
(2014) 05 AHC CK 0354

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 19005 of 2011

Suddhu

APPELLANT

Vs

Senior Regional Manager,F.C.I.

RESPONDENT

Date of Decision : 20-05-2014

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2014) 5 ADJ 245 : (2014) 3 ESC 1444 : (2014) 142 FLR 437 : (2014) 4 LLJ 294

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : R.C. Gupta, Advocate for the Appellant; S.K. Verma, Advocate for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—Heard Sri R.C. Gupta, learned counsel for the petitioners and Sri Satya Prakash, learned counsel for respondent Nos. 1 and 2. Briefly stated the facts of the present case are that the petitioner No. 2 was working as loader under the respondent No. 2. His date of birth was 15.4.1948. He was to retire on 14.4.2008 on attaining the age of superannuation of 60 years. However, on medical ground, the petitioner No. 2 applied for his retirement by an application dated 6.4.2002 annexing therewith a medical certificate issued by Medical Superintendent, Government Hospital, Shivpur, Varanasi. His application for retirement on medical ground was accepted by respondent No. 2.

2. An office order dated 13.6.2002 was issued by respondent No. 2 retiring the petitioner w.e.f. 30.6.2002 when he was of 53 years. On 1.10.2002, the petitioner No. 2 moved an application before the respondent No. 2 requesting him to appoint his son Sri Suddhu, i.e. petitioner No. 1 on compassionate ground in view of the scheme of compassionate appointment dated 3.7.1996 for appointment of next kin of departmental workers, who seek retirement on

medical ground at their own request in relaxation to the procedure of getting sponsored from Employment Exchange. The aforesaid application dated 1.10.2002 was submitted by him in prescribed form before attaining 55 years of age.

3. Despite the aforesaid application having been moved alongwith requisite documents in terms of the Scheme/Circular dated 3.7.1996, the respondent No. 2 did not pass any order and the same was kept pending. In the meantime, circular No. 05/2003 dated 4.3.2003 was issued by the Food Corporation of India, New Delhi, whereby it was provided that the appointment on compassionate ground in the matter of departmental workers, may be done only to the extent of 5% of the total vacancy.

4. Thereafter, the respondent No. 1 sent a letter dated 15.3.2003 to the respondent No. 2 intimating him that the application of the petitioner alongwith documents has been checked and certain other documents, namely, capability certificate of petitioner No. 1, medical unfitness certificate of petitioner No. 2, affidavits of all other adult dependants, income certificate and affidavit of second son that he is not in service and details of financial benefits available to petitioner No. 2 on retirement, be submitted for further action. For compliance of this letter, the respondent No. 2 wrote a letter dated 26.3.2003 to the petitioner. By letter dated 2.4.2003, the petitioner submitted all the required documents as desired by the aforesaid letter of the respondents, which were forwarded alongwith report by respondent No. 2 to the respondent No. 1 vide letter dated 5.4.2003.

5. Since, the respondents did not pass any order on the application of the petitioner No. 1 for compassionate appointment, hence the petitioner filed Civil Misc. Writ Petition No. 25655 of 2006 for the following reliefs:

(i) issue writ order or direction in the nature of mandamus directing the respondent No. 2 to consider the claim of the petitioner No. 1 for compassionate appointment on the post of Handling Labour which he has already submitted entire documents (Annexure Nos. 4 and 5) ignoring the circular No. 05/03 dated 4.3.2003 (Annexure 6);

(ii) issue any other suitable writ, order or direction which this Hon''ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice.

6. In the counter-affidavit filed in the aforesaid writ petition, the respondents did not deny the substantial facts, but pleaded that the scheme provided by circular dated 3.7.1996 has been amended vide circular letter dated 4.3.2003 under which a ceiling limit of 5% vacancies has been placed for grant of compassionate appointment and since there is no vacancy available, no appointment can be given to the petitioner. The said writ petition was allowed by the learned Single Judge by judgment dated 18.12.2006 observing as under:

The aforesaid recitals and perusal of the entire circular shows that the ceiling imposed was only prospective. Even otherwise, there is nothing in the circular to show that it was meant to apply retrospectively, and legally speaking if there is nothing to show retrospectively, it would apply from the date of its inception.

The issue can be examined from another angle. Under 1996 scheme the petitioner had a right for being considered for compassionate appointment and all the formalities had been completed much before the circular came into force and the right of the petitioner stood crystallized, thus, merely because of inaction of the respondents and its officials the petitioner cannot be deprived of his crystallized right under the 1996 scheme. This aspect has been considered by the two Bench of our Court but has not been touched by the Division Bench of the Delhi High Court. The Division Bench of our Court has a binding affect on the Single Judge and otherwise also the Court, respectively, is not inclined to agree with the reasoning given by the Delhi High Court

For the reason above, this petition succeeds and is allowed and the respondents are directed to consider the claim of compassionate appointment of the petitioner under the scheme of circular dated 3.7.1996 and pass a reasoned order within six weeks from the date of submission of a certified copy of this order.

No order as to cost.

