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(2016) 10 BOM CK 0138

In the Bombay High Court

Case No : Writ Petition No. 4789 of 2003

The Incharge Deputy Commissioner — APPELLANT

Vs

Renuka Ramdas Sherla — RESPONDENT

Date of Decision : 06-10-2016

Acts Referred:
Maharashtra Recognition of Trade Unions and Prevention of Unfair Labour Practices Act, 1971 — Section 44

Citation : (2017) 1 CLR 108 : (2017) 1 MhLJ 804

Hon'ble Judges : Ravindra V. Ghuge, J.

Bench : Single Bench

Advocate : Shri Deshpande Ram B, Advocate, for the Respondent No. 1; Shri Lokhande Kishor N, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Ravindra V. Ghuge, J. (Oral) - The Petitioner/Establishment is aggrieved by the judgment and order dated 13.08.2003 by which Complaint (ULP) No.368/1994 has been allowed by the Industrial Court and the Petitioner is directed to appoint Respondent No.1 on compassionate basis within a period of two months from the date of the order.

2. This petition was admitted by a speaking order on 21.04.2004 and interim relief in terms of prayer clause (C) was granted thereby, staying the operation of the impugned judgment. Respondent No.1 is, therefore, not in employment.

3. The contention of the Petitioner is that the father of Respondent No.1, who was working as a Tracer, passed away on 01.10.1973. The compassionate appointment policy was available at the relevant time. The widow/ mother of Respondent No.1 did not apply for compassionate appointment. Respondent No.1 was born on 25.03.1974 which is after about six months from the date of the demise of her father. Though the mother was eligible, she did not apply and Respondent No.1 filed her application on 15.11.1992. Since a period of 19 years had lapsed from the demise of the employee, the application of Respondent No.1

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was rejected.

4. It is submitted that Respondent No.1 then filed Complaint (ULP) No.368/1994. The prayers put forth in the said complaint were that she should be regularised in employment as she was already working as Bigari (daily wager). No specific prayer that she should be appointed on compassionate ground was put forth in the prayer clause.

5. The learned Advocate for the Petitioner contends that the Industrial Court, while dealing with the complaint, concluded that since Respondent No.1 was continued in employment and was directed to be allocated the work by order of this Court in Writ Petition No.4552/1995, Respondent No.1 deserves to be granted absorption in service. He submits that the said conclusion is erroneous for the reason that the compassionate appointment is made available to ensure that the family is not made to starve after the death of the sole bread earner and the family is provided with some earning so as to survive. The wife of the deceased employee did not apply for 18 years which indicates that there was no need for compassionate appointment. After Respondent No.1 became 18 years of age, she has filed the application by which time, the period for making the application was over. He, therefore, submits that the impugned judgment deserves to be quashed and set aside.

6. Shri Deshpande, learned Advocate for Respondent No.1, has strenuously supported the impugned judgment. He, however, concedes that Respondent No.1 is not in employment for the past about 18 years and is more than 42 years old today. It is also conceded that she has got married and has two children.

7. He, however, submits that the mother of Respondent No.1 did not claim compassionate appointment as she was illiterate and was unaware about the grant of compassionate appointment to the surviving heir of the deceased employee. Had she had the knowledge about such schemes, she would have applied and probably would have got employment. Her failure to apply for compassionate appointment should not be misconstrued to mean that she is not interested in service. He further submits that the fact that Respondent No.1 has got married and has two children should also not be construed to mean that she has settled in life. She had specifically averred in her complaint that she should be regularised in employment on compassionate ground.

8. Having considered the submissions of the learned Advocates, I have gone through the petition paper book and the Government Resolutions cited by the Petitioner.

9. There is no dispute that when the father of Respondent No.1 passed away, his widow was entitled for making an application for compassionate appointment and could have been considered since the Petitioner had a policy at the relevant time. When such an application was not made for 19 years, in my view, it nullifies the purpose for which the scheme for compassionate appointment has been introduced. No doubt, Respondent No.1 was born after the demise of her father.

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However, when the application for compassionate appointment was made, it was almost 19 years from the date of demise of her father, in the backdrop that her mother could have claimed compassionate employment 19 years ago.

10. The Honourable Supreme Court, in the matter of the State of J.& K. v. Sajad Ahmed Mir, 2006(5) ALL MR (SC) 8, has observed in paragraphs 6, 9 and 12 as under:-

"6. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought ''compassion'', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say ''goodbye'' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution.

9. In Umesh Kumar Nagpal v. State of Haryana & Ors. [(1994) 4 SCC 138], it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases, the object is to enable the family to get over sudden financial crisis. Such appointments on compassionate ground, therefore, have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favourable treatment to the dependent of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and 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 legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned.

12. In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the

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Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal. For the foregoing reasons, the appeal deserves to be allowed and it is accordingly allowed. The order passed by the Division Bench is set aside and that of the learned single Judge is restored. In other words, the petition filed by the respondent herein-applicant before the learned single Judge is ordered to be dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs."

11. The Apex Court has thus, concluded that the compassionate appointment is not a source of recruitment. It is a scheme aimed at ensuring that the death of an employee will not leave his family without any means of livelihood. The object is to enable the family to overcome sudden financial crisis. Passage of a long duration would nullify and mitigate the hardships suffered by the family on account of the death of the bread earner.

12. In the instant case, on the one hand, the widow, though eligible, did not apply for 19 years and on the other hand, Respondent No.1 who applied is now 42 years old, is married and has two children. This, therefore, nullifies the need of compassionate appointment and after passage of 43 years from the demise of the employee, I do not find that the claim for compassionate appointment could be entertained.

13. It also cannot be ignored that the complaint filed by Respondent No.1/ original Complainant was for claiming regularisation in employment and also for seeking compassionate appointment. Similarly, the award dated 21.02.2005 delivered by the Industrial Tribunal in relation to the present Petitioner and it''s Union in Reference (IT) Nos.2, 3 and 4 of 1993, has been made applicable prospectively as is the observation of the Industrial Tribunal on internal page 32 of the said award. Nevertheless, the failure on the part of her mother in claiming compassionate appointment, would not substitute Respondent No.1 in her place after 19 years.

14. It appears from the record that the Industrial Court, by it''s interim order dated 09.03.1995 in Complaint (ULP) No.368/1994, had directed the Petitioner to allot the work to the original Complainant. The said order was challenged by the Petitioner in Writ Petition No.4552/1995. By order dated 23.09.1996, this Court admitted the petition and while directing the Petitioner to continue to provide her with work, had indicated to the Industrial Court that it could proceed with the said complaint. Considering the fact that Complaint (ULP) No.368/1994 has been decided, the said Writ Petition has been disposed of by order dated 21.04.2004. It is admitted that she is not in employment for a decade.

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15. It is trite law that the service rendered by an employee under interim orders of the Court cannot be reckoned with, while considering the claim for regularisation in service, much less for considering the claim for compassionate appointment after 43 years from the demise of the employee''s father.

16. Considering the above, this Writ Petition is allowed. The impugned judgment dated 13.08.2003 delivered by the Industrial Court is quashed and set aside. Complaint (ULP) No.368/1994 stands dismissed.

Rule is made absolute in the above terms.

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