

(1995) 02 KAR CK 0027
In the Karnataka High Court
Case No : Writ Petition No. 36622 of 1993

Susheela B. Bhakta

APPELLANT

Vs

Karnataka State Road Transport Corporation

RESPONDENT

Date of Decision : 03-02-1995

Acts Referred:

Constitution of India, 1950 — Article 142 (1), 16 (2), 226

Citation : (1995) ILR (Kar) 551

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : M. Narayan Bhat, for K. Subba Rao, for the Appellant; T.N. Manjula Devi, for the Respondent

Judgement

Bharuka, J.—This Writ application has been filed seeking quashing of the Endorsement dated 24th June 1992 (Annexure-H) by which respondents have rejected the application of the petitioner No. 2 for providing appointment on compassionate grounds and for a consequent Mandamus directing the respondents to appoint her on the post of Junior Assistant or of Typist or to any suitable Class-III post in the Karnataka State Road Transport Corporation (hereinafter for short, "the Corporation").

2. Petitioners 1 and 2 are respectively wife and daughter of late K. Bhaskar Bhakta, who was working as an Artisan in the respondent-Corporation and died in harness on 8th May, 1989.

3. Petitioner No. 2 claims that after passing her Pre-University Examination in 1986 she has also passed English Typewriting Junior Examination conducted by the Karnataka Secondary Education Examination Board. She also seems to have passed the Speed Test in English Typewriting conducted by the Commerce Institutes' Association of Karnataka, Bangalore. The Certificates for having passed the said examinations have been filed as Annexures A, B, C and D respectively. Subsequent to acquiring of the said qualifications, on 14th February 1992, she filed an application to the respondents seeking appointment on

compassionate grounds; but, the same has been rejected as stated above, by the Endorsement at Annexure-H on the ground that since one of the sons of the deceased workman is already employed as Driver in the Corporation, in view of the Circular presently in force, no other dependant can be granted appointment on compassionate ground.

4. Learned Counsel appearing for the petitioners submitted that the elder son of the deceased workman, who is in the employment of the Corporation, has deserted the family more than ten years ago and therefore he cannot be considered to be a member of the family for the purpose of ascertaining the desirability of providing appointment on compassionate ground. Learned Counsel submits that even otherwise, keeping in view the Supplementary Settlement entered into between the recognised Trade Union and the Corporation on 16th February 1978 under the provisions of the Industrial Disputes Act, 1947, the Corporation is bound to provide employment to one of the members of the family of the deceased workman and they cannot defeat the said statutory settlement on the plea that one of the members of the family is already in employment of the Corporation. In support of his submission, he has placed reliance on the Judgment of the Supreme Court in the case of Life Insurance Corporation of India Vs. D.J. Bahadur and Others, and K. Raja Vs. Karnataka Electricity Board, On the other hand, Smt. Manjula Devi appearing for the Corporation has submitted that in view of the Circular dated 9.10.1991 pertaining to the employment of the dependant of a deceased employee of the Corporation, appointment on compassionate grounds can be provided only when no other member of the family is in employment of the Corporation. According to her, the Settlement of 1978 arrived at under the Industrial Disputes Act has already lapsed by efflux of time; and, even otherwise the above Circular will have an over-riding effect over the said Settlement disentitling petitioner No. 2 to claim the relief sought for. In support of her submissions, she has placed reliance on three recent Judgments of the Supreme Court in the cases of Auditor General of India and others Vs. G. Ananta Rajeswara Rao, and Umesh Kumar Nagpal Vs. State of Haryana and Others,

5. Before proceeding to consider the rival contentions raised at the Bar regarding desirability of providing appointment on compassionate grounds on the facts of the present case, I would like to notice the law laid down with regard to the appointment on compassionate grounds by the Supreme Court.

6. In the case of Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , the Apex Court has held that -

"The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family."

It was also observed that such appointment should therefore be provided immediately to redeem the family in distress.

7. In Umesh Kumar Nagpal's case (supra) the Supreme Court was constrained to

hold that Sushma Gosain's case had been misinterpreted to the point of distortion, and their Lordships have laid down the principles which should guide while giving appointment in public service on compassionate ground in order to strengthen out the confusion prevailing in this branch of Law. It has now been laid down that-

(i) the only ground which can justify compassionate employment is the penurious condition of the family of the deceased which has no means of livelihood so that the family may tide over the sudden crises caused by the immature death of the sole bread earner of the family, and, thus the object is to provide relief against destitution ;

(ii) seeking of appointment on compassionate grounds cannot be treated as a vested right to the dependants of the deceased employee;

(iii) it is impermissible on the part of the Government and its instrumentalities to offer compassionate, employment as a matter of course irrespective of the financial condition of the family of the deceased;

(iv) no compassionate appointments can be granted in the posts above Class-III;

(v) qualifications of dependants are of no relevance for granting employment on compassionate ground ;

(vi) compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the Rules or the executive instructions framed/ issued by the competent authority.

6. In the case of Auditor General of India And Others (supra) the Supreme Court was faced with Constitutional validity of a Memorandum of the Government of India which inter alia provided for grant of compassionate appointment even to "near relatives" of the deceased employee. Their Lordships declared that part of the Memorandum as Constitutionally invalid being violative of Article 16(2) of the Constitution and has held that -

"5. A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments by compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on Constitutionally valid and permissible grounds. Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/ daughter or widow of the deceased Government employee who died in harness

and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion. Accordingly, we allow the appeal in part and hold that the appointment in para-1 of the Memorandum is upheld and that appointment on compassionate ground to a son, daughter or widow to assist the family to relieve economic distress by sudden demise in harness of Govt. employee is valid. It is not on the ground descent simpliciter, but exceptional circumstance for the ground mentioned. It should be circumscribed with suitable modification by an appropriate amendment to the Memorandum limiting to relieve the members of the deceased employee who died in harness, from economic distress. In other respects Article 16(2) clearly attracted."

