

(2015) 11 CAL CK 0024
In the Calcutta High Court
Case No : W.P. 17604 (W) of 2015

Supriya Dutta

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 19-11-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 4 CALLT 583

Hon'ble Judges : Subrata Talukdar, J.

Bench : Single Bench

Advocate : Ishita Chakraborty, for the Appellant; Sushovan Sengupta and Sirsanya Bandopadhyaya, for the Respondent

Final Decision : Allowed

Judgement

Subrata Talukdar, J.—The short point which this Court is required to answer in this writ petition is whether the Memo dated 11th June, 2015 issued by the Sub-Divisional Controller (F & S) (for short SCFS), North 24 Parganas rejecting the claim of the writ petitioner for engagement as a kerosene oil dealer (for short SK oil dealer) on compassionate grounds is legally sustainable or not. By the said Memo dated 11th June, 2015 impugned in this writ petition the SCFS held that under the provisions of Paragraph 2(i) of the SK oil order dated 24th July, 2014 only the prayer of the legal heir of the deceased/incapacitated dealer being a member of the family of such dealer being either the wife/husband, dependant sons, dependant unmarried daughters who have no regular means of subsistence may be considered on compassionate grounds. Therefore, the SCFS rejected the claim of the writ petitioner on the ground that she was the married daughter of the deceased dealer, her mother, the late Aloka Dutta.

2. Ms. Ishita Chakraborty, Ld. Counsel for the petitioner argues that although the petitioner was married, she is presently a divorcee without a regular income of her own. The petitioner also has a son out of her marriage. Ms. Chakraborty points out that the petitioner is the only child of her mother.

3. Prior to her death on 8th November, 2013 her mother had approached the competent authority for transfer of the SK oil dealership in favour of the petitioner on medical grounds. However, her mother died before such application could be considered. Ms. Chakraborty further points out that the death of the original dealer was informed to the Authority by the petitioner on 11th November, 2013. Even during the life time of her mother, since the petitioner had an estranged relationship with her husband, the petitioner used to assist her mother in running the SK oil dealership along with her son.

4. Relying on a Supplementary Affidavit filed pursuant to leave granted by this Court by order dated 17th August, 2015, Ms. Chakraborty submits that the petitioner and her husband filed an application for mutual divorce being MAT Suit No. 153 of 2013 which was allowed and, the marriage between the parties was dissolved by a decree of divorce on mutual consent. Pursuant to such divorce the petitioner is presently left with no option but to depend on the SK oil dealership of her late mother and, in the interregnum, the petitioner pleads that she is earning a living by working as a maid servant.

5. Per contra, Sri Sushovan Sengupta, Ld. Senior State Government Advocate appearing for the State-respondents, submits that there is no infirmity in the order impugned dated 11th June, 2015 since, at the time of consideration of the prayer of the petitioner the Memo dated 24th July, 2014 was in vogue. The clear provisions of the Memo dated 24th July, 2014 do not provide for the engagement on compassionate grounds of any person other than a family member of the deceased/incapacitated dealer.

6. As already noticed by this Court under Para 2(i) of the SK oil order dated 24th July, 2014, such family members have been defined to be the wife/husband, dependant sons or dependant unmarried daughters. According to Sri Sengupta, in the above view of the matter the petitioner, being the married daughter of the deceased dealer was clearly ineligible to claim the appointment.

7. For the interests of assisting this Court on the point Sri Debabrata Saha Roy, Ld. Counsel was requested to act as the Amicus Curiae. Ld. Amicus Curiae during arguments points out that since the death of the original dealer occurred on 8th November, 2013, i.e. prior to coming into force of the SK oil Memo dated 24th July, 2014, the latter cannot have any manner of application to the consideration of the petitioner's prayer for compassionate appointment. Sri Saha Roy submits that the licence of the original dealer shall be deemed to be eligible for transfer on compassionate grounds on the moment of death of the original dealer and shall be guided by the law in vogue when the death occurred.

