
(1996) 11 AHC CK 0084

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition Nos. 22970 of 1989

Vijai Kumar and Am.

APPELLANT

Vs

U.P.State Cement Corporation Ltd.& Anr.

RESPONDENT

Date of Decision : 22-11-1996

Acts Referred:

Citation : (1996) 11 AHC CK 0084

Hon'ble Judges : B.S.Chauhan, J

Final Decision : Allowed

Judgement

Dr. B.S. Chauhan, J.—The fatherinlaw of petitioner No. 1 dies in harness on 1341989 while in service with respondents and the father of petitioner No. 2, who was working as a Wagon Drill Operator in Grade A in Cement Factory, Churk, Quarry Gurma, died on 2689. The husband of petitioner No. 1 and petitioner No 2 applied for giving appointment in kith ana kin policy in accordance with the rules known as U.P. Dependent of Government Servants Dying in Harness Rules, 1974 (here in after called as the rules), which have been made applicable to the respondents as well. As they were not given employment, they approached this Court for issuing a direction to the respondents to give them employment on compassionate ground on ClassIII posts. This Court, vide its order dated 2293 issued an interim mandamus to the respondents to consider their case for compassionate employment or to show cause.

2. The respondents preferred to show cause and filed their reply to the writ petition. The main ground taken by the respondents is that the aforesaid rules were made applicable in case of respondents vide Government Order dated 31st August, 1991 and the said Government Order was communicated to the General Manager by means of a communication dated 521992, therefore, the petitioners cannot claim any benefit under the said rules, as the employees had died prior to the date of said Government Order.

3. In reply to the averments made by the petitioners that the respondents had been giving compassionate employment even prior to the issuance of the said

order and to the illustrations taken by the petitioners the respondents have made a specific reply to the said allegations to the effect that the Chairman and the Managing Director of respondent company issued an order dated 17th November, 1982 to provide the compassionate employment to the dependents of persons dying in harness. However, due to the changed circumstances, economic, financial and working condition of the factory, the Chairman issued another order dated 16th June, 1986 for not providing such an employment. The said orders have been annexed as Annexures CA2 and CA3 to the counteraffidavit. In the additional counteraffidavit a similar explanation has been given for the employment given to the persons on compassionate ground, after 16686. It has specifically been mentioned that such dependents were given employment on casual vacancies.

4. Heard Shri AshokBhushan, learned counsel for the petitioners and Shri Dilip Gupta, learned counsel for the respondents.

5. In Smt. Sushma Gosain and others v. Union of India and others, AIR 1989 SC 1976, the Apex Court observed that the purpose of providing such appointment is to mitigate the hardship due to the death of the bread earner in the family, such employment should, therefore, be provided immediately to redeem the family in distress and there should be no unreasonable delay in making such appointment.

6. Similar view was taken by the Supreme Court in Smt. Phoolwati v. Union of India, AIR 1991 SC 469.

7. This issue was further considered by the Apex Court in Umesh Kumar Nagpal v. State of Haryana and others, 1994 (4) SCC 138, wherein the Apex Court has observed that the appointments in public service should be made strictly in accordance with the requirement rules on the basis of open invitation of applications and merits. However, to this general rule, some exceptions can be carved out in the interest of justice and to meet certain contingencies. One such exception can be made, out of pure human consideration, to provide employment on compassionate ground to the dependent of employee dying in harness and lying his family in penury and without any means of livelihood. However, such employment should be claimed with in a reasonable period and it cannot be claimed and offered whatever the lapse of time after the crises is over.

8. Similar view has been taken by the Apex Court in Jagdish Prasad v. State of Bihar, 1996 (1) SCC 301 and Hararyana State Electricity Board v. Naresh Tanwar and anothers, 1996 (2)3 T 542.

9. Shri Dilip Gupta, learned counsel for the respondents has vehemently urged that the rules were made applicable with effect from 31891 and petitioner cannot claim any benefit under the said rules as said employees of corporation had died prior to the said cut of date and this Court cannot issue any direction in contravention of law, even out of sympathetic consideration.

10. In *Martin Bum Ltd. v. Corporation of Calcutta*, AIR 1966 SC 529, the Apex Court has observed that a Court cannot ignore the provisions of law and a statute must be given effect to whether a Court likes the result or not.

