
(2015) 04 RAJ CK 0217
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2055 of 2007

Tara Chand

APPELLANT

Vs

Nuclear Power Corporation of India

RESPONDENT

Date of Decision : 30-04-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 04 RAJ CK 0217

Hon'ble Judges : Sandeep Mehta, J

Bench : Single Bench

Advocate : Nupur Bhati and T.S. Rathore, for the Appellant; Dinesh Mehta, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Sandeep Mehta, J.—By way of the instant writ petition, the petitioner has approached this Court with a prayer for directing the respondent Corporation to give appointment to the petitioner on compassionate basis in place of his mother late Smt. Rukmani Bai who passed away while in employment of the respondent Corporation.

2. Facts in brief are that the petitioner's mother was deployed as a class IV employee in the respondent Corporation. She passed away on 2.10.1992 while in service. The petitioner thereupon applied for being granted compassionate appointment in her place. It appears that a dispute arose between the petitioner and his sister and rival claims were raised by each of them for being given compassionate appointment. The petitioner was personally invited for inquiry through a letter Annexure-2 dated 6.4.1995. Thereafter, a list Annexure-3 was published by the Corporation setting out the names of the persons who had been given compassionate appointment in the Corporation from the year 1995 onwards. The petitioner claims that he was surprised to find that his name did not figure in the list of appointees Annexure-3. Thereafter he filed a suit under the Indian Succession Act in the Court of learned Addl. District Judge No. 1,

Chittorgarh. Learned Addl. District Judge declared the petitioner as well as his sister Shyama Bai to be the successors of late Smt. Rukmani Bai. The petitioner claims that after the suit was decreed, the matter was settled between him and his sister who executed an affidavit Annexure-5 in favour of the petitioner on 14.7.2003 and gave up her claim for compassionate appointment. It was also mentioned in the affidavit that Smt. Shyama has since been married and was living with her husband who was a permanent employee in the R.A.P.P. Hospital. The petitioner again submitted an application Annexure-6 annexing therewith the affidavit of Smt. Shyama for being given appointment on compassionate basis. He was informed by a registered letter dated 19.10.2004 (Annexure-7) that his case has been considered and rejected by the concerned committee in the year 1995 and thus he was not entitled to compassionate appointment. Being aggrieved by the rejection of his prayer for compassionate appointment, in place of his mother, the petitioner has approached this Court by way of the instant writ petition.

3. Dr. Nupur Bhati, learned counsel for the petitioner vehemently contended that the action of the respondents in denying appointment to the petitioner on compassionate basis was absolutely unjust. As per her, appointment was denied to the petitioner simply on the ground that there was a dispute between the petitioner and his sister regarding the right to succeed Smt. Rukmani Bai. The dispute was thereafter settled between the siblings and the petitioner's sister executed an affidavit in the petitioner's favour in the year 2003. The civil suit instituted for deciding the succession right was also decided in the year 2003 and a settlement was arrived at between the petitioner and his sister who gave up the claim for compassionate appointment thereafter. As per the learned counsel, once the legal proceedings culminated, and as the only other claimant gave up her claim to the post, the petitioner became entitled for compassionate appointment as of right, immediately thereafter. She, therefore, prayed that the writ petition should be accepted and the petitioner deserves to be offered compassionate appointment in place of his mother.

4. Per contra Mr. Dinesh Mehta, learned counsel for the respondent submitted that the petitioner's claim for compassionate appointment was considered by the appropriate committee who did not find case of the petitioner fit for compassionate appointment. The petitioner was informed in the year 1995 itself that he was not found suitable for appointment. The committee whilst examining the petitioner's case, considered the family's financial position and found that Tara Chand was working with a contractor and his father was in receipt of pension @ Rs. 996/- per month. The two of the petitioner's brothers were employed. There was likelihood of family pension being paid upon the death of Rukmani Bai. The committee formed an opinion that the family was not in financial distress and thus there was no dire need of employment. Learned counsel submitted that the petitioner did not challenge the order whereby the committee rejected his prayer for compassionate appointment and instead chose to wait for almost eight years and then re-applied for compassionate

appointment. He contends that as the order (Annexure-7) issued by the Committee attained finality, the writ petition is not maintainable. On the strength of these averments, the learned counsel for the respondents urged that the writ petition should be dismissed.

5. A rejoinder has been filed on behalf of the petitioner wherein it has been pleaded that the committee formed to examine the petitioner's case for compassionate appointment was not legally constituted. The procedure adopted by the committee was also unfair and illegal. It is further stated in the rejoinder that the petitioner's father passed away on 23.5.2002 and thereafter the pension being paid to him has been discontinued. The petitioner claims to be having by way of dependents, his wife and four kids in his family which is allegedly in dire financial condition. It is further urged in the rejoinder that appointments have been given by the Corporation to even such persons whose blood relatives like brother etc. are already working in the NPCIL. On the strength of these averments, the petitioner has reiterated his claim for compassionate appointment.

6. I have heard and considered the arguments advanced at the bar and have gone through the material available on record.

7. It is settled proposition of law that compassionate appointment is provided as a measure of tiding over the family of the deceased employee from penury and to ensure that the family does not fall in financial distress on account of the death of the employee. The general Rule is that appointment to public posts should always be made by open advertisement and compassionate appointment is an exception thereto.

