
(2015) 09 DEL CK 0291

In the Delhi High Court

Case No : W.P. (C) 6947/2015 and CM Appl. No. 12734/2015

Union of India and Others

APPELLANT

Vs

Pradeep Belwal and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 09 DEL CK 0291

Hon'ble Judges : G.S. Sistani and Sangita Dhingra Sehgal, JJ.

Bench : Division Bench

Advocate : Prabha Sharma and H. Haider, Advocates, for the Appellant; V.P.S. Tyagi, Advocate, for the Respondent

Final Decision : Disposed Off

Judgement

G.S. Sistani, J.—The present writ petition challenges the correctness of the order dated 14.11.2014 passed by the Central Administrative Tribunal (for short "the Tribunal") in O.A. No. 4263/2012 and 1147/2013, whereby the Tribunal allowed the said O.A.'s filed by the respondents herein and issued a direction to the petitioners to reinstate the respondents.

2. The facts of the case in a nutshell are as under:

"The Respondents No. 1 to 3 are sons of deceased Government servants, and Respondent No. 4 is wife of the deceased Government servant. The said deceased Government servants were employed under the petitioners, and they died while in service. All the Respondents made applications for grant of compassionate appointment in accordance with the scheme of 1998 for compassionate appointment. Their applications were duly considered by the Petitioners and the offers of appointment on compassionate ground were issued on 10th and 11th June 2002. Respondent No. 1, 2 and 4 were offered appointment as Mazdoor (USK) and Respondent No. 3 was offered appointment as choukidar (CVB). After their medical examination and character antecedent verification, the respondents reported for duties on 10th, 11th and 18th June

2002. Thereafter, the Petitioners vide letter dated 27.06.2002 and 29.06.2002 terminated the services of the Respondents without assigning any reason and without complying with the principles of natural justice. Being aggrieved by the termination of their services, the respondents filed W.P (C) Nos. 1185(S/B), 1387(S/B), 1277(S/B) and 1678(S/B) of 2002 before the Hon"ble High Court of Uttarakhand. The Hon"ble Court vide orders dated 5.09.2002, 8.10.2002, 10.10.2002 and 13.12.2002 respectively passed in the said writ petitions, stayed the operation of orders of termination of services of the respondents until further orders."

3. Ms. Prabha Sharma, learned counsel appearing on behalf of the petitioners submits that the order passed by the Central Administrative Tribunal is unjust, illegal, arbitrary and is based upon assumptions and presumptions.

4. Learned counsel for the petitioners contends that the Tribunal has failed to appreciate that the respondents do not have any vested right to be appointed on compassionate grounds. The counsel further clarified that as per the revised policy, the appointment of the respondents on compassionate grounds was found to be wrong due to miscalculation of vacancies and as soon as this came to the knowledge of the petitioners, the appointment letters issued to the respondents were cancelled and the services of the respondents were terminated. Reliance has been placed on Kishorilal Charmakar and Another Vs. Distt. Education Officer and Another, , Committee of Management, Arya Nagar Inter College, Arya Nagar, Kanpur, through its Manager and another Vs. Sree Kumar Tiwary and another, , Kalyani Sharp India Ltd. Vs. Labour Court No. 1, Gwalior and Another, .

5. Learned counsel for the petitioners has further relied on Shesh Mani Shukla Vs. D.I.O.S. Deoria and Others, in which the Hon"ble Supreme Court in para 14 observed as under:

"...It is true that the appellant has worked for a long time. His appointment, however, being in contravention of the statutory provision was illegal, and, thus, void ab initio. If his appointment has not been granted approval by the statutory authority, no exception can be taken only because the appellant had worked for a long time. The same by itself, in our opinion, cannot form the basis for obtaining a writ of or in the nature of mandamus; as it is well known that for the said purpose, the writ petitioner must establish a legal right in himself and a corresponding legal duty in the State. Sympathy or sentiments alone, it is well settled, cannot form the basis for issuing a writ of or in the nature of mandamus.