11. In *Life Insurance Corporation of India v. Asha Ram Chandra Ambedkar and another*, 1994 (2) SCC 718, the Supreme Court considered the case of compassionate employment and observed as under:

"The Court should endeavour to find out whether a particular case in which sympathetic considerations are to be made falls within the scope of law. Disregard of law, however, hard the case may be it should never be done.....

Appellant Corporation being a statutory corporation is bound by the Life Insurance Corporation Act as well as the Statutory Regulations and instructions. They cannot be put aside and compassionate appointment be ordered.....

It is true that there may be pitiable situation on that score, statutory provisions cannot be put aside."

12. Similarly, in *Himachal Road Corporation v. Dinesh Kumar*, 1996 (4) SCC 395, the Apex Court has held that a compassionate employment can be offered by a statutory body only if a vacancy is available and if it is permissible "in the light of the relevant rules" and further held that it is not permissible for the Court or Tribunal to direct the concerned authority to create a supernumerary post and appoint a person on compassionate ground to such a post. The appointment even on compassionate ground cannot be made hors Rules.

13. In *Umesh Kumar Nagpal v. State of Haryana*, (supra) the Apex Court has emphasised to give due regard and enforce the rules or the executive instructions issued for the purpose of giving compassionate employment. The Court observed as under:

"It is needless to emphasise that the provisions for compassionate employment have necessarily to be made by the rules or by the executive instructions issued by the Government or the public authority concerned."

14. In *Hindustan Aeronautics Ltd. v. Smt. A. Radhika Thirumalai*, 1996 (9) JT 197, the Hon'ble Supreme Court after considering all its earlier judgments has held that the appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been framed by the concerned authority.

15. Shri Ashok Bhushan, learned counsel for the petitioners has urged that as other persons had been given employment even prior to the commencement of the rules, the petitioners are entitled for the same treatment. He further placed reliance upon a Division Bench decision of this Court in *Khalid Ansar Hameed and another v. Aligarh Muslim University and another*, 1986 ALJ 1313, wherein the Division Bench has relied upon the judgment of the Supreme Court in *Sengara Singh v. State of Punjab*, AIR 1984 SC 1499, wherein the Supreme Court had

observed that vice of arbitrariness would fall within the ambit of Article 14 of the Constitution of India and further relied upon the case in *Vishnudas Handumal v. State of M.P.*, AIR 1981 SC 1636, wherein it had been held that even an unintended discrimination indulged by the authority has to be rectified by putting every one at par. After placing reliance upon the aforesaid two judgments, this Court observed as under:

"Arbitrary or discriminatory action is destructive of the rule of law and fairness. Direction to authorities to act similarly or uniformly, is not perpetrating an illegality but maintain the social balance"

16. In reply Shri Dilip Gupta has relied upon the judgment of this Court in *Satya Prakash v. U.P Electricity Board and another*, 1995 SCD130 has considered this issue and relied upon the Division Bench judgment of this Court in *Umesh Kumar Srivastava v. State of U.P. and others*, Special Appeal No. 514 of 1992, decided on 191094 and held that the provisions of the said rules have to be strictly construed and the benefits thereof cannot be given to the dependent family member of the deceased employee, who had died prior to the commencement of the rules. The Court further observed as under:

"Even otherwise, a wrong decision in favour of any particular person cannot per se entitle any other person to claim the benefit simply on the basis of the wrong decision and he has to satisfy the requisite eligibility criteria in the and in the absence thereof the benefits sought for cannot be released as otherwise it may amount to perpetuating a wrong which must be avoided."

17. In the same context it may further be mentioned that in the case of *Coromandal Fertilizer Ltd. v. Union of India and others*, 1985 (1) SCR 523, the Supreme Court observed that a wrong decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision.

18. Same view has been taken by the Apex Court in *Madras Fertilizers Ltd. v. Assistant Collector of Central Excise*, 1994 (1) JT 150.