9. In the case of Life Insurance Corporation of India v. Asha Ramachandra Ambekar (Mrs) and another, the Supreme Court was constrained to hold that the High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration if it is otherwise not permissible in law. In this case, the Statutory Regulations provided that where any member of the family is employed, no appointment may be made on compassionate grounds. Despite the said provision, the High Court issued a Writ of Mandamus directing the LIC to grant appointment to the petitioner before it on compassionate grounds impelled by the consideration that he was at his prime of the life and youth and his age was about 21 years. According to the High Court, the dues that were paid to the family were the lawful dues that were earned by the deceased; and, therefore, on facts, the petitioner before it was entitled to appointment on compassionate grounds. The Supreme Court has held the approach of the High Court is incorrect being against the statutory provisions contained in the regulations.

10. I have to incidentally mention here about the two cases of the Supreme Court - i.e. Smt. Kamala Gaiind v. State of Punjab and Smt. Phoolwati Vs. Union of India and Others, . In view of the three Decisions of the Supreme Court referred to above, these two Decisions laying down the law on the subject at hand, in my view, cannot be said to be the settlers of law on the subject, and, they can only be said to have been passed by the Apex Court under its extraordinary jurisdiction under Article 142 of the Constitution. I say so because in Kamala Gaiind (supra) the Supreme Court had directed the respondent-State to grant Class-I post to the appellant before it since a similar post was provided to another person who was similarly situated. The Court took a view that-

"Even if it is compassion, unless there be some basis there is no justification for discriminatingly extending the treatment."

11. In the case of Umesh Kumar Nagpal (paragraphs 3, 4 and 5), the Supreme Court has emphatically held that the appointment on compassion grounds to posts above Class IV and III is legally impermissible. It has further been held

that if keeping in view his educational qualifications the dependant of the deceased employee finds it below his dignity to accept the post offered, he is free not to accept the same, since the post is offered to see the family through the economic calamity and not to cater to his status.

12. In the case of Phoolwati (supra) it was brought on record that the widow of the deceased had received an amount of Rs. 21,700/- as Gratuity, Rs. 10,926/- as CGE Insurance and Rs. 1,717/- as GPF and also she was getting family pension of Rs. 30/- per month, and, as such her second son cannot be employed on compassionate grounds in the Government Press in which her husband was in service. Despite these facts, the Court directed the Union of India to take immediate steps for employing the second son of the widow in a suitable post commensurate with his educational qualification within a period of one month from the date of the order. Possibly no High Court or Tribunal is competent to pass any such order in view of the law now laid down in the cases of Umesh Kumar Nagpal (supra) and Life Insurance Corporation of India v. Asha Ramachandra Ambekar and another (supra). Recently in the case of State of Haryana Vs. Naresh Kumar Bali, , it has been once again held by the Supreme Court of India that: "the exercise of extraordinary jurisdiction Constitutionally conferred on the Apex Court under Article 142(1) of the Constitution can be of no guidance on the scope of Article 226."

13. In the case of K. Raja v. Karnataka Electricity Board, a Bench of this Court has taken the view that notwithstanding the fact that one of the members of the family of the deceased employee is already in the employment of the establishment, still one of his dependants would be entitled to be appointed on compassionate ground because it is for "assuaging the monetary loss suffered by the dependants of the deceased by reason of the latter's sudden and unexpected demise". In my respectful opinion, the reason assigned by the Division Bench for grant of compassionate appointment has to be now held as impliedly over-ruled by the Supreme Court in the case of Umesh Kumar Nagpal (supra) wherein their Lordships have in unequivocal terms laid down that: "the only ground which can justify compassionate appointment is the penurious condition of the deceased's family". It has further been held that mere death of an employee in harness does not entitle his family to such source of livelihood because the object of affording such employment is to relieve the family of its financial destitution and to help it to get over the emergency.

14. It has further been held in the case of Nagpal (supra) that: "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."

15. Keeping in view the law as now laid down by the Supreme Court, in my opinion, the respondents could not have refused the request of the petitioners for appointment on compassionate ground merely because one of the sons of the

deceased is already in employment of the Corporation, who according to the petitioners had separated from the family long before the death of the deceased employee. For appropriately dealing with an application for grant of appointment on compassionate ground it is incumbent upon the authorities to ascertain by holding an appropriate enquiry as to whether the family comprised of the dependants of the deceased employee had any income from any source to sustain their livelihood, and if it is found that but for a job being offered to one of the eligible dependants their family cannot tide over the crises, compassionate employment should be given to the eligible dependant. Mere employment of one of the sons of the deceased cannot clinch the issue of granting compassionate appointment, if on facts it is found that he had separated from the family of the deceased even during his life time, because in such a situation it cannot be said that he was still a helping hand to the family.

16. The Settlement between the Corporation and its workmen dated 16.2,1978 and the Circular dated 9.10.1991 to the extent it relates to the compassionate appointment have to be read and understood only in the manner as aforesaid since any other interpretation of these documents will offend the Articles 14 and 16 of the Constitution of India which also bind the Corporation being a State instrumentality.

17. While rejecting or accepting the request of the petitioners for grant of a compassionate appointment, the dominant object i.e. to relieve the family of the distress of the sudden financial crisis or destitution, and its immediate remedy have to be kept in the forefront.

18. In view of the law noticed as above and the facts of the present case, the impugned Endorsement dated 24th June 1992 is quashed with a direction to the respondent authorities to consider the case of the petitioners afresh and pass appropriate order within two months from the date of communication of this order.