(Emphasis supplied by me)

7. Thereafter, the respondent No. 1 rejected the application of the petitioner No. 1 by an order dated 19.1.2007 on the following grounds:

(i) That from the financial status of the applicant it is observed that the ex-worker has two major sons namely, Sri Suddhu and Sri Rajesh and three major daughters and spouse. Both the sons are earning an annual income of Rs. 28,800/- as per income certificate issued by revenue authority. Besides this, ex-worker, Sri Gulab has also got Rs. 4,45,218/- on account of retiral benefits after retirement on medical ground. As such financial status of the applicant is quite sound for running the family and they are in no need of further financial support in the shape of compassionate appointment.

(ii) The position has further been assessed with clear cut vacancies even without taking into consideration the ceiling of 5% as on this date also there is no vacancy available at FSD Varanasi, rather we have surplus labourers as such the request of the applicant cannot be considered.

(iii) It is further stated that due to withdrawal of procurement and storage function of food grains by the State Government of UP the work of FCI has considerably gone down and to reduce the financial loss/liability, this Corporation had to introduce "Voluntary Retirement Scheme" for the departmental labours of the depots in FCI vide circular No. IR (L)-/1(16)/2000/Vol. II dated 22.9.2003. As a consequence, 302 labourers had opted benefit under the scheme and thus vacancy position has also been reduced to the extent of 302. In the above facts

also there is no vacancy in the entire state as a whole at present.

(iv) It is mentioned here that FCI is not a profit making organisation and entirely depend upon the annual subsidy of Rs. 24,000 crores from public exchequer and public exchequer cannot be spent by way of salary to the idle labourers without doing any work.

(v) The undersigned is fully convinced that with the financial terminal benefits given to the worker and what they are earning annually is sufficient to run the family well and petitioner is not in need of appointment in FCI on compassionate ground.

(vi) The FCI Hqrs. Circular No. No. IR (L)/31(27)/87 dated 3rd July, 1996 and No. IR/31/15/96 dated 22.7.1997 also envisages that the compassionate ground appointment is not a matter of right but purely at the discretion of the competent authority taking into the account of the circumstances and conditions of the family of the medically retired workers and also subject to availability of the vacancy.

(vii) While passing the orders dated 18.12.96, the Hon"ble High Court has observed in para 5 of the order as follows:

In the Counter-affidavit the substantial facts have not been denied. "It has further been observed in subsequent paras that "the issue can be examined from another angle. Under 1996 scheme the petitioner had right for being considered for compassionate appointment and all the formalities had been completed much before the circular came into force and the right of the petitioner stood crystallized.

In the above context, it may be pointed out that while filing the Counter-affidavit when the very circular dated 3.7.1996 was amended vide circular dated 4.3.2003, imposing the ceiling of 5% of the vacancies, the facts about completion or incompleteness of other formalities were not considered to be mentioned in the Counter-affidavit.

Now, when the competent authority had been advised by the High Court to consider the claim of compassionate appointment of the petitioner under the scheme of circular dated 3.7.1996 and passed a reasoned order and all other supporting papers have been examined and has been brought out above.

Keeping in view the facts brought out as above, I, SS Bhatoa, General Manager (UP), hereby reject the claim of the petitioner for appointment on compassionate ground.

8. Aggrieved with the aforesaid order dated 12/19.1.2007, the petitioners filed a Writ Petition No. 10304 of 2007, which was allowed by this Court vide judgment dated 18.11.2010 asunder:

The impugned order dated 12/19.1.2007 is hereby quashed. The respondents are directed to reconsider the claim of the petitioner only in view of circular

dated 3.7.1996 and ignoring the subsequent circular dated 4.3.2003 as already directed by this Court in its judgment dated 18.12.2006 (supra). This entire exercise shall be completed by the respondents within two months from the date of production of certified copy of the order before him. The authorities concerned shall also communicate the reasoned order to the petitioner immediately thereafter.

(Emphasis supplied by me)

9. Against the order dated 18.12.2006 passed in Writ Petition No. 25655 of 2006, the respondents filed Special Appeal No. 125 of 2007, District Manager, Food Corporation of India and another v. Suddhu and another, which was dismissed by the Division Bench by an order dated 31.8.2010 holding as under:

In the present case, we are concerned with the policy vide circular of the Corporation dated 3.7.1996 for appointment of next of kin of the departmental worker, who seeks retirement on medical grounds, on their own request in relaxation of the procedure of getting sponsored from employment exchange. This is a different policy, than the policy of giving appointment to the dependents of the employee dying in harness. In the policy of retirement on medical grounds, the applicant workman virtually surrenders his remaining service in lieu of the appointment of his next of kin. The policy is subject to acceptance of the application by the Corporation and is further subject to general condition (given in the policy dated 3.7.1996) that the compassionate appointment in such case is not a matter of right but purely at the discretion of the competent authority taking into account all the circumstances and the conditions of the family of the medically retired workers and also subject to availability of the vacancies. The words "subject to availability of vacancy" and "subject to 5% vacancy" are different considerations based on different factors.