19. Similarly, in *The Secretary Jaipur Development Authority v. Daulat Mai Jain and others* 1996 (8) JT 387, the Apex Court observed as under:

"Article 14 has no application or justification to legitimise an illegal and illegitimate action. Article 14 proceeds on the premise that a citizen has legal and valid right enforceable at law and persons having similar right and persons similarly circumstanced, cannot be denied of the benefit thereof. Such person cannot be discriminated to deny the same benefit. The rational relationship and legal back up are the foundations to invoke the doctrine of equality in case of persons similarly situated. If some persons derived benefit by illegality and had escaped from the clutches of law, similar persons cannot plead, nor court can countenance that benefit had from infraction of law must be allowed to be retained."

20. Similarly, in *Smt. Sneh Prabha and others v. State of UP and others*, 1996 (7) SCC 426, the Apex Court observed that "even if a benefit is wrongly given in favour of one or two, it does not clothe with a right to perpetuate the wrong and the court cannot give countenance to such action though they are blameworthy and condemnable. Equality clause does not extend to perpetuate wrong nor can anyone equate a right to have the wrong repeated and benefit reaped thereunder."

21. The Court can neither pass any order in contravention of the statutory provisions, [vide *Madamanchi Ramappa and another v. Muthulara Bojjappa*, AIR 1963 SC 1533 and *Gauri Shanker Gaur and others v. State of UP. and others*, AIR 1994 SC 169] nor can direct an authority to act in contravention or refrain from acting in consonance of law, [vide *State of U.P. v. Harish Chandra*, 1996 (9) SCC 309 and *Union of India v. Kirloskar Pneumatic Company Ltd*, 1996 (5) SCC 26.

22. In view of the law above mentioned, the instant case is examined. In fact the said order dated 31891 clearly provides that the benefit under the said Rules of 1974 shall be made available from 31891 to the dependents of employees, who died in harness. It does not say that the benefit shall be given to dependents of the employee who died on or after 31891. Therefore, if the order is examined in its proper and correct perspective and in the light of the object it tends to achieve, the only possible conclusion one may reach is that the dependent of employees who had also died in close proximity of the said cut of date, i.e. 31891 shall also be entitled for the benefit of the rules.

23. While disposing of a bunch of writ petitions No. 29331 of 1990 *Mohan Singh and others v. District Magistrate, Uttarkashi and others*, decided on 81196, this Court has held that the compassionate employment cannot be claimed as vested right and thus in case where the rules do not provide for any limitation, the dependent of the employee who died in harness could not be entitled for such an employment after the lapse of a reasonable period from the date of death of the employee. However, the reasonable time is to be assessed on the facts and circumstances of a particular case.

24. In the instant case the employees had died on 1341989 and 2689 and the rules were made applicable in the case of respondent corporation vide order dated 3891, the intermittent period cannot be treated as unreasonable, particularly in view of the fact that the petitioners had applied immediately after the death of the employees. Had the said order dated 31891 stipulated that the dependent of the employees who died on or after 31891 shall be entitled for such employment the situation could have been entirely different. For example, the regulations framed under the U.P. Intermediate Education Act, 1921 were amended vide notification dated 28892. The said notification specifically provides that the dependent of an employee who died on or after 1181 shall be entitled to be considered for employment under the said regulations. Under the said regulations, it is not open for any dependent of an employee to claim such employment if the employee had died prior to 1181. In the instant case no doubt

the covering letter dated 5292 issued by the Managing Director to the General Manager of the corporation specifically stipulates that the benefit of the said rules shall be given to the dependents of the employees died on or after 31891, but the same cannot be given any effect to being in contravention of the said Government Order dated 31891 and the same is simply to be ignored because even a contract inviolation of law can only be read and enforce in terms of the law and in no other way, vide Union Territory, Chandigarh, Admn. and others v. Managing Society, Goswami, GDSDC 1996 (7) SCC 665 and Dr. S.K. Kacher v. All India Institute of Medical Sciences and others, 1996 (8) JT513.

25. In view of the above, even if the opinion that the petitioners are entitled to be considered for the benefit of the said rules as the employees had died in harness in close proximity of the date on which the said rules were made applicable in the case of respondent Corporation.

26. Thus, the writ petition succeeds and is allowed. Respondents are directed to consider the case of the petitioners for compassionate employment under the said rules with in a period of three months from today.

27. However, there shall be no order as to costs.