6. Per contra, Mr. V.P.S. Tyagi, learned counsel appearing on behalf of the respondents submits that the respondents had been duly appointed on compassionate grounds as per the 1998 Scheme for compassionate appointment and the Government of India instructions which were in force during the relevant period and thus the respondents had acquired a valuable right to continue in the posts to which they were appointed.

7. The counsel for the respondents further submits that the petitioners have failed to comply with the principles of natural justice inasmuch as no notice was issued to the respondents to show cause as to why their appointment letters should not be cancelled and their services should not be terminated. Therefore, the impugned cancellation of appointment letters being violative of the principles of natural justice is unsustainable and liable to be quashed.

8. The counsel for the respondents also contends that except for making a bald assertion about miscalculation of vacancies the petitioners have not produced any material before the Tribunal in support of the said assertion and therefore, the action of the petitioners in terminating the services of the respondents is arbitrary and illegal and hence liable to be quashed. To substantiate his arguments learned counsel for the respondents has relied on Director General of Posts and Others Vs. K. Chandrashekar Rao, wherein the Apex Court has discussed the scope, interpretation and applicability of the office memorandums issued by the Government of India containing the scheme for compassionate appointment.

9. We have heard the learned Counsel for the parties in detail and considered their rival submissions and have also perused the detailed record which was before the Tribunal, copies of which were produced before this Court.

10. We are informed that an order of status quo was already passed in this matter. With regard to the period when the respondents have not worked, counsel for the respondents on instructions undertakes to the Court that the respondents would not claim any benefit for that period.

11. In the present writ petition what falls for our consideration is whether the appointment of the respondents on compassionate ground is valid and sustainable in law?

12. At the outset, before delving into the merits of the submissions made by the parties, the admitted position of the case is that the Government of India had issued a circular dated 9th October, 1998 declaring its policy in the form of a scheme for compassionate appointment with an object to give a source of employment to the dependent family members of the government servant dying in harness or one who has retired on medical grounds. This scheme was declared on 9th October, 1998. The scheme stipulated that the compassionate appointment could be made upto a maximum of 5 per cent of the vacancies falling under Direct Recruitment Quota in Group "C" or "D" post.

13. Before we proceed to appreciate the entitlement of the respondents for a particular post on compassionate basis, we think it necessary to refer to certain pronouncements in the field pertaining to compassionate appointment itself. In Umesh Kumar Nagpal Vs. State of Haryana and Others, while dealing with the concept of compassionate appointment the Court has observed that the whole object of granting compassionate employment is 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 and it is only if it is satisfied that the family will not be able to meet the crisis then 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.

14. In Director General of Posts and Others Vs. K. Chandrashekar Rao, , the Hon"ble Supreme Court had discussed the object of the Scheme of 1998 framed by the Government of India for compassionate appointment and observed as under:

"the Scheme of 1998 for compassionate appointment is a welfare activity carried out by the Government of India. It is a benevolent act on the part of the State. Keeping in view the dire economic and social crisis to which the family of a deceased government employee in Class "C" or "D" is exposed, the government through this Scheme offers a helping hand. This is a voluntary act of generosity on the part of the State. The generosity once extended in the form of exercise of a subordinate legislative power by formulating the said Scheme, will have the force of law. It is enforceable to its limited extent and within its prescribed parameters. The purpose of the 1998 Scheme was to provide employment and preferably as part of the regular cadre subject to availability of vacancies. Then the Central Government issued Office Memorandum dated 16th May, 2001. This Memorandum did not refer to the circular of 1998 as such, however, the essence of this memorandum was that while presenting the Budget for the year 2001-2002, the Finance Minister stated that "all requirements of recruitment will be scrutinized to ensure that fresh recruitment is limited to 1 per cent of total civil staff strength. As about 3 per cent of the staff retire every year, this will reduce the manpower by 2 per cent per annum achieving a deduction of 10 per cent in five years as announced by the Prime Minister." Under Clause 2.2 of this Memorandum, it was further stated that while preparing the Annual Recruitment Plans, the concerned screening committees would ensure that direct recruitment does not in any case exceed 1 per cent of the sanctioned strength of the department and accordingly direct recruitment would be limited to 1/3rd of the direct recruitment vacancies arising in the year subject to further restriction that this will not exceed 1 per cent of the total sanctioned strength of the department."