In the present case, learned Single Judge has rightly found that the petitioner-respondent No. 2 had applied for retirement on medical ground at the age of 53 years with a request of appointment of his son on 6.2.2002. His application was accepted on 13.6.2002 giving him a right of the consideration of the appointment of his son. He was made to retire on 30.6.2002. His son applied within three months as provided under the scheme and was found suitable by the Committee of officers in October 2002, "much before the scheme was revised on 5.5.2003. The petitioner-respondent No. 2 acted to his detriment by surrendering seven years of service and thus the principles of promissory estoppel can be invoked, to stop the Corporation from alleging that the employment of his son could be considered only within 5% of the vacancies in the year.

We do not find any error in the judgment of learned Single Judge dated 18.12.2006. The scheme of appointment of employees died in harness, and the scheme of appointment on the retirement on medical ground of the next of kins, are different scheme. The object and purpose of both the scheme may be same, but where the employee dies, a vacancy is created, which may be given to his

son as dependant where the family has to tide over the immediate financial crisis. In the scheme of retirement on medical grounds, the employee virtually surrenders more than jive years of service in getting appointment for next of kin. The vacancy is in fact created by the offer given by the employee to retire on medical grounds, and in such case, if the request for retirement is accepted, the Corporation cannot deny appointment to his son or daughter on the ground of nonavailability of vacancy within 5% quota.

The policy of giving appointment within 5% of quota was brought into operation on 5.5.2003 much before the right of the petitioner-respondent matured. The applicant of respondent No. 2, in this case was accepted and his son-respondent No. 1 was found fit for such appointment.

We are informed that the application for petitioner-respondent No. 1 was considered and rejected on 12-19.1.2007. He has already challenged the order in Writ Petition No. 10304 of 2007, which is still pending.

In the facts and circumstances of the case the Special Appeal is dismissed.

(Emphasis supplied by me)

10. Against the aforesaid Division Bench judgment passed in Special Appeal No. 125 of 2007, the respondents filed Special Leave to Appeal (Civil) No. 30609 of 2010 before Hon?ble Supreme Court in which no interim order was granted and ultimately it was disposed of by an order dated 20.7.2012 as under:

Heard learned counsel for the parties.

We do not propose to interfere in the judgment of the High Court dated 31st August, 2010 primarily for the reason that it is an admitted position before us that vide order dated 12th January, 2007, the request of the present respondents for appointment on compassionate grounds was rejected by the authorities. That is the subject-matter of challenge before the High Court of Allahabad in Special Appeal No. 2053 of 2007 which has arisen from the judgment and order passed by the learned Single Judge in Writ Petition No. 10304 of 2007 which is still pending. We dispose of this petition without commenting upon the merits leaving all the contentions open and request the High Court to decide the matter expeditiously.

11. Against the judgment dated 18.11.2010 passed in Writ Petition No. 10304 of 2007, the respondent filed a Special Appeal No. 2053 of 2007 before this Court, which was dismissed as infructuous vide order dated 1.11.2012 on the ground that during pendency of the appeal, the case of the petitioner was reconsidered and rejected and against the rejection order another Writ Petition No. 19005 of 2011 has been filed before this Court which is the present writ petition in which order dated -18.11.2011 passed by the respondents, is impugned, whereby the claim of the petitioners for appointment was rejected on the following grounds:

(a) That from the financial status of the applicant it is observed the ex-worker

has two major sons namely, Shri Suddhu and Shri Rajesh and three major daughters and spouse. Both the sons are earning; an annual income of Rs. 28,800/- as per income certificate issued by revenue authority. Besides this,, ex-worker, Sri Gulab has also got Rs. 4,45,218/- on account of retiral benefits after retirement on medical ground. As such financial: status of the applicant is quite sound for running the family and they are in no need of further financial support in the shape of compassionate appointment.

(b) The position has further been assessed with clear cut vacancies even without taking into consideration the ceiling of 5% also as on this date. It is seen that there is no vacancy available at FSD Varanasi and rather we have surplus labourers. As such, the request of the applicant cannot be considered.

(c) To rationalise labour strength and operational aspects inter alia financial loss/liability, this corporation had to introduce "Voluntary Retirement Scheme" for the departmental labours of the depots in FCI vide circular No. IR(L)/(1(16)/200-Vol. II dated 22.9.2003. As a consequence, 302 labours had opted for benefit under the scheme and this vacancy position has also been reduced to the extent of 302 in the entire state as a whole at present.

(d) It is mentioned here that FCI is not a profit making organization and entirely depends upon the annual subsidy from public exchequer cannot be spent by way of salary to the idle labourers without doing any work.

(e) The undersigned is fully convinced that with the financial terminal benefits given to the worker and what they are earning annually is sufficient to run the family well and the petitioner is not in need of appointment in FCI on compassionate ground.