8. Therefore, Ld. Amicus Curiae submits that the claim of the petitioner requires to be considered under the memo dated 5th February, 2004 which, inter alia, provides that in the event of the death or resignation of a SK oil dealer and, further in the event any claim is made by the husband/wife/son/unmarried or divorced or deserted daughter of the deceased/resigned SK oil dealer, such claim

to compassionate appointment is required to be considered sympathetically provided the same is made within three months from the date of the expiry of the original dealer.

9. Having heard the parties and considering the materials on record this Court is persuaded by the arguments advanced by Ld. Amicus Curiae that the claim of the writ petitioner was wrongly considered by the SCFS under the SK oil order of 24th of July, 2014 since the original dealer, Aloka Dutta expired on 8th November, 2013, i.e. prior to its promulgation. In the considered view of this Court the material consideration on the part of the SCFS would be the law in vogue on the date of death of the original dealer read with the claim to compassionate appointment made within the prescribed time by her legal heir.

10. With further regard to the abovenoted discussion this Court notices that compassionate appointment has been held to be an exception to the normal course of recruitment. The object of compassionate appointment is the need to remove immediate penury.

11. In Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, , the Hon"ble Apex Court noticed the clear emphasis through different judicial pronouncements that compassionate appointment cannot be claimed and offered whatever the lapse of time and after the crisis is over. The observations In Re: Eastern Coalfields (supra) are as follows:--

"7. So far as the question of nature and object of appointment on compassionate ground, it is relevant to take note of what is stated by this Court in Umesh Kumar Nagpal v. State of Haryana:

"6.the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

8. In Jagdish Prasad v. State of Bihar it was observed that:

"3. The very object of appointment of a dependant of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family."

13. In Punjab National Bank v. Ashwine Kumar Taneja it was observed by the Court that:

"4. It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic

intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

12. A similar view was taken by the Hon"ble Apex Court in Punjab National Bank and Others Vs. Ashwini Kumar Taneja, . At Paragraph 4 it was held as follows:--

"4. In support of the appeal learned counsel for the appellants submitted that the approach of the High Court is erroneous. When the object of compassionate appointment is kept in view with reference to the amounts received by the heirs of the deceased employee, it was submitted that there was no financial hardship. Learned counsel for the respondent submitted that the amounts like gratuity, provident fund, etc. have no relevance for determining the question whether compassionate appointment is to be made. It is to be seen that the appointment on compassionate ground is not a source of recruitment but merely an exception to the requirement regarding appointments being made on open invitation of application on merits. Basic intention is that on the death of the employee concerned his family is not deprived of the means of livelihood. The object is to enable the family to get over sudden financial crisis."

13. In Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, , the Hon"ble Supreme Court crystallised the claim to compassionate appointment to the following factors:--

"17. In Umesh Kumar Nagpal v. State of Haryana & Ors., while emphasising that a compassionate appointment cannot be claimed as a matter of course or in posts above Class III and IV, this Court had observed that:

"The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz., relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family of the deceased there are millions of other families which are equally, if not more

destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the 1 Umesh Kumar Nagpal Vs. State of Haryana and Others, legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

18. Similarly, in Steel Authority of India Limited v. Madhusudan Das & Ors., this Court has observed that:

"This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right." (See also: General Manager, State Bank of India & Ors. v. Anju Jain.)

19. In V. Sivamurthy v. State of Andhra Pradesh & Ors., this Court while observing that although appointment in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution, yet appointments on compassionate grounds are well recognized exception to the general rule, carved out in the interest of justice to meet certain 2 Steel Authority of India Ltd. Vs. Madhusudan Das and Others, contingencies, highlighted the following two well-recognised contingencies as exceptions to the general rule :

"(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) appointment on compassionate ground to meet the crisis in a family on account of medical invalidation of the breadwinner."

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."

