

(2013) 01 JH CK 0153
In the Jharkhand High Court
Case No : W.P. (S) No. 5088 of 2006

Urmila Devi

APPELLANT

Vs

Steel Authority of India Ltd. and Others

RESPONDENT

Date of Decision : 30-01-2013

Acts Referred:

Citation : (2013) 2 AJR 408

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Aparesh Kumar Singh, J.—Heard counsel for the parties. The petitioner's claim for compassionate appointment has been rejected by letter dated 09th May 2006 issued by the Assistant Manager (Pers/TA) as contained in annexure-9 to this writ application. The grounds for rejection are that as per the existing policy applicable to SAIL/BSL, direct dependent of employees are considered for substitution when the employee is suffering from dreaded diseases like Cancer, Aids, total Renal Failure or total paralysis resulting in such employees becoming unproductive. Respondents have rejected the claim of the petitioner on the ground that the application for compassionate appointment was made after the death of the employee in harness and not during his service for substitution on the ground that the employee was suffering from the enumerated dreaded diseases which were covered under the said scheme of 1997. It is the petitioner's case that her husband who was driver in N.P. Biological Park under Bokaro Steel Limited, died due to kidney failure on 29th October 2002 after having served the company for 22 years 03 months and 14 days. She made a representation on 11th December 2002 for compassionate appointment in view of the Circular dated 02nd May 2001. Thereafter, it was followed up an appropriate application before the Deputy Chief Personnel Manager, in view of the letter dated 24th February 2003 issued by the respondents asking her to make an application for compassionate appointment. The petitioner earlier came

before this court in WPS No. 6667/2005 which was disposed of on 29th March 2006 with a direction to the respondents to consider the claim of the petitioner for compassionate appointment within a stipulated period. The petitioner has made out a case that other persons have been granted compassionate appointment while the petitioner has been discriminated under the same Circular. From perusal of the Circular which is annexed as annexure-5, it appears that it has been issued by the Raw Material Division of Steel Authority of India Limited, Kolkata to cover the cases of employee under the Raw Material Division having died in harness on the basis of their seniority and other conditions being fulfilled.

2. Respondents, on the other hand, have brought on record the scheme which is annexed as annexure-A to the supplementary counter affidavit which also provides for eligibility criteria for being considered under the said scheme. The scheme is labelled as "Scheme for Substitution of Employment for Employees suffering from Dreaded Diseases". The eligibility criteria provides that only one direct dependent (adult male, child or young male spouse) of the employee suffering from the disease will be considered for the substitution normally. However, in exceptional situation where no male dependent is available in the family, a young female dependent may be considered at the discretion of the management and subject to suitability for the post available for substitution. The dreaded diseases are indicated such as like Cancer, Aids, total Renal Failure or total paralysis resulting in such crippling of body movement with no chances of revival. The scheme provides that it shall remain in force until further orders and has been issued on 18th August 1997. Annexure-B is another Circular dated 20th February 2010 which provides for guidelines and procedure for dealing with compassionate cases to bring in uniformity in dealing with compassionate cases under the respondent Steel Authority of India Limited. Under the scheme of 2010, the coverage is extended in case of death or permanent total disablement due to accident arising out of and in course of employment. It further provides coverage in case of an employee declared incapable to perform normal duty due to his/her physical/mental incapacity due to suffering from chronic debilitating diseases. It is the case of the respondents that the scheme of 1997 invoked at the time when the claim of the petitioner was raised in December 2002 and 2003, there was no provision for grant of compassionate appointment on the death of the employee in harness. It is their specific case that the scheme in vogue in 1997 only provides for substitution of the employee by his direct dependent on his being declared to be suffering from either of the dreaded diseases enumerated in the scheme itself. However, admittedly, the husband of the petitioner had made no such application during his lifetime. In that view of the matter, respondent justified the issuance of the impugned order rejecting the petitioner's claim for compassionate appointment on the ground of being not covered under the scheme in vogue. Respondents have relied upon paragraphs-15 & 20 of the judgment rendered in the case of Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, which is quoted herein below:

15. Now, it is well settled that compassionate employment is given solely on

humanitarian grounds with the sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis and cannot be claimed as a matter of right. Appointment based solely on descent is inimical to our constitutional scheme, and ordinarily public employment must be strictly on the basis of open invitation of applications and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of appointment is permissible. Nevertheless, the concept of compassionate appointment has been recognised as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of an employer, which partakes the character of the service rules. That being so, it needs little emphasis that the scheme or the policy, as the case may be, is binding both on the employer and the employee. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

20. Thus, while considering a claim for employment on compassionate ground, the following factors have to be borne in mind:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV Posts.

3. Counsel for the respondents further submits that the scheme issued on 02nd May 2001, which is relied upon by the petitioner, is specific to the Raw Material Division, a Unit of Steel Authority of India Limited stationed at Kolkata which is separate and distinct from the Bokaro Steel Plant, another Unit of the Steel Authority of India Limited and the same has also been taken care of in the impugned order itself. The said scheme is inapplicable to the petitioner's case.

4. I have heard counsel for the parties at length and gone through the relevant materials on record including the impugned order. The law for grant of compassionate appointment has now been well settled in view of the judgment

rendered by the Supreme Court from time to time. Respondents have relied upon the case of Bhawani Prasad Sonkar (Supra). In this regard, this court is benefited by the latest pronouncement by the Hon''ble Supreme Court in the case reported in The Chief Commissioner, Central Excise and Customs, Lucknow and Others Vs. Prabhat Singh, . The opinion of the Hon''ble Supreme Court, as contained in paragraphs 14, 15 & 16, are apposite and are quoted herein-below:

14. We are constrained to record that even compassionate appointments are regulated by norms. Where such norms have been laid down, the same have to be strictly followed. Where claims for appointment on compassionate ground, exceed, the available vacancies (which can be filled up by way of compassionate appointment), a selection process has to be adopted by the competent authority. The said process necessarily has to be fair, and based on a comparative compassion gradient of eligible candidates, or on some such like criterion having a nexus to the object sought to be achieved. In other words, where there are two candidates but only one vacancy is available, there should be a clear, transparent and objective criterion to determine which of the two should be chosen. In the absence of a prescribed criteria, a fair selection process has to be followed, so that, the exercise carried out in choosing one of the two candidates against a solitary available vacancy, can be shown to be based on reason, fair-play and non arbitrariness.

15. The very object of making provision for appointment on compassionate ground is to provide succor to a family dependent on a government employee, who has unfortunately died in harness. On such death, the family suddenly finds itself in dire straits, on account of the absence of its sole bread winner. Delay in seeking such a claim, is an ante thesis, for the purpose for which compassionate appointment was conceived. Delay in raising such a claim, is contradictory to the object sought to be achieved. The instant controversy reveals that even though Vijay Bahadur Singh, the father of the applicant (Prabhat Singh) seeking appointment on compassionate ground had died on 2.3.1996, Prabhat Singh sought judicial redress, for the first time, by approaching the CAT-Allahabad Bench in 2005. By such time, there was no surviving right for appointment on compassionate ground under the OM dated 5.5.2003. As already noticed above, appointment on compassionate ground under the OM dated 5.5.2003 is permissible within three years of the death of the bread winner in harness. By now, sixteen years have passed by, and as such, there can be no surviving claim for compassionate appointment.

16. Courts and Tribunals should not fall prey to any sympathy syndrome, so as to issue directions for compassionate appointments, without reference to the prescribed norms. Courts are not supposed to carry Santa Clauses big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court''s intervention. Courts and Tribunals must understand, that every such act of sympathy, compassion and discretion, wherein directions are issued for appointment on compassionate ground, could deprive a really needy

family requiring financial support, and thereby, push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are misplaced sympathy and compassion.

5. From the judgments rendered by the Hon''ble Supreme Court of India, extracts of which have been quoted herein above, it is obvious that the grant of compassionate appointments are regulated by norms which have to be strictly followed. However, the very object of making provision for appointment on compassionate ground is to provide succor to a family dependent on a government employee who has unfortunately died in harness. The Hon''ble Supreme Court has further given a note of advise upon the courts and tribunals that it should not fall prey to any sympathy syndrome so as to issue directions for compassionate appointments without reference to the prescribed norms. In the language of the Hon''ble Supreme Court of India, the courts are not supposed to carry Santa Clause's big bag on Christmas eve, to disburse the gift of compassionate appointment, to all those who seek a court intervention. A note of caution has also been given that such acts of sympathy, compassion and discretion, could deprive a really needy family requiring financial support and thereby push into penury a truly indigent, destitute and impoverish family. Discretion is therefore ruled out. So are, misplaced sympathy and compassion. From the facts which have been brought on record, it is apparent that under the scheme of 1997 which was in vogue under the respondent Bokaro Steel Plant, there was no provision for grant of compassionate appointment on the death of an employee. In these circumstances, since no application was made during the lifetime of the employee concerned for his substitution by one of his direct dependent, the respondents cannot be faulted for having refused the claim for compassionate appointment. The writ petition is accordingly dismissed as no interference is required in the impugned order.