15. From the above mentioned 1998 Scheme, it is clear that on the one hand, the State had formulated a welfare scheme for compassionate appointments, whereas on the other hand, because of limitations of its financial resources it decided to take economic measures by reducing the extent of appointment by

direct recruitment from the financial year 2001-2002. Both these matters falling in the domain of the Government and being matters of policy, the Court is hardly called upon to comment upon either of them. These are the acts which fall in the domain of the State and do not call for any judicial interference. All that we propose to hold is that the State has to abide by the Scheme it has floated for compassionate appointment. The 1998 Scheme floated by the Government should receive a liberal construction and application as it is stated to be a social welfare scheme and largely tilted in favour of the members of the family of the deceased employee. The purpose appears to be to provide them with recruitment on a regular basis rather than circumvent the same by adopting any other measure. That is the reason why the Government specifically states in its Scheme that efforts should be made to appoint the members of a distressed family to the post provided that he/she satisfies the other parameters stated in the Scheme.

16. The respondents were admittedly appointed on compassionate ground to the post in furtherance to the 1998 Scheme, in the year 2002 and continued to work upto 16.10.2012 based on the status quo order passed by the Hon"ble High Court of Uttarakhand and no steps were taken by the petitioners for vacation of the interim order. The stay order was vacated only on 16.10.2012 when the writ petitions were dismissed with liberty to the petitioners to approach the Central Administrative Tribunal. Even in the OA filed before the Tribunal, by an order dated 17.12.2012, parties were directed to maintain status quo and no steps were taken by the petitioners for vacation of the interim order. The rights of these persons had been settled, the respondents had been appointed to the posts and they had already worked in their respective posts before the notice of termination were issued to them. No clarification or material has been placed by the Government before us to support the contention that due to miscalculation, these persons were appointed in excess of the posts provided under the Scheme. The rights of the respondents which had been settled could not be re-settled now. The stand of the petitioners that it was a discrepancy or miscalculation does not stand to any reason and must be rejected.

17. With regard to the contention of the respondents that the existing status of the respondents should not be disturbed by this Court, the attention of this Court has been drawn to Union of India (UOI) and Others Vs. K.P. Tiwari, , where the Hon"ble Supreme Court noticed in para 4 of the judgment as under:

"...it is unnecessary in this case to examine either questions of law or fact arising in the matter. Suffice to say that the Respondent has been appointed now and has been in service for more than five years. We do not think, it would be appropriate to disturb that state of affairs by making any other order resulting in uprooting the Respondent from his livelihood"

18. As is evident from various judgments, it is not appropriate to disturb the appointment of the respondents at this stage. We may usefully refer to Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, , wherein the

Hon"ble Supreme Court held as under:

"19. Mr. Bhasme further contended that family members of a large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the employee concerned. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Roscoe Pound pointed out the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whatever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction."

In the above case, the Court has placed emphasis upon the concept of socio-economic justice and granted relief to the Appellant and, in addition, directed employment of one of the family members.

19. In view of the above settled position of law and the fact and circumstances of the present case, we do not consider it appropriate to interfere with the order of the learned Tribunal. The spirit of the Scheme was to provide relief to the family members of the deceased persons and thus on the yardstick of social justice, such relief cannot be withdrawn on the ground of some alleged discrepancy which has not been supported by any clarification, is unreasonable and therefore, even unsustainable. The petitioners must state appropriate reasons and provide the expected data on record if they expect the Court to come to a different conclusion.

20. For the reasons afore-mentioned, the writ petition stands disposed of with no back-wages for the period when the respondents had not worked. No orders as to costs.