
(2001) 07 KAR CK 0094
In the Karnataka High Court
Case No : Writ Appeal No. 3483 of 1999

Sujeethkumar D. Ghatke

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 16-07-2001

Acts Referred:

Citation : (2001) 6 KarLJ 33

Hon'ble Judges : Chidananda Ullal, J;Ashok Bhan, J

Bench : Division Bench

Advocate : S.V. Prakash, for the Appellant; B. Anand, A.G.A. and K. Hiriyanna, for the Respondent

Final Decision : Dismissed

Judgement

Ashok Bhan, J.—Sri Sharat kumar D. Ghatke, brother of the appellant died while in service in the year 1995. Appellant being the brother filed an application for appointment on compassionate ground on 14-3-1995. State of Karnataka enacted Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 (for short, "the 1996 Rules"). Prior to the coming into force of the 1996 Rules, appointment on compassionate ground was governed by the Government Instructions No. DPAR 30 SSR 84, dated 22nd August, 1985 (for short, "the 1985 Instructions"). Under the 1985 Instructions, a brother could claim appointment on compassionate ground. Application filed by the appellant was rejected by the respondents on 25-2-1997 on the ground that a brother was not entitled to appointment on compassionate grounds in view of the 1996 Rules.

2. Appellant being aggrieved, filed writ petition challenging the 1996 Rules insofar as it restricted the appointment to the widow, son and unmarried daughter of the deceased Government servant. Under the 1996 Rules, dependents of the deceased were entitled for appointment on compassionate ground and the words "Dependent" and "Family" have been defined under Rule 2 as follows:

"2. Definitions.--In these rules, unless the context otherwise requires.-

(a) "Dependent of a deceased Government servant" means his widow, son and unmarried daughter who were dependent upon him and were living with him;

(b) "Family" in relation to a deceased Government servant...or her spouse and their son and unmarried daughter who are living with him".

According to the appellant, restricting the appointment to widow, son and unmarried daughter of the deceased employee is discriminatory and arbitrary and therefore liable to be set aside.

3. Another contention raised by the appellant was that since his brother had died before coming into force of the 1996 Rules, his application was required to be dealt with under the 1985 Instructions. Learned Single Judge negated this contention by relying upon sub-rule (1) of Rule 9 of the 1996 Rules which reads as under:

"9. Transitional provision.--(1) All applications for appointment on compassionate ground made prior to the twentieth October, 1994 and the applications made on or after that date but before the date of commencement of these rules and which are pending on the date of commencement of these rules shall be disposed of in accordance with these rules within a period of three months from the date of its commencement".

Learned Single Judge held that the applications made for appointment on compassionate ground after 20th October, 1994 and which were pending on the date of the commencement of the 1996 Rules, were required to be disposed of in accordance with the 1996 Rules.

4. Aggrieved by the order of the Single Judge, present appeal has been filed. Points raised before us are the same which had been raised before the Single Judge. We do not find substance in any of the submissions made by the Counsel for the appellant.

5. Appointment on compassionate ground is not a matter of right. It is for the legislature to make a provision as to who out of the members of the family can be given appointment on compassionate grounds. The legislature has defined the "Family" of the deceased Government servant to be his/her spouse, their son and unmarried daughter, who are living with them. Accordingly, the definition of the "Dependent" entitled for appointment on compassionate grounds has been restricted to the widow, son and the unmarried daughter living with the deceased employee. The challenge to the said rule as being discriminatory has no force. Brother of the deceased Government servant cannot put himself at par with the widow, son or unmarried daughter of a deceased employee.

6. Equals cannot be treated unequally. But, unequals can be treated unequally. A person or a set of persons can be treated differently on the basis of a reasonable classification based on discernible criteria. In our view, the putting of widow, son

and unmarried daughter for appointment on compassionate grounds of a deceased employee is a reasonable classification. It is the primary duty of a person to look after his nuclear and immediate family. Keeping this factor in view, the State Government framed the Rules to give appointment to the widow, son and the unmarried daughter of the deceased employee. In case of need, at times the responsibility of bringing up and settling the brother is taken over by the elder brother in India, but that does not mean that the brother can be put at par with the widow, son and the unmarried daughter of the deceased employee for the purpose of habilitation of the family is concerned. Under the Hindu Succession Act, whereas widow, son and daughter are Class-I heirs, the brother is a Class-II heir in the second entry- Even all Class-I heirs have not been included in the definition of "Family" and "Dependents" in the Rules. Restricting the appointment on compassionate grounds to some of the Class-I heirs who were immediately dependent and living with the deceased Government employee is a reasonable classification based on an understandable and discernible criteria. The exclusion of brother for giving appointment on compassionate ground is neither discriminatory nor unreasonable. Otherwise also it is a matter of policy and the Courts do not interfere in such matters.

7. Coming to the second point, it has to be held that the learned Single Judge was right in observing that the applications filed after 20-10-1994 and which were pending on the date when the 1996 Rules came into force, were required to be dealt with in accordance with the 1996 Rules in view of sub-rule (1) of Rule 9 thereof. Vires of Rule 9 have not been challenged. So long as the Rules stand on the statute book, applications made after 20-10-1994 and pending as on the date of coming into force of 1996 Rules has to be disposed of in accordance with the 1996 Rules. The language of the rule is clear and unambiguous. Appellant had filed the application in March 1995 i.e., after 20-10-1994 which was pending on the date the 1996 Rules came into force. Necessarily, the application filed by the appellant was required to be dealt with under the 1996 Rules.

8. Reliance placed by the Counsel for the appellant on the judgment of the Supreme Court in the case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , is of no help to him. Counsel for the appellant was unable to show that the Rules or the Instructions for giving appointment on compassionate grounds in the said judgment were similar to Rule 9 of the 1996 Rules.

9. Dismissed. No costs.