
(2013) 10 AHC CK 0130

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 10967 of 2001

Sudhir Kumar

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 11-10-2013

Acts Referred:

Citation : (2013) 9 ADJ 468 : (2014) 4 ALJ 167 : (2013) 6 AWC 6088 : (2013) 4 UPLBEC 3218

Hon'ble Judges : Surya Prakash Kesarwani, J

Bench : Single Bench

Advocate : Irshad Ali, K.M. Asthana, U.P. Singh and Sanjay Misra, for the Appellant; K.C. Sinha, K.M. Asthana, R.N. Mishra, Rajesh Khare and N.C. Nishad, for the Respondent

Final Decision : Allowed

Judgement

Surya Prakash Kesarwani, J.—In this writ petition, the petitioner has prayed for a writ order or direction in the nature of certiorari to quash the impugned order dated 4.12.2000 (Annexure-7) passed by the respondent No. 1. On 17.1.2010, this Court passed the following order:

This writ petition relates to the employee of the Defence Services as the Tribunal has already been constituted and in view of Section 34 of the aforesaid Act, as such the file of this case be transmitted to the Tribunal.

The office is directed to sent the file to the Tribunal sitting at Lucknow within a period of one month from today. This order has been passed in the presence of Shri N.C. Nishad, learned counsel appearing for the respondents.

2. Pursuant to the afore quoted order the records were sent to the Armed Forces Tribunal Regional Bench, Lucknow and it was numbered as T.A. No. 25 of 2010. vide order dated 20.8.2010, the Armed Forces Tribunal Regional Bench, Lucknow remitted back the records of the writ petition to this Court on the ground that neither the father of the applicant nor the applicant was himself subject to Army

Act, Navy Act 1957 or Air Force Act 1950 and as such this Tribunal has no jurisdiction to adjudicate upon the dispute raised in the petition. In these circumstances, this writ petition was again listed in this Court and is now being heard.

3. Briefly stated the facts of the present case are that Sri Gandhi Prasad, father of the petitioner was working on the post of Laboratory Attendant in the office of the respondent No. 3. He died on 15.5.1989 while in service, leaving behind his wife Smt. Chando Devi, two unmarried daughters and two minor unemployed sons namely, Sri Sudhir Kumar and Sri Ranjit and one major son Sri Sunil Kumar who was already in employment w.e.f. 26.2.1989 as Lab Attendant in the office of Controller of Quality Assurance (PP), Kanpur and alleged to be living separately. The case of the petitioner is that at the time of death of his father, he was minor and after he attained the majority, an application dated 30.12.1996 followed by further applications dated 4.3.1997, 10.4.1997 and 25.11.1999 (Annexures 1, 2, 4 and 5) respectively were submitted before respondent No. 1 for compassionate appointment in accordance with Rules/Government Orders. Since the respondent No. 1 did not consider the case of the petitioner for compassionate appointment, the petitioner filed a Civil Misc. Writ Petition No. 35837 of 2000 which was disposed of vide order dated 22.8.2000 directing the competent authority to consider and dispose of the petitioner's application dated 10.4.1997 and 25.11.1999 as early as possible preferably within a period of two months from the date of production of certified copy of the order. Thereafter respondent No. 1 considered the application of the petitioner dated 10.4.1997 and 25.11.1999 and rejected the same by the impugned order dated 4.12.2000 (Annexure 7) on the following grounds:

- (i) The widow of the deceased employee has been getting a family pension of Rs. 484/- (pre - revised) per month.
- (ii) Following terminal benefits were received immediately after the death of the deceased i.e. DCRG Rs. 16,120, CHEIS Rs. 10,958/-.
- (iii) One son is already working as Laboratory Attendant CQA (PP), Kanpur. As an earning member of the family, he is obliged to also look after his mother and other members of his father's family, more so when he has no other reported responsibilities of his own.
- (iv) With the support of one earning member of the family and the benefits given, the family would not be considered to be in penury and without any means of livelihood.

4. The petitioner and his mother have been contending from the very beginning that the eldest son Sri Sunil Kumar is living separately and is not supporting the family and as such after the death of Sri Gandhi Prasad (father of the petitioner), there is no one to support the family and they are in extreme economic crisis and whatever money was received on the death of the father of the petitioner, the same was spent in the marriage of one daughter. In the counter-affidavit

respondents reiterated and supported the stand taken in the impugned order dated 4.12.2000 (Annexure-7). There is no dispute that the petitioner moved an application for compassionate appointment as aforementioned. In paragraph-15 of the counter-affidavit, it has been stated on behalf of the respondent that the petitioner was not found fit for compassionate appointment under the norms of O.M. No. 14014/6/1994- Est. (D) dated 9.10.1998 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension (Department of Personnel and Training) New Delhi, which is the scheme of compassionate appointment under the Central Government. Paragraph-10 and 16(c) of the aforesaid O.M. dated 9.10.1998 are reproduced below:

10. Where there is an earning member:

(a) In deserving cases even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary of the Department/Ministry concerned who, before approving such appointment, will satisfy himself that grant of compassionate appointment is justified having regard to number of dependants, assets and liabilities left by the Government servant, income of the earning member as also his liabilities including the fact that the earning member is residing with the family of the Government servant and whether he should not be a source of support to other members of the family.

(b) In cases where any member of the family of the deceased or medically retired Government servant is already in employment and is not supporting the other members of the family of the Government servant, extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

16(c) The scheme of compassionate appointments was conceived as far back as 1958. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.

5. I have heard Sri U.P. Singh, Advocate holding brief of Sri Irshad Ali, learned counsel for the petitioner and Sri Rajesh Khare, learned counsel appearing for

the respondents and perused the records.