(f) As already stated by the Supreme Court/High Courts in various judgments that a compassionate ground appointment is really a back door appointment. Prima facie, it violates Article 16 of the Constitution. However, it is permitted in exceptional cases, but such exception as cases must be strictly construed that ordinarily an appointment is made on merit so that a suitable person can be appointed. Under the compassionate appointment scheme even persons who are not meritorious are appointed. Obviously, a limit should be set as to the number of such non-meritorious candidates otherwise the department may not be able to function. Thus, the applications for compassionate appointment made whether before or after 4.3.2003 will be subject to a ceiling limit of 5% vacancy.

(g) It is also to be informed that only those dependents should get the benefits of compassionate ground appointment, who are unable to run their family and do not have sufficient means to make both ends meet. Giving appointment to underselling persons will debar the deserving candidates from such appointments and the very benefit and utility of the policy will go waste.

(h) The FCI HQR Circular No. IR(L)/31(27)/87 dated 3.7.1996 also envisages that the compassionate ground appointment is not a matter of right but purely at the

discretion of the competent authority taking into account circumstances and condition of the family of the medically retired workers and also subject to availability of vacancy.

(i) In SLP No. 13704/2007 filed by FCI v. Nizamuddin and others, the Hon''ble Supreme Court in their judgment dated 15.11.10 have given judgment in favour of FCI stating the applicant will not be entitled to compassionate appointment as a consequence of voluntary retirement of his father on medical grounds.

(j) In SLP No. 30609/2010 filed by FCI and others v. Suddhu and others, the Hon''ble Supreme Court has granted interim stay on Hon''ble High Court Allahabad judgment dated 31.8.2010 passed in Spl. Appeal No. 125 of 2010, FCI v. Suddhu.

(k) And now; when the competent authority had been advised by the Hon''ble High Court to consider the claim of compassionate ground appointment of the petitioner and pass a reasoned order, all other supporting papers have been examined and have been brought out above.

Submission on behalf of the Petitioners.

12. Sri R.C. Gupta submits as under:

(i) The petitioner No. 2 took retirement on medical ground in view of the Scheme dated 3.7.1996 and was retired under the orders of the competent authority w.e.f. 30.6.2002. The application for compassionate appointment was moved in accordance with law by the petitioner No. 1 with the concurrence of petitioner No. 2 alongwith necessary documents within the prescribed time and much before the petitioner No. 2 attained the age of 55 years and as such the application of the petitioner should have been considered and decided in accordance with the aforesaid scheme. This aspect of the matter is concluded by the judgment of this Court dated 18.12.2006 passed in Writ Petition No. 25655 of 2006, which was filed by the petitioners and in which this Court held as under:

The issue can be examined from another angle. Under 1996 scheme the petitioner had a right for being considered for compassionate appointment and all the formalities had been completed much before the circular came into force and the right of the petitioner stood crystallized, thus, merely because of inaction of the respondents and its officials the petitioner cannot be deprived of his crystallized right under the 1996 scheme. This aspect has been considered by the two Bench of our Court but has not been touched by the Division Bench of the Delhi High Court. The Division Bench of our Court has a binding effect on the Single Judge and otherwise also the Court, respectively, is not inclined to agree with the reasoning given by the Delhi High Court.

(ii) The aforesaid judgment has attained finality and is binding upon the respondents, inasmuch as Special Appeal No. 125 of 2007 filed by the respondents, was dismissed by the Division Bench of this Court by judgment dated 31.8.2010 wherein the Division Bench held that in the policy of retirement

on medical grounds, the applicant-workman virtually surrenders his remaining service in lieu of appointment of his next kin. The vacancy is, infact, created by the offer given by the employee to retire on medical grounds, and in such case, if the request for retirement is accepted, the Corporation cannot deny appointment to his son or daughter on the ground of non-availability of vacancy within 5% quota.

(iii) Against this judgment, the respondents filed Special Leave to Appeal (Civil) No. 30609 of 2010, which was disposed of by Hon''ble Supreme Court vide order dated 20.7.2012. Thus, the judgment passed by leaned Single Judge in Writ Petition No. 25655 of 2006 and the judgment of the Division Bench in Special Appeal No. 125 of 2007 are binding inter-parties.

(iv) The order dated 12/19.1.2007 rejecting the application of the petitioner No. 1 for compassionate appointment was set aside by the learned Single Judge in Writ Petition No. 10304 of 2007 decided on 18.11.2010 against which the respondents filed Special Appeal No. 2053 of 2010 which was dismissed as infructuous by the Division Bench by an order dated 1.11.2012.

(v) The impugned order dated 18.1.2011 passed by the respondent's rejecting the application of the petitioner No. 1 for compassionate appointment is identical and more precisely and repetition of the order dated 12/19.1.2007 which was set aside by judgment dated 18.11.2010 passed in Writ Petition No. 10304 of 2007. The impugned order is in direct conflict with the judgment of this Court dated 18.12.2006 passed in Civil Misc. Writ Petition No. 25655 of 2006, judgment dated 31.8.2010 passed in Special Appeal No. 125 of 2007 and judgment dated 18.11.2010 passed in Writ Petition No. 10304 of 2007 and these judgments being inter parties were binding upon the respondents.