8. The concept of compassionate appointment was examined by the Hon'ble Supreme Court in the case of MGB Gramin Bank Vs. Chakrawarti Singh, (2013) 9 AD 253 : AIR 2013 SC 3365 : (2013) 139 FLR 469 : (2013) LabIC 3824 : (2013) 10 SCALE 223 : (2013) 4 SCT 541 : (2013) 114 SLJ 328 : (2013) AIRSCW 4801 and it was held that compassionate appointment cannot be claimed as a matter of right as it is neither a vested nor a fundamental right. Some excerpts from the judgment are reproduced for the sake of ready reference :-

"Every appointment to public office must be made by strictly adhering to the mandatory requirements of Articles 14 and 16 of the Constitution. An exception by providing employment on compassionate grounds has been carved out in order to remove the financial constraints on the bereaved family, which has lost its bread-earner. Mere death of a Government employee in harness does not entitle the family to claim compassionate employment. The Competent Authority has to examine the financial condition of the family of the deceased employee and it is only if it is satisfied that without providing 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. Moreso, the person claiming such appointment must possess required eligibility for the post. The consistent view that has been taken by the

Court is that compassionate employment cannot be claimed as a matter of right, as it is not a vested right. The Court should not stretch the provision by liberal interpretation beyond permissible limits on humanitarian grounds. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such a case pending for years. As the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc., the application has to be considered in accordance with the scheme. In case the Scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the Scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post."

9. Upon examining the case at hand in context of the aforesaid factual and legal position, it is evident that the petitioner's case for compassionate appointment was taken up and rejected in the year 1995. The petitioner chose not to challenge the proceedings immediately and instead kept on pursuing the suit for succession which he had preferred in the Court of learned Addl. District Judge, Chittorgarh. The suit was finally decided in the year 2003 whereafter the petitioner managed to procure his sister's no objection and then attempted to revive the prayer for compassionate appointment. On going through the recommendation of the committee constituted by the respondent Corporation for appointment/employment on compassionate ground, it is evident that the petitioner's case was not rejected for the sole reason that his sister had also made a similar claim. The committee examined the petitioner's documents and found that the petitioner was working with a contractor and the family was not in a dire need of employment. The Committee's decision, turning down the petitioner's prayer for compassionate appointment was communicated to the petitioner in the year 1995 itself and, admittedly, the petitioner did not challenge the committee's decision which attained finality. While filing the fresh application (Annex.6) seeking revival of the claim for compassionate appointment, the petitioner did not controvert the fact that he was working with the contractor. The petitioner also did not mention in the said application that he was totally without any means of subsistence. All that is mentioned in the application is that he should be given appointment so as to escape financial constraints. "Financial constraint" is a relative term and the mere use thereof cannot lead to irrefutable conclusion that the petitioner's family ran into financial distress after the death of his mother. For almost eleven years after the death of Smt. Rukmani, petitioner not only managed to successfully sustain his family but also during this period, contested a litigation for succession. In this factual background, it would be absolutely unjust to hold that the petitioner's family was in penury and compassionate appointment was required to tide the family over financial distress. The documents as available on record, particularly the application for succession filed by the petitioner's father in the A.D.J. court clearly mentions that one of the petitioner's brother was engaged as a government servant in the

Kendriya Vidhyalaya. The conditions of compassionate appointment as enumerated in the scheme are reproduced hereinbelow for the sake of convenience:-

"3.0 CONDITIONS FOR COMPASSIONATE APPOINTMENT

3.1 In the case of an employee, who dies in harness the compassionate appointment of a son or an adopted son or a daughter or an adopted daughter or the spouse shall be made only when there is no other earning member in the family.

3.2 In the case of an employee who sought voluntary cessation of service on account of any bodily or mental infirmity, the compassionate appointment of a son or an adopted son or a daughter or an adopted daughter or the spouse shall be made only when such a cessation takes place at least three years before the normal date of his/her retirement on superannuation and that the condition of the family is indigent and family is in great distress and in immediate need of assistance and there is no other earning member in the family is fulfilled.

3.3 A compassionate appointment shall be made only after taking into consideration the monetary benefits that may accrue to the family by way of benefits from accident insurance, group insurance, life insurance, family pension, gratuity, provident fund balances, deposit linked insurance, encashment of leave and other assets like movable and immovable properties etc.

3.4 Every person who seeks compassionate appointment shall fill up Form "A" appended to this scheme.

3.5 Every person who applies for compassionate appointment shall give an undertaking in form "B" that he or she shall maintain his or her parent or dependents after his/her appointment in the Corporation.

3.6 No compassionate appointment shall be made if the application is received one year after the employee died in harness or the employee had quit service voluntarily on medical grounds."

10. Evidently, the petitioner was not entitled for compassionate appointment looking to the clauses 3.1 and 3.3 of the Scheme.

11. Furthermore, as the petitioner did not challenge the decision taken by the recommendation committee in the year 1995 not to grant compassionate appointment timely and chose to wait for eight years before reviving his claim, otherwise also the relief claimed in the instant writ petition cannot be granted as petitioner suffers from laches.

12. In this view of the matter, this Court is of the opinion that the petitioner failed to satisfy the necessary requirements of the scheme for compassionate appointment so as to be given appointment in place of his mother.

13. As a consequence, the writ petition is devoid of any merit and is hereby

dismissed.

14. No order as to cost.