with Articles 14 and 16 of the Constitution of and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind."

7. Learned counsel for the writ appellants drew attention of this Court to the copy of Office Memorandum dated 11.12.1984 which relates to providing employment on compassionate ground to the near relatives of the Government servants who died-in-harness. Copy of the said Office Memorandum is annexed as Annexure 4 to the writ petition. Para 6 of the said Office Memorandum provides as under:

"(6) This concession will be applicable only to such cases where the concerned Government servant has put in at least five years continuous service against a regular post."

From the above paragraph of the Office Memorandum dated 11.12.1984, it is

clear that provisions relating to compassionate appointment were applicable to the relatives of the employee holding a regular post who died-in-harness. Admittedly, the writ petitioner's husband was a Work Charged employee.

8. The regularization of the Work Charge service of Late Nazmul Hoque will not change the character of employment or status as Work Charged employee. Regarding this point, we may refer to the decision of the Apex Court in State of Manipur Vs. Thingujam Brojen Meetei, , wherein the Apex Court clearly held that Work Charged employee after confirmation does not cease to be a work-charged employee and he continues to be a work-charged employee. The bar regarding applicability of the Scheme to work-charged employee would, therefore, continue to be applicable and the dependants of such a confirmed work-charged employee cannot claim the benefit of an appointment on the basis of the Scheme. The Dying-in-harness Scheme for appointment on compassionate ground of the Government of Manipur as discussed in Thingujam Brojen Meetei's case (supra) is *pari materia* with the Dying-in-harness Scheme for appointment on compassionate ground of the Government of Meghalaya vice Office Memorandum dated 11.12.1984, in as much as, in the said two Office Memoranda, there is a condition that the dependant of the concerned employee (employee who died-in-harness) can apply for appointment under compassionate ground only in such cases where the concerned Government servant put in at least five years of regular continuous service against a regular post.

9. The Apex Court in State of Manipur Vs. Md. Rajaodin, clearly held that the appointment of the dependent under Dying-in-harness scheme can only be extended with the dependent of the deceased employee who fulfilled all essential requirements under the concerned Dying-in-harness Scheme. In that case, one of the conditions for appointment under Dying-in-harness Scheme of the State Government was that the application for appointment under Dying-in-harness scheme should be filed within a period of one year from the date of the death of the concerned employee (who died-in-harness). Para 11 of the SCC in Md. Rajaodin's case (supra) reads as follows:

"11. ***** ***** *****

In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , it was observed that in the matter of compassionate appointment there cannot be insistence for a particular post. Out of purely 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 ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for grant of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased employee. As

it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision."

The ratio laid down in Md. Rajaodin's case (supra) is that the conditions for appointment on compassionate ground mentioned in the concerned scheme i.e. "Memorandum for appointment on compassionate ground" should be fulfilled by the dependants of the concerned employee who seek for appointment on compassionate ground. For the sake of repetition, we reiterate that the writ petitioner did not fulfill the condition of para 6 of the Memorandum dated 11.12.1984, quoted above in extenso.

10. The Scheme for appointment or the appointment under Dying-in-harness Scheme, the aims and objects of the appointment under Dying-in-harness Scheme on compassionate ground had been considered and discussed by the Apex Court in a catena of cases. In the present case, the concerned employee Late Nazmul Hoque died as early as 23.02.1995, therefore, as on today, nineteen years had lapsed and the writ petitioner had approached this Court for consideration of her employment on compassionate ground after a lapse of about sixteen years.

11. In Thingujam Brojen Meetei's case (supra) and M. Selvanayagam's case (supra), the Apex Court had held that the dependants of the employee who died-in-harness are not entitled to compassionate appointment after the lapse of many years from the date of the death of the concerned Govt. employee as it conflicts with Articles 14 and 16 of the Constitution of India. In State of Haryana and Others Vs. Rani Devi and Another, , the word "employee" has been explained and it has been held that it does not include a casual or purely ad hoc employee.

12. Apart from above, it is relevant to mention here that it is not denied by the writ petitioner that she has been paid family pension apart from providing casual job of cleaner.

13. In the circumstances, we are of the view that the directions given by the learned single Judge to regularize the services of the writ petitioner cannot be sustained.

14. For the reasons as above, the writ appeal is allowed. The impugned judgment and order dated 08.08.2013 passed in W.P. (C) No. 312 of 2011 is hereby set aside. No order as to costs.