(vi) The impugned order has been passed in a mechanical manner and on such grounds which were rejected by this Court by judgments passed in earlier writ petitions and the special appeal, as mentioned above.

(vii) The finding of financial status of the petitioners to be sound as recorded in the impugned order is wholly perverse and based on no material, inasmuch as the family of the petitioner No. 2 consists of his wife, two major sons and three major unmarried daughters with total annual income of Rs. 28,800/- per month which is wholly insufficient to arrange for livelihood of a family of the size of seven adult members. The post retiral benefits of Rs. 4,45,218/- received by the petitioner No. 2 was a meager amount in view of the continuous long illness of the petitioner Nos. 2 and three unmarried daughters.

(viii) The ground of no vacancy is wholly misconceived and totally incorrect and without any evidence on record. Even the respondents have not placed any evidence on record to show that there exists any vacancy. That apart, this aspect of the matter is concluded by the Division Bench judgment of this Court dated 31.8.2010 passed inter parties in Special Appeal No. 125 of 2007 wherein it was clearly held that in the policy of retirement on medical grounds, the applicant-

workman virtually surrenders his remaining service in lieu of appointment of his next kin. The vacancy is, infact, created by the offer given by the employee to retire on medical grounds, and in such case, if the request for retirement is accepted, the Corporation cannot deny appointment to his son or daughter on the ground of nonavailability of vacancy within 5% quota.

(ix) The impugned order is wholly arbitrary and illegal and the same has been passed without affording any opportunity of hearing of being heard to the petitioner.

(x) Other similarly situated persons have been given appointment, but the petitioner No. 2 has been discriminated, which is violative of Article 14 of the Constitution of India.

13. In support of his submission Sri R.C. Gupta has relied upon the following judgments:

(a) M/s. Star Paper Mills Ltd. Vs. Deputy Director (Administration/Marketing) And Others,

(b) Special Appeal No. 61, 5/2005 (Ram Kesh Yadav and another v. District Manager, FCI Azatngarh and another), decided on 19th September, 2005,

(c) Food Corporation of India and Another Vs. Ram Kesh Yadav and Another,

(d) Food Corporation of India and Another Vs. Nizamuddin and Another,

(e) Ram Gopal and another v. Union of India and others, 2006 (6) ADJ 533 (DB) and order dismissing the Special Leave to Appeal (Civil) No(s). 18501 of 2006 (Food Corporation of India and another v. Ram Gopal and others, decided on 12th January, 2010,

(f) Shiv Kumar Dubey and Others Vs. State of U.P. and Others,

(g) Prabhu Narain Patel and another Vs. Union of India and others,

Submissions on behalf of Respondents

14. Sri Satya Prakash submits as under:

(i) The application of the petitioner was barred by time, inasmuch as it was submitted beyond the prescribed time from the date of retirement of petitioner No. 2 on medical grounds.

(ii) The financial status of the petitioners is sound to run the family, inasmuch as two sons of the petitioner including the petitioner No. 1 collectively have an annual income of Rs. 28,800/- as per report of the Tehsildar and the petitioner No. 2 has received Rs. 4,45,218/- as terminal benefits.

(iii) A finding has been recorded in the impugned order that there is no vacancy at Varanasi and as such the petitioner No. 1 cannot be given compassionate appointment.

(iv) The application of the petitioner No. 2 for retirement on medical ground was unconditional and as such the respondents are under no obligation to appoint the petitioner No. 2 on compassionate ground.

(v) In view of the judgment of Hon"ble Supreme Court in the case of Food Corporation of India and Another Vs. Nizamuddin and Another, and the Division Bench judgment of this Court dated 26.7.2012 passed in Special Appeal No. 1732 of 2010, Prabhu Narain Patel and another v. Union of India and others and another Division Bench judgment of this Court dated 3.4.2012 passed in Special Appeal No. 577 of 2010, Brijmohan v. Food Corporation of India and others, the writ petition deserves to be dismissed.

(vi) The appointment on compassionate ground cannot be claimed as a matter of right, even if the petitioner is otherwise found eligible.

15. Sri Satya Prakash has relied upon the following judgments:

(a) Writ Petition No. 59321 of 2010 (Prabhu Narain Patel and another v. Union of India and others) decided on 28.9.2010.

(b) Prabhu Narain Patel and another Vs. Union of India and others,

(d) Food Corporation of India and Another Vs. Nizamuddin and Another,

(e) Food Corporation of India and Another Vs. Ram Kesh Yadav and Another,

(f) Special Appeal No. 481 of 2008(DM-FCI, Aligarh v. Smt. Kamla Devi) decided on 29th April, 2008,

(g) Special Appeal No. 298 of 2007 (Food Corporation of India v. Ispak) decided on 31st August, 2010),

(h) Delhi High Court Judgment LPA No. 1672 of 2005 (FCI v. FCI Workers Union) decided on 30th January, 2006,

(i) SLP No. 6877 of 2006 [FCI Workers Union v. FCI), decided on 31st March, 2008,

(j) State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir,

(k) Special Appeal No. 1864/2013 (Sanjay Kumar v. S.R.M. F.C.I) decided on 5th December, 2013,

(l) Union of India (UOI) and Others Vs. Ram Kumar Thakur,

(m) Special Appeal No. 577 of 2012 (Brij Mohan v. FCI) decided on 3rd April, 2014.

16. I have carefully considered the submissions of learned counsel for the parties.

Findings

17. It is wholly undisputed that the scheme dated 3.7.1996 was brought by the

respondents, Food Corporation of India to provide for appointment of next kin of departmental workers who seeks retirement on medical grounds at their own request in relaxation to the procedure of getting sponsored from the employment exchange. It is undisputed that in view of the scheme dated 3.7.1996, the petitioner No. 2 sought retirement on medical grounds at the age of about 54 years as against the age of retirement of 60 years. The petitioner was retired w.e.f. 30.6.2002 under an office order dated 13.6.2002 issued by the respondent No. 2. He applied for appointment of his son Sri Suddhu (petitioner No. 1) for appointment under the scheme on 1.10.2002. The application for appointment was moved, with in time as provided under the scheme dated 3.7.1996. The application of the petitioner was not rejected on the ground of delay in submitting the application. Therefore, the submission of learned counsel for the respondents that the application was belatedly filed by the petitioner is wholly baseless, misconceived and is hereby rejected.

18. It is also wholly undisputed that after the petitioner No. 1 applied for compassionate appointment on 1.10.2002 in the prescribed form jointly signed by the petitioner No. 2 fulfilling the eligibility criteria provided under the scheme and annexing therewith requisite documents. The respondent No. 2 issued an Office Order No. F(I)(421)vkS-ls-@okjk-@11495 dated 12/13.12.2002 and in compliance thereto a three members committee of the officers of respondent corporation examined the capability of the petitioner No. 1 to do work as handling labour and found that he can do loading and unloading and staking of food grain bags of 95 Kg. and 50 Kg. The enquiry report with respect to this was submitted by the committee on 27.12.2002. Thus the condition of medical fitness to do loading and unloading stood satisfied. The medical certificate issued by the Superintendent upgraded Rajkiya Chkitalaya, Shivpur, Varanasi certified that for employment in the FCI no physical disqualification was found in the petitioner.

19. Vide letter dated 15.3.2003, the respondent No. 1 intimated the respondent No. 2 that the application of the petitioner alongwith documents has been checked and certain other documents are required which may be submitted by the petitioner for further action. This letter was communicated by the respondent No. 2 to the petitioner vide letter dated 26.3.2003, vide letter dated 2.4.2003, the petitioner submitted required documents in compliance to the aforesaid letter of respondent No. 2 which was forwarded by the respondent No. 2 to the respondent No. 1 alongwith his report vide letter dated 5.4.2003. However, no order was passed by the respondents on the application for compassionate appointment of the petitioner. Aggrieved with this, the petitioners filed Civil Misc. Writ Petition No. 25655 of 2006, in which the counter-affidavit filed by the respondents it was alleged that vide circular dated 4.3.2003 a ceiling limit of 5% vacancies has been placed for grant of compassionate appointment and since there is no vacancy available, no appointment could be given to the petitioner. The stands so taken by the respondents was rejected by this Court vide judgment and order dated 18.12.2006, the relevant portion of which has already been quoted in paragraph No. 7 above. The special Appeal No. 125 of 2007 filed

by the respondent against the aforesaid order dated 18.12.2006 passed in Writ Petition No. 25655 of 2006, was dismissed by the Division Bench observing that this is a different policy than the policy giving appointment to the dependants of the employee under dying-in-harness rules. In the policy of retirement on medical grounds, the applicant workman virtually surrendered his remaining service in lieu of the appointment of his next kin. His son applied within the time prescribed under the scheme and was found suitable by the committee of officers in October, 2002, much before the new circular was issued. The petitioner acted to his detriment by surrendering 7 years of service. No error was found in the judgment of learned Single Judge dated 18.12.2006. The vacancy is in fact created by the offer given by the employee to retire on medical grounds.

20. Aggrieved with the aforesaid judgment and order which has been briefly quoted in paragraph 10 above, passed in Special Appeal No. 125/2007, the respondents preferred a Special Leave to Appeal (Civil) No. 30609 of 2010, which was disposed of by Hon'ble Supreme Court vide order dated 20.7.2012 observing that "we do not propose to interfere in the judgment of the High Court dated 31st August, 2010 primarily for the reason that it is an admitted position before us that vide order dated 12th January, 2007, the request of the present respondents for appointment on compassionate grounds was rejected by the authorities. That is the subject-matter of challenge before the High Court of Allahabad in Special Appeal No. 2053 of 2007 which has arisen from the judgment and order passed by the learned Single Judge in Writ Petition No. 10304 of 2007 which is still pending".

