
(2002) 12 KL CK 0065
In the High Court Of Kerala
Case No : O.P. No. 32126 of 2002

Sunil Kumar, K.G.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-12-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2002) 12 KL CK 0065

Hon'ble Judges : Jawahar Lal Gupta, C.J.;R. Basant, J

Bench : Division Bench

Advocate : R. Sudhisk and Manju Sudhisk, for the Appellant; P.S. Sreedharan Pillai, Sr. C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, C.J.—Has the Central Administrative Tribunal erred in rejecting the Petitioner's claim for the grant of compassionate appointment? This is the short question that arises for consideration in this case. A few facts as relevant for the decision of this case may be noticed.

2. The Petitioner's father was working as an Assistant Binder with the Government of India Press. Unfortunately, he passed away on June 14, 1998. On his death, the Petitioner applied for the grant of appointment on compassionate basis. The claim was duly considered by the competent authority. However, vide Order dated November 1, 2000, the request was declined. Copy of this order has been produced as Ext.P-5. Aggrieved by this order, the Petitioner approached the Central Administrative Tribunal. The petition having been dismissed, he has approached this Court through the present petition.

3. Mr. Sudhish, learned Counsel for the Petitioner, contends that the mere grant of terminal benefits cannot be a ground for the denial of an appointment on compassionate basis. Still further, the Counsel submits that the Petitioner had a liability of Rs. 30,000. Thus, the decision as taken by the competent authority

and affirmed by the Administrative Tribunal cannot be sustained. Learned Counsel has placed reliance on a decision of this Court in *Canara Bank and Ors. v. Priya Jayarajan* 2001 (1) K.L.J. 411 . He has also referred to the Judgment of Their Lordships of the Supreme Court in *Balbair Kaur and Another Vs. Steel Authority of India Ltd. and Others*, . The claim as made by the Petitioner has been controverted by Mr. Gopinath, learned Counsel for the Respondents.

4. The short issue is -- Has the Tribunal erred in rejecting the Petitioner's claim?

5. A perusal of the order passed by the competent authority shows that the Petitioner's family consists of three persons. Besides the Petitioner himself, his mother and sister are the two other members. Admittedly, the sister has already been married. That leaves behind the Petitioner and his mother. Still further, it is the admitted position that the family had received an amount of Rs. 1,87,554 by way of retiral benefits. An amount of Rs. 1788+ Dearness Allowance is admissible on account of the family pension. In this situation, it is clear that the family is not facing absolute penury so as to be unable to sustain itself.

6. Mr. Sudhish submits that the family had financial liability of Rs. 30,000. Is it so?

7. It has been found by the authority that no documentary evidence had been produced in support of the claim. Even before us, nothing has been placed on record to substantiate the averment in the petition. Irrespective of that, it deserves mention that the Petitioner is a young man of 26 years. He had given up his studies sometime back. He is in a position to sustain himself. Still further, a family with an amount of Rs. 1,87,554 and a recurring income of more than Rs. 3,000 on account of pension, cannot be said to be so poor as to deserve "an appointment on compassionate basis."

8. In this context, it deserves mention that Article 16 of the Constitution guarantees, equality of opportunity to every citizen. Normally, every available post has to be advertised. It can be filled up only after considering the claims of the eligible persons. The grant of appointment on compassionate basis is an exception to the general rule of equality embodied in Articles 14 and 16 of the Constitution. It is only when a good ground for making an exception is made out that the requirements of Article 16 can be dispensed with. Thus, there cannot be a hard and fast rule in the matter of appointment on compassionate basis. Each case has to be decided on its own facts. However, the basic guiding factor is the condition of the family. It can happen that despite the death of the breadwinner, the family may be in good position to sustain itself. In an other case, even after the collection of terminal benefits, the family may be under a debt. Thus, the mere fact that a family has received terminal benefits, cannot, by itself, be a reason to deny appointment on compassionate basis. Equally, even in a case where the family has not got sufficient amount by way of retiral benefits, the prayer for the grant of appointment on compassionate basis can be rejected if it is found that the family is in a position to sustain itself. What is the position in

the present case?

9. It has been found as a fact that the Petitioner is in a position to work and earn. The Petitioner is a young man of 26 years. He can earn for the family. Till he begins to work, the family has enough to fall backup on. In this situation, we find no infirmity in the view taken by the authority which has been accepted by the Central Administrative Tribunal.

10. Mr. Sudhish refers to the decision of Their Lordships of the Supreme Court in Balbir Kaur's case (supra). In this case, it was found on facts that the 1989 agreement "did not withdraw benefit of compassionate appointment already available to employees". In view of the peculiar facts, the claim for grant of appointment on compassionate basis was sustained. There is no such agreement in the present case. Nothing has been placed on record to show that the factual position is similar to that in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, . Thus, the Petitioner can derive no advantage from this decision.

11. Mr. Sudhish has also placed reliance on the Division Bench decision in the case of Priya Jayarajan's case (supra). In this case, the learned Single Judge had found that the widow was "a hapless woman" and gave a direction to the Bank "to give employment assistance to her". The Bank had appealed. It was noticed that the deceased had left behind a widow, mentally and physically handicapped brother and two minor children. In this situation, the claim for grant of appointment on compassionate basis was upheld. In the present case, the factual position is materially different.

12. No other point has been raised.

After consideration of the matter, we find no infirmity in the view taken by the Tribunal. Thus, the petition is dismissed.