
(2009) 04 AHC CK 0312

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 5019 of 2006

Vikas Pandey

APPELLANT

Vs

Banaras Hindu University and Others

RESPONDENT

Date of Decision : 10-04-2009

Acts Referred:

Citation : (2009) 04 AHC CK 0312

Hon'ble Judges : Dilip Gupta, J

Final Decision : Dismissed

Judgement

Dilip Gupta, J.—The petitioner who had sought appointment on compassionate grounds in the Banaras Hindu University (hereinafter referred to as the ""University") has sought the quashing of the order dated 9th June, 2006 by which his claim was rejected. The petitioner has also sought the quashing of the order dated 28/29th September, 2006 whereby the petitioner was informed that this request cannot be accepted as his claim had been rejected earlier.

2. The petitioner claims to be the adopted son of Aditya Narain Pandey who was working as a Group ""D" employee in the University and who had died in harness on 9th May, 1983 while serving as a peon. The petitioner whose date of birth is 10th June, 1980 was, therefore, only three years old when Aditya Narain Pandey died. The petitioner submitted an application seeking appointment on compassionate ground after he attained majority. This application was received in the office of the Registrar of the University on 20th August, 2003. The University by the communication dated 10/16th November, 2004 informed the petitioner that the request for compassionate appointment was considered by the Appointments Committee of the University in its meeting held on 2nd September, 2004 but the aforesaid Committee did not accept his request because the application was barred by time. The petitioner again submitted an application dated 17th May, 2005 before the University mentioning therein that he had earlier submitted an application before the University when he was a minor but that application was rejected on the ground that appointment could not be given

to a minor. He, therefore, prayed that compassionate appointment may now be given to him. This application was also rejected by the University by the order dated 9th June, 2006. Not being satisfied, the petitioner submitted yet another application dated 7th August, 2006 seeking compassionate appointment. This application was also rejected by the University by the communication dated 28/29th September, 2006 mentioning therein that his case was placