
(2011) 05 AHC CK 0275

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 18834 of 2011

Union of India (UOI) and Others

APPELLANT

Vs

Phool Chand Pal and Another

RESPONDENT

Date of Decision : 12-05-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 6 ADJ 917

Hon'ble Judges : Sabhajeet Yadav, J;S.K. Singh, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

S.K. Singh, J.—Heard Sri R.B. Singhal, learned Asstt. Solicitor General of India who appeared for the Petitioner and Sri L.M. Singh learned Advocate for the Respondents.

2. This writ petition is directed against the judgment of the Central Administrative Tribunal dated 10.12.2010 passed in O.A. No. 1468 of 2010 filed by Respondent No. 1.

3. By the impugned decision the applicant has been directed to be placed at serial No. 1 in the wait listed candidates for giving compassionate appointment and that is to be considered in the next meeting.

4. There is further direction that claim of the applicant is not to be rejected for delay and in view of his age.

5. Writ petition was just filed as a fresh and at the first hearing learned Counsel for the Respondents even did not ask for time to file counter affidavit, and therefore, whatever materials are on record, arguments were heard.

6. For passing appropriate orders at this stage brief facts noticed below will suffice.

7. Moti Lal was appointed/engaged as Labour in Garrison Engineer Project, Midssarrari who is said to have died on 13th May, 1989 (somewhere mentioned on 3.3.1989). Two sons and one daughter (as mentioned at pages 29/47 of the record) were left behind.

8. On 19.6.89 Sumitra Guwala, second wife moved application informing the department about death of Moti Lal on 13.5.1989. It is thereafter correspondences proceeded and department informed the first wife namely Saharaja Devi, resident of Allahabad which is shown in the record about the death of her husband. For the first time on 24.2.1995 i.e. after about six year applicant (Phool Chand) moved application for giving him compassionate appointment.

9. Before the present O.A. i.e. O.A. No. 1468 of 2010 which has been allowed on 10.12.2010 applicant approached the Tribunal thrice by filing O.A. No. 1039 of 1999 which was disposed of on 15.9.99, O.A. No. 856 of 2000 which was disposed of on 7.11.2000 and O.A. No. 1255 of 2002 which was disposed of on 14.3.2006.

10. All the times the Tribunal directed for passing of appropriate speaking orders and to consider the applicant's claim.

11. The department passed orders time and again informing the applicant about consideration of his claim and his position in the list and marks so received and his place in the wait list and at the same time by orders dated 9.3.2010, 17.4.2010, 30.8.2007 rejecting his claim by assigning various reasons including the delay part as well. It is in the aforesaid background of the fact now the Tribunal by its judgment dated 10.12.2010 has finally allowed O.A. and gave positive direction for appointment of applicant, placing him at serial No. 1 by relaxing the age and by condoning the delay.

12. Learned Counsel for the Petitioner submits that admittedly application was filed by Respondent No. 1 for the first time after about six years of the death of his father. It is further submitted that the deceased left behind two sons and one daughter (page 29/47 of the writ petition).

13. Argument is that giving of compassionate appointment is not absolute right of the claimant as providing of compassionate appointment under the scheme has a purpose.

14. Submission is that the object is to enable the family to get over from financial crisis which it faces at the time of death of the sole bread-earner and compassionate appointment cannot be claimed/offered after lapse of time and after crisis is over.

15. Argument is that deceased left behind him two sons and one daughter and he applied after about six years of the death and now after the death about 20-21 year has passed, therefore, direction of the Tribunal for giving compassionate appointment placing the Respondent No. 1 at serial number 1

after relaxing the age and delay is totally unjustified.

16. At this stage it is to be noticed that after the death of Moti Lal the dispute of payment of pensionary benefits was also raised and mother of the applicant viz. Saharaja Devi filed O.A. No. 895 of 1999 in which the Tribunal on 15.9.2000 ruled that the second marriage is void and the daughter was permitted to be paid half of the benefit and half of the retiral benefit was permitted to be paid to Saharaja Devi and accordingly payments were ensured by the department.

17. It is also to be noticed that in paragraph 22 of the writ petition it is stated that Moti Lal remained absent from duty from 20.9.1981 upto 3.3.1989 (which may be 13.5.1989) i.e. upto the time of death, and therefore treating the case as a case under Dying in Harness Rules is also not proper.

18. Here the court can hurriedly add that in these kind of matters the principle that who caused the delay, how it so happened, why it should not have happened, are not the matters of much investigation after such a long as that can be an issue for the purposes of fixing the liability and the effect on its proof.

19. At the same time the onus for proving about no delay in the move from applicant side and he/she not being in a position to meet the daily needs of the family is certainly on the claimant and it is on a specific pleading and proof in this respect the employer side will be called upon to meet and answer the same and thus on the basis of assumptions and suppositions, only by assuming the class being poor one, the continuance of the need for all the time and then providing of the employment after any number of years i.e. now after 20-21 years, as the case in hand will neither be proper nor will fit in with the scheme with which policy was enacted.

20. We are again to be reminded that getting employment on the death of an employee is not as a matter of right by the claimant and it is dependent on proof of certain relevant factors and thus by pointing out some slackness on the part of employer, irrespective of no pleading, no proof about need grant to the claimant will be a sheer charity, in clear violation of Article 14 and 16 of the Constitution of India. Something if is made available to a claimant over and above he is otherwise getting then certainly it will be help to him and to his family but he is not getting that by his merit, right but if he is to just get it by sheer grace then he has to immediately apply with a proof of his family position, his need and it is on satisfaction of these facts to the employer the claimant can get it and, therefore, the argument of the Respondents just of taking lenient approach for his no fault, not founded by pleadings, evidence can be only a matter of sharing of the feeling and sorrow but that may not be executable in the light of law laid down by the Apex Court and also by this Court.

21. The court can refer to some of the decisions of the Apex Court on the issue.

22. In case of Umesh Kumar Nagpal Vs. State of Haryana and Others, following observations were made-

For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration of 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 crises which it faces at the time of death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

(Emphasis supplied)

23. In another decision given by the Apex Court in case of Union of India (UOI) and Others Vs. Bhagwan Singh, following observations were made-

6. The facts of this case disclose that on the date when Ram Singh died (12.9.1972) he had, besides the Respondent, who was a minor then, two major sons and a wife. The two major sons and the wife did not seek any appointment on compassionate grounds. As stated by this Court in Smt. Sushma Gosain v. Union of India (SCC p. 470, para 9)

...in all claims for appointment on compassionate ground, there should not be any delay in appointment, The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family, such appointment should, therefore, be provided immediately to redeem the family in distress.

(Emphasis supplied)

7. The above decision was followed in Smt. Phoolwati Vs. Union of India and Others, The reason for making compassionate appointment which is exceptional, is to provide immediate financial assistance to, the family of a Government servant who dies in harness, when there is no other earning member in the family. Matters which should be considered while giving an appointment in public services on compassionate grounds have been laid down by a Bench of this Court in Umesh Kumar Nagpal Vs. State of Haryana and Others, to the following effect: (SCC pp. 139-40, para 2)

As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every cases, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful

employment to one of the dependents of the deceased who may be eligible for such employment. 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....."

(Emphasis supplied)

It is settled law, that even if the Court reaches the conclusion that the applicant has made out a case, all that the High Court or Administrative Tribunal can do, is only to direct the authority concerned to consider the claim of the applicant in accordance with relevant law or rules, if any. (See: *State of Haryana v. Naresh Kumar Bali*)

(Emphasis supplied in this order)

8. It is evident, that the facts in this case point out, that the plea for compassionate employment is not to enable the family to tide over the sudden crisis or distress which resulted as early as September, 1972. At the time Ram Singh died on 12.9.1972 there were two major sons and the mother of the children who were apparently capable of meeting the needs in the family and so they did not apply for any job on compassionate grounds. For nearly 20 years, the family has pulled on, apparently without any difficulty. In this background, we are of the view that the Central Administrative Tribunal acted illegally and wholly without jurisdiction in directing the Authorities to consider the case of the Respondent for appointment on compassionate grounds and to provide him with an appointment, if he is found suitable. We set aside the order of the Tribunal dated 22.2.1993. The appeal is allowed. There shall be no order as to costs.

(Emphasis supplied)

24. In another decision given by the Apex Court in the case of *State Bank of India and Anr. v. Raj Kumar* reported in (2010) 11 SCC 661, the following observations were made by the Apex Court

It is now well settled that appointment on compassionate grounds is not a source of recruitment. On the other hand it is an exception to the general rule that recruitment to public services should be on the basis of merit, by an open invitation providing equal opportunity to all eligible persons to participate in the selection process. The dependents of employees, who die in harness, do not have any special claim or right to employment, except by way of concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for

compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.

(Emphasis supplied)

25. In the case of State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir , following observations were made by the Apex Court-

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 the 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 from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say "goodbye" to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.

(Emphasis supplied)

26. There is another decision which has been recently given by the Apex Court in case of Union of India and Anr. v. B. Kishore reported in JT 2011 (4) SC 77.