21. The findings recorded by the Division Bench of this Court in Special Appeal No. 125 of 2007, decided on 31.8.2010 have not been interfered with as observed by Hon'ble Supreme Court in the order dated 20.7.2012 passed in Special Leave to Appeal (Civil) No. 30609 of 2010.

22. Perusal of the impugned order dated 18.11.2011 shows that the application of the petitioners for compassionate appointment was rejected almost on the same ground on which the earlier order dated 19.1.2007 was passed by the respondents which order was set aside in Writ Petition No. 10304 of 2007 by a judgment dated 18.11.2010 against which the Special Appeal No. 2053/2007 was dismissed as infructuous vide order dated 1.11.2012. The impugned order dated 18.11.2011 is also in conflict with the Division Bench judgment of this Court, in Special Appeal No. 125/2007, decided on 31.8.2010 which has not been interfered with by Hon'ble Supreme Court in Special Leave to Appeal (Civil) No. 30609 of 2010.

23. A finding of sound financial status has been recorded in the impugned order dated 18.11.2011 that there are two earning members in the petitioner's family, namely, petitioner No. 1 and his brother who jointly earn an annual income of Rs. 28,800/- and the petitioner No. 2 has received Rs. 4,45,218/- on account of retiral benefits. While recording this findings, the respondents have completely lost sight of the fact that the petitioners' family consist of seven members which

includes three unmarried daughters. Undisputedly, the petitioner No. 2 is suffering from diseases which requires expenses to be incurred in the treatment. The total earning of the family comes to Rs. 2,400/- per month. It comes to less than Rs. 343/- per member per month or Rs. 11.43 per day. This, by no stretch of imagination or logic may indicate sound financial status of the petitioners. The amount of Rs. 4,45,218/- received on account of retail benefits by the petitioner No. 2 also does not indicate sound financial status of the petitioners, in view of his ill health and his three unmarried daughters and two unmarried sons. Thus, the findings recorded in the impugned order that the financial status of the petitioners is quite sound for running the family, is wholly perverse.

24. In a recent judgment of Full Bench of this Court in the case of Shiv Kumar Dubey and Others Vs. State of U.P. and Others, it has been held as under:

29. We now proceed to formulate the principles which must govern compassionate appointment in pursuance of Dying in Harness Rules:

(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;

(iv) In determining as to whether the family is in financial crisis, all relevant aspects must be borne in mind including the income of the family; its liabilities, the terminal benefits received by the family; the age, dependency and marital status of its members, together with the income from any other sources of employment;

(v) Where a long lapse of time has occurred since the date of death of the deceased employee, the sense of immediacy for seeking compassionate appointment would cease to exist and this would be a relevant circumstance which must weigh with the authorities in determining as to whether a case for the grant of compassionate appointment has been made out;

(vi) Rule 5 mandates that ordinarily, an application for compassionate appointment must be made within five years of the date of death of the deceased employee. The power conferred by the first proviso is a discretion to relax the

period in a case of undue hardship and for dealing with the case in a just and equitable manner;

(vii) The burden lies on the applicant, where there is a delay in making an application within the period of five years to establish a case on the basis of reasons and a justification supported by documentary and other evidence. It is for the State Government after considering all the facts to take an appropriate decision. The power to relax is in the nature of an exception and is conditioned by the existence of objective considerations to the satisfaction of the Government;

(viii) Provisions for the grant of compassionate appointment do not constitute a reservation of a post in favour of a member of the family of the deceased employee. Hence, there is no general right which can be asserted to the effect that a member of the family who was a minor at the time of death would be entitled to claim compassionate appointment upon attaining majority. Where the rules provide for a period of time within which an application has to be made, the operation of the rule is not suspended during the minority of a member of the family.

25. In view of the above discussions and the law laid down in para 29(iv) by the Full Bench of this Court in the case of Shiv Kumar Dubey (*supra*), the finding of sound financial status recorded in the impugned order cannot be sustained and is, therefore, set aside.

26. Undisputedly, the petitioner No. 1 was found to be eligible and medically fit. He was examined by the three members committee and he was found to be capable of performing the work of labour. The criteria for appointment on compassionate grounds was not different from those who may be sponsored by employment exchange. The scheme merely provided for relaxation in appointment only in respect of procedure. The grounds taken in the impugned order for rejecting the application of the petitioners are similar to those as were taken in the earlier order dated 12/19.1.2007 which was set aside by the judgment dated 18.12.2006 passed in Writ Petition No. 25655 of 2006 against which special Appeal No. 125 of 2007 filed by the respondents was dismissed by the Division Bench by judgment dated 31.8.2010. Even otherwise, there is no dispute that clear vacancy was in existence when the petitioner No. 2 retired on 30.6.2002, and he applied for compassionate appointment of the petitioner No. 1, as per scheme dated 30.7.1996. The respondents dragged the petitioner in litigation for more than 12 years. Therefore, now they cannot be allowed to take the stand that there is no vacancy. Besides this, no material has been brought on record by the respondents to demonstrate that really there was no vacancy.