6. Ground No. (i) and (ii) taken in the impugned order to reject the application for compassionate appointment of the petitioner is wholly misconceived and in conflict with para 16(c) of the scheme of compassionate appointment which provides that an application for compassionate appointment should not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare schemes. In the case of *Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others*, , Para 13, the Hon"ble Supreme Court has observed as under:

the family benefit scheme cannot in any way be acquitted with the benefit of compassionate appointment. The stand jerk in the family by the reason of the death of bread earner can only be observed by lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and any security thereafter, reigns and it is at that juncture that if lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affair in the normal course of events. It is not that monitory benefit would be replacement of the bread earner but that would undoubtedly bring solace to the situation.

7. Thus the ground No. (i) and (ii) taken in the impugned order to reject the application of the petitioner for compassionate appointment is wholly misconceived and cannot be sustained. This view taken by me is also fortified by the law laid down by this Court in *Chief General Manager, State Bank of India and Others Vs. Durgesh Kumar Tiwari*, , *Ram Piyarey Vs. State Bank of India and Others*, , *State Bank of India v. Ram Piyari*, 2001(2) ESC 876 and *Smt. Padma Pathak v. Managing Director, PNB* in Writ Petition No. 37817 of 2001 decided on 3.3.2003 wherein it has been held that payment of family pension and dues of the deceased cannot be a ground for rejecting the claim for compassionate appointment.

8. The ground Nos. (iii) and (iv) mentioned in the impugned order for rejecting the application of the petitioner for compassionate appointment is also without any foundation of facts and enquiry in the matter of support to the family by the eldest son Sri Sunil Kumar who was already in employment when the father of the petitioner died. The stand of the petitioner from the very beginning is that Sri Sunil Kumar is living separately and he does not support his mother, two sisters and two brothers. Para 10 (reproduced above) of the scheme of compassionate appointment as filed and relied by the respondents itself clearly provides that even where there is already an earning member in the family, a dependent family member may be considered for compassionate appointment with prior approval of the Secretary, Department/Ministry concerned, who before approving such appointment will satisfy himself that grant of compassionate appointment is justified having regard to the number of dependants, assets and liabilities left by the Government servant, income of the family member as also his liabilities

including the fact that family member is residing with the family of the Government servant whether he should not be a source of support to other members of the family and where he is not supporting the other members of the family of the Government servant extreme caution has to be observed in ascertaining the economic distress of the members of the family of the Government servant so that the facility of appointment on compassionate ground is not circumvented and misused by putting forward the ground that the member of the family already employed is not supporting the family.

9. Perusal of the impugned order would show that none of the guiding factors as provided in paragraph-10 of the scheme and discussed above have been considered by the respondent No. 1 and nothing relevant has been even discussed or mentioned in the impugned order while rejecting the application of the petitioner on the ground that his elder brother is an earning member. The respondents have also completely ignored the clear stand of the petitioner and his mother right from the beginning that Sri Sunil Kumar the eldest son of the deceased came in employment during the lifetime of his father and was living separately and is not supporting the family. In the impugned order, it has been merely observed that Sri Sunil Kumar is obliged to also look after his mother and other members of his father's family. The respondents have not recorded any finding that Sri Sunil Kumar, the eldest son of the deceased is actually supporting his mother and other members of his father's family. Thus, in view of paragraph-10 of the scheme of compassionate appointment, the grounds No. (iii) and (iv) of the impugned order taken for rejecting the application of the petitioner for compassionate appointment, are wholly arbitrary, misconceived and cannot be sustained.

10. The law of compassionate appointment is well-settled. In a recent judgment in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, , para 20, the Hon''ble Supreme Court observed as under:

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the bread winner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his

death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee, viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.

11. I have already discussed in detail the relevant provisions of the scheme of compassionate appointment referred and relied by the respondents themselves in the counter-affidavit and came to the conclusion that the grounds of rejection in the impugned order are wholly unsustainable in view of paragraphs 10 and 16(c) of the scheme of compassionate appointment. It is also relevant to note that the petitioner has moved the application for compassionate appointment way back in the year 1996 which was followed by reminders. Thereafter, he filed a writ petition No. 35837 of 2000 which was disposed of by order dated 22.8.2000 directing the respondents to decide the petitioner's application within two months. Pursuant to the said direction, the respondent decided the petitioner's application by the impugned order dated 4.12.2000 (Annexure-7). Challenging the said order, the present writ petition has been filed in the year 2001 which remained pending for about twelve years and came to be heard now. In view of these facts the last submission of the counsel for the respondents that the claim of the petitioner for compassionate appointment is belated, is wholly misconceived and baseless. Such stand cannot be taken in view of the fact that this is not a ground in the impugned order for rejection of petitioner's application. In the case of Chief General Manager, State Bank of India and Others Vs. Durgesh Kumar Tiwari, , a Division Bench of this Court followed earlier two judgments in Ajay Kumar Shevdy Vs. The Chief Security Commissioner, Railway Protection Force, Central Railway and Another, and Anju Misra (Smt.) Vs. General Manager, Kanpur Jal Sansthan, and held that if the application for compassionate appointment was filed within time then merely because the applicant was unnecessarily dragged from pillar to post for getting employment and for this cause resulting in delay, he should not be denied the appointment. In view of the discussions made above, the writ petition succeeds and is hereby allowed. The impugned order dated 4.12.2000 (Annexure-7) passed by the respondent No. 1 is set aside. The matter is remitted back to the respondent No. 1 with direction to reconsider the application of the petitioner and pass appropriate order in accordance with law in the light of the observations made above, within a period of two months from the date a certified copy of this order is filed by the petitioner before him.