

(2010) 07 PAT CK 0089

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 9464 of 2007

Sunaina Devi and Laxmikant Singh

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-2010

Acts Referred:

Citation : (2010) 52 BLJR 1032 : (2011) 128 FLR 485

Hon'ble Judges : Shiva Kirti Singh, J;Birendra Prasad Verma, J

Bench : Division Bench

Advocate : Gautam Bose, Ratna Das and Ajay Kumar, for the Appellant; Rakesh Kumar Singh and Ratan Kumar, for the Respondent

Judgement

Shiva Kirti Singh and Birendra Prasad Verma, JJ.

1 Heard learned Counsel for the petitioners, learned Counsel for the Union of India and the other official respondents.

2. Petitioner No. 1 is mother of petitioner No. 2. Late R.V. Singh died in harness while serving in a group-C post on 23.06.1999. Petitioner No. 2, being his eldest son applied for compassionate appointment on 23.08.1999. There was no contest from any other dependents which include two sons and one unmarried daughter. It appears from the discussion made by learned Central Administrative Tribunal, Patna Bench, Patna in its impugned order dated 3rd November, 2006 passed in O.A. No. 167 of 2005 that the claim for such appointment was considered in June, 2001 and rejected on 11.08.20001. According to the petitioners the order rejecting their prayer was not received by them although it is the claim of the respondents that such order was sent by registered post at the known address. The materials on record further disclose that the claim of petitioner No. 2 was further considered in the years 2004 and 2005. In 2006 also it appears that the claim was considered and rejected on the basis of assessment of the claim made in 2004.

3. On the basis of first order of rejection dated 11.08.2001 a plea of limitation

arose before the Tribunal. The Tribunal was of the view that subsequent representations could not have extended the period of limitation but it did not reject the application on the ground of limitation and instead held that in many cases the Court and Tribunal have condoned the delay if it promotes justice. Thereafter the matter was considered on merits.

4. The grounds for rejection of the claim in order dated 11.08.2001 have been extracted by Tribunal in paragraph-7 of the impugned order. The same are again being extracted herein below for proper appreciation of the issues:

(i) The government servant had expired on 23.06.1999, about two years back, hence the need for immediate assistance by way of compassionate appointment to tide over the crisis was lacking in the case.

(ii) The minimum family pension was Rs. 12 75+ DA @ 43%. That way, the monthly income of the family was not likely to be below Rs. 1767.00 p.m.

(iii) There was total ban on local direct recruitment, hence no vacancy was likely to be available within one year. As per latest government instructions, compassionate appointment should be offered within one year if a clear vacancy within 5% of the total vacancy was available.

5. Learned Counsel for the petitioners submitted that ground No. 1 cannot be permitted to be urged by the respondents because application for compassionate appointment was filed promptly within two months of the death and admittedly it was considered only in June, 2001, almost after two years and hence the ground that there could be no need for immediate assistance after two years is misconceived, impermissible and can not lie in the mouth of respondents.

6. So far as ground No. 2 is concerned, the original records relating to consideration of claims during the relevant period for compassionate appointment have been produced for our perusal in view of an earlier order and it is clear that the fact that the family pension was not likely to be below Rs. 1767.00 per month could never be a ground for denying compassionate appointment. According to the scheme for evaluating relative merits, issued by the Ministry of defence and as shown to us, an applicant's family pension between Rs. 1701 and 1900/- could entitle the applicant for 14 points as against maximum of 20 points for family pension up to Rs. 1300/- and minimum of 6 points for family pension above Rs. 2500/-. Hence, this ground is also misconceived and does not reflect the correct position borne out by the records.

7. The last ground mentioned for rejecting the claim is a plea that there was absolute ban on local direct recruitment and, therefore, no vacancy was likely to be available within one year. This ground further mentions that as per latest government instructions, compassionate appointment should be offered within one year if a clear vacancy within 5% of the total vacancy is available. The first part of this ground is difficult to be understood. The vacancy available at any particular time is a fact which must be clear and known to the authority and

there can be no speculation as to the any vacancy position. Ban on local direct recruitment also cannot have any relation to availability of vacancies unless it is pleaded that under some lawful order there was ban on compassionate appointment itself. Such is not the case of the respondents as is apparent from the pleadings and the materials on record. The later part of ground No. 3, which refers to government instructions, is clearly a direction upon the authorities to act promptly and offer compassionate appointment as early as possible, preferably within one year. This required the respondents to act promptly and consider the case of petitioner No. 2 in the year 1999 or in the year 2000 but that was not done and for the same there is no plausible explanation available on record.

8. Some charts and materials have been brought before us by the respondents through a supplementary counter affidavit to show that petitioner No. 2 could earn only 43 points in the year 2001 when some others had earned some more points but the records produced further show that on the same parameters, in the year 2004 he is shown to have earned 50 points and not 43 points as awarded to him in the year 2001.

9. In spite of our efforts we found no sufficient material to show the vacancies position in the year 1999 and 2000 or even in the year 2001. The original records also did not help the learned Counsel for the respondents to answer our query in this regard.

10. Although the law is clear that in the matters of compassionate appointment delay tends to defeat the claim, this principle cannot be universally applied, when a case deserving proper consideration is not considered properly at the initial stage itself. In this regard it is noted with anguish and dismay that the authorities had no scope to consider the fact that the father of petitioner No. 2 suffered from cancer and died of such dreaded disease. This fact was mentioned by petitioner No. 1, the widow, in her application and she had explained that the family had to incur huge expenses and even the future grants could not be sufficient to meet such expenses. Such relevant facts should be considered by the concerned authorities if compassionate appointment is to have any real meaning. There should be a scope, while evaluating relevant merits for compassionate appointment, to consider such extraordinary features in a case for compassionate appointment.

11. So far as the facts of this case are concerned, we have no hesitation in coming to a finding that the authorities themselves were not knowing the vacancy position in the relevant years when the claim of petitioner No. 2 required consideration. It is further clear that 43 points allotted to petitioner No. 2 in the year 2001 does not appear free from a doubt of being erroneous.

12. In view of the aforesaid discussion and because we find that the process whereby the claim of petitioner No. 2 was considered by the authorities does not appear to be transparent and free from mistakes, the matter, in our view,

requires reconsideration by the respondents themselves. Hence, the impugned order of the Tribunal as well as decision of the authorities rejecting the claim of petitioner No. 2 is set aside and the matter is remitted back to the concerned respondents to reconsider the claim of petitioner No. 2 on the basis of his position and other relevant facts as obtaining when he applied, i.e., during the year 1999 and till the year it received further consideration. For this purpose they must disclose in the records the vacancy position clearly and then they should consider the case of petitioner No. 2 on all relevant parameters including the fact that apparently he and his family had suffered extreme difficulty because of the death of his father due to cancer.

13. The authorities are required to take a fresh decision in the matter within four months from the date of receipt/production of a copy of this judgment.

14. With the above direction, the writ petition is disposed of. But there shall be no order as to costs.