27. In paragraph 36 of the writ petition, the petitioners have specifically stated that Sri Rajnath, Sri Chhedi Lal, Sri Shobh Nath, Sri Ghanshyam Prajapati, Sri Suresh Yadav, Sri Vikram Yadav and Sri Ram Gopal Yadav have been given appointment on compassionate grounds under similar facts and situation, and

therefore, the grounds for rejecting the prayer of the petitioners for compassionate appointment is wholly arbitrary, discriminatory and thus violative of Article 14 of the Constitution of India. This paragraph has been replied by the respondent No. 1 and 2 in paragraph No. 24 of the counter-affidavit dated 12.9.2012 filed in October, 2013 by Sri Ashish Tak, Area Manager, FCI, DO, Varanasi as under:

24. That the contents of paragraph No. 36 of the writ petition as stated are specifically denied as true and correct. The alleged persons have been found eligible besides few of them were appointed under orders of the Court. Further, in such cases of appointments parity cannot be a ground. Each case is considered independently on merit. Rest of the allegations being legal, will be suitably replied at the time of hearing.

28. A perusal of the reply of the respondents in paragraph No. 24 of the counter-affidavit clearly shows that the respondents have not denied the fact that similarly situated seven persons have been given appointment on compassionate grounds. This itself shows that the finding recorded in the order impugned that there is no vacancy at Varanasi is perverse, inasmuch as it is not the case of the respondents that these seven persons have been given appointment without any vacancy. The respondents have not disclosed in the counter-affidavit that if there is no vacancy then how these seven persons were appointed.

29. Thus, the submission of learned counsel for the respondent No. 1 and 2 that the application of the petitioner is barred by time, the financial status of the petitioners is sound, no vacancy at Varanasi and retirement of the petitioner No. 2 on medical grounds was unconditional,, deserves to be rejected and are hereby rejected.

30. Sri Satya Prakash has relied upon a Division Bench judgment of this Court in Prabhu Narain Patel and another Vs. Union of India and others, In this case the Division Bench has relied upon the judgment of Hon''ble Supreme Court in the case of Food Corporation of India and Another Vs. Ram Kesh Yadav and Another, and the judgment in the case of Food Corporation of India and Another Vs. Nizamuddin and Another, and held that the request for retirement on medical grounds and the request for appointment on compassionate ground were not interlinked or contingent upon each other and there is no vested or accrued right to seek compassionate appointment even if the request of retirement on medical grounds has been accepted. The only right which the dependent has upon acceptance of the request for medical retirement of the employee/worker would be that his claim be considered and no more.

31. There cannot be any quarrel to the principle as laid down in the above noted cases. In the present set of facts, the respondents have not considered the claim of the petitioner for compassionate appointment in accordance with the scheme dated 3.7.1996. They rejected the claim of the petitioner on the ground of sound financial status and non-availability of vacancy which have been found by this

Court to be unsustainable on the facts of the case.

32. In the case of Nizamuddin (supra) the employee sought voluntary retirement on medical grounds on 16.2.1998, after completion of 55 years age while the Scheme provides that benefit was available only if the worker seeks voluntary retirement on medical grounds before completing the age of 55 years. Similar facts existed in the case of Ramkesh Yadav (supra) as has been noted in paragraph No. 7 of the judgment. It was held that each request had to be considered on its own merits with reference to the rules/scheme applicable. In the present case the petitioner No. 2 took retirement under the scheme on medical ground at the age of 54 years and petitioner No. 1 applied under the scheme for appointment, immediately thereafter. Thus these judgments are distinguishable on facts of the present case.

33. The judgment in the case of Smt. Kamla Devi (supra) relied by learned counsel for the respondents relates to application of a widow of a deceased employee on compassionate grounds which is not the case of here. Similar was the position in the case of Ispak (supra). These judgments are distinguishable on the facts of the present case. In the case of Sajjad Ahmad Mir (supra) the facts were that the father of the applicant died in the year 1976 but the application for compassionate appointment was given in the year 1991. His claim was rejected in the year 1996. The writ petition was filed in the year 1999 which was rejected on the ground of delay and laches. The next judgment relied by Sri Satya Prakash in the case of Sanjay Kumar (supra) is also distinguishable as evident from facts noted in paragraph No. 4, 9 and 10 of the said judgment wherein it has been observed that the employee died on 8.11.2004 and his son applied for compassionate appointment on 25.4.2006 while the time limit for applying for compassionate appointment was six months as per Circular dated 2.2.1977. Thus this judgment is also distinguishable on facts of the present case. The case of Ram Kumar Thakar (supra) is on the question of maintainability of appeal against the order of learned Single Judge which is not the case here.

34. In view of the above discussions, the impugned order dated 18.1.2011 cannot be sustained, and is therefore, set aside. The respondent No. 1 is directed to re-consider the claim of the petitioners for compassionate appointment in the light of the observations made in the body of this Judgment and to pass an appropriate order in accordance with law, as expeditiously as possible preferably within a period of one month from the date a certified copy of this order is filed by the petitioner before him. In result the writ petition succeeds and is hereby allowed. The matter is remanded with the directions as aforementioned.