27. In the aforesaid case employee died in September, 1993 and request for compassionate appointment was made in January, 1994. The Bench of High Court allowed writ petition. The observation as made by the Apex Court in the aforesaid judgment is hereby quoted-

On going through the judgment passed by the High Court, it is evident that it is based on a complete misconception about the scheme of compassionate appointments. Contrary to the High Court's observation, indigence of the departments of the deceased employee is the first pre-condition to bring the case under the scheme of "compassionate appointments". The very purpose and object of the scheme is to provide immediate succour to the family of an employee that, on his death, may suddenly find itself in a state of destitution. If the element of indigence and the need to provide immediate assistance for relief from financial deprivation is taken out from the scheme of compassionate appointments, it would turn out to be a reservation in favour of the dependents of an employee who died while inservice which would be directly in conflict with the ideal of equality guaranteed under Articles 14 and 16 of the Constitution.

(Emphasis supplied)

28. In another recent decision given by the Apex Court in case of Local Administration Department and Anr. v. M. Selvanayagam @ Kumaravelu reported in JT 2011 (4) SC 30 the same view has been reiterated.

29. In the aforesaid judgment of Local Administration Department (Supra) the application was moved after about five and half years of the death which happened in the year 1988. The claim of the applicant was denied and the writ petition was also dismissed by the learned Single Judge and then by the Division Bench the claim of the applicant was allowed. The Apex Court set aside Division Bench decision of the High Court and allowed the Civil Appeal. The observations as made in the recent decision of the Apex Court, noted below is hereby quoted-

Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies etc. normally the appointment may come after several months or even after two or three years. It is not our intent, nor it is possible to lay down a right time limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

In such a case, the appointment cannot be said to be sub-serve the basic object and purpose of the scheme.

(Emphasis supplied by us)

In the facts of the case, the municipal authorities were clearly right in holding that with whatever difficulty, the family of Meenakrisundaram had been able to tide over the first impact of his death. That being the position, the case of the Respondent did not come under the scheme of compassionate appointments.

30. At this stage some of the decisions, referred by the learned Counsel for the Respondents are also to be taken note-

31. In case of Subhash Yadav v. State of U.P. and Ors. reported in 2011 (1) ESC 136 (All)(DB) the Bench of this Court remitted the matter back to the department to examine the claim as the State Government has power to relax the time factor. This is not the situation here.

32. Here is the case where final direction has been given by the Tribunal to place the applicant at S. No. 1 for giving appointment after relaxing the age and other criteria.

33. Another decision in case of Jagwati Devi v. Union of India and others given by the Delhi High Court reported in 2003 (1) ESC 637 has been referred in which application was rejected on the ground of change of policy and thus direction was given to consider the claim as stood before the change of the policy as application was filed earlier.

34. In another decision given in case of Bank of Maharashtra and Anr. v. Manoj

Kumar Dharia and Anr. reported in 1010 (126) FLR 1092 application was directed to be considered according to the old policy.

35. In another decision given in case of T. Swamy Das v. Union of India reported in 2003 (1) ATJ 367 the same view has been reiterated i.e. consideration of the application according to the old policy.

36. Thus from the aforesaid discussion following fact appears to be clear, subject to response and placing material from the Respondent i.e.

i) Claim for appointment was made after about six years of death.

ii) Two sons of deceased were there at the time of death.

iii) In the original application filed by the lady half of the retiral benefit was permitted to be given to her and half to the daughter by the Tribunal.

iv) Deceased was absent from duty from 1981 upto 1989 i.e. upto the time of his death as stated in para 22 of the writ petition.

v) Thrice Tribunal gave direction for consideration upon which matter was considered and final orders were passed negating the claim of the Respondent.

vi) Now in all, about 20-21 year has passed and family survived.

vii) No specific pleading, evidence or proof is there about immediate or otherwise need.

viii) Delay, if any, now if is to be considered then who is at fault and why that occasioned will be another matter of probe.

ix) Department already negated the claim of the Respondent thrice and thus whether showing some leniency or grace giving of the compassionate appointment is a compulsion.

x) Claim of getting appointment is not as a matter of right and that is dependent on specific pleadings and establishing certain facts in the light of settled preposition.

37. In the light of the factual matrix about which apparently there is no dispute, I am of the prima facie view that the writ petition is to be entertained and a prompt decision on merits after giving time to the Respondent to file counter affidavit will be in the ends of justice.

38. Learned Counsel who appeared for Respondent No. 1 has not prayed for grant of time but as it is a fresh case, the court is of the view that reasonable time is to be allowed to file counter affidavit.

39. Learned Counsel for the Respondent No. 1 is allowed six week time to file counter affidavit.

40. Writ petition is to be listed thereafter.

41. As an interim measure the Court directs that operation of the impugned judgment of the Tribunal dated 10.12.2010 will remain stayed till next date of listing.