14. In the background of the above noted position of law this Court is now required to examine the stand of the State-respondents in the facts of the present case. Sri Sengupta has strenuously argued on the basis of the decision of the Hon''ble Supreme Court in Gajraj Singh etc. Vs. The State Transport Appellate Tribunal and others etc., that there is a distinction between right acquired or accrued and the privilege, hope or expectation of a right.

15. Ld. State Counsel has argued that till the petitioner is able to demonstrate that a right has crystallised in her favour for the compassionate appointment under the replaced law and regulations, such compassionate appointment must be guided by the law and regulations prevailing on the date of consideration. On the above noted premise Sri Sengupta asserts that the competent Authority committed no legal infirmity by rejecting the claim of the petitioner as invalid under the Memo dated 24th July, 2014.

16. Noticing Sri Sengupta's submissions (supra) this Court is required to place such submissions in the context of the pronouncements of the Hon''ble Apex Court through its several judgments (supra) regarding the inherent nature of compassionate appointment. To the mind of this Court the Hon''ble Apex Court has been clear in pronouncing that the compassionate appointment must relate to the need of the claimant being a dependant family member of the deceased to avert an immediate financial crisis. Second, such compassionate appointment is an exception to the normal recruitment process and, almost amounts to a concession.

17. Having regard to the clear exposition of the legal principles attached to compassionate appointment laid down by the Hon''ble Apex Court (supra), this Court is of the considered view that since the immediate financial crisis of the claimant arises on the death of the original licensee, the claim to such compassionate appointment must be considered to have arisen at the time of such death. In other words the right of the claimant must be considered to have crystallised at the moment of the death of the original licensee.

18. In the above view of the matter the claim of the appointee/claimant cannot be merely discarded on the ground that such claim was considered by the competent State Authority at a distance of time when the law and regulations prevailing at the moment of death stood substituted by a new law and

regulation. To the further mind of this Court a consideration by the competent State Authority at a distance of time on the platform of a new law and regulations which did not exist at the moment of death, is an exercise which frustrates the essence of compassionate appointment which is to help tide over an immediate financial crisis by way of an exception to the normal recruitment process.

19. Therefore, this Court is of the further considered view that the competent State Authority must address itself to a bona fide claim submitted by the claimant within due time under the law and regulations existing at the moment of death. The competent State Authority is then required to arrive at a just conclusion on the need of the claimant to such compassionate appointment on fulfilment of the necessary parameters as applicable to him under the law and regulations as prevalent at the moment of death.

20. In the facts of the present case this Court finds that within three months of the death of the original dealer on 8th November, 2013, i.e. on 13th January, 2014 the petitioner applied for compassionate appointment. In the further view of this Court since the death of the original dealer as well as the first claim of the petitioner occurred prior to the promulgation of the SK oil Memo dated 24th July, 2014, the same ought to have been considered under the SK oil Memo dated 5th February, 2004 then applicable. This Court finds that as the divorced daughter of the deceased dealer the claim of the petitioner was not barred under the Memo dated 5th February, 2004 and was made within a period of three months from the date of the expiry of the original dealer.

21. Having regard to the facts on record this Court is satisfied that after the mutual divorce and, in the light of the averments made at paragraph 9 of the application for mutual divorce (*supra*), the petitioner has been compelled to fall back on the income of her late mother being the only daughter.

22. For the above reasons and, having regard to the facts of this case, the order impugned dated 11th June, 2015 is set aside. The SCFS is directed to revisit the claim of the writ petitioner in the light of the observations made above in this order. The SCFS shall pass a reasoned order, if necessary by granting the writ petitioner an opportunity of hearing to clarify any issue and communicate his reasoned order to the writ petitioner.

23. The above exercise shall be completed within a period of four weeks from the date of communication of this order.

24. WP 17604(W) of 2015 stands accordingly allowed.

25. There will be, however, no order as to costs.

26. Urgent certified photocopies of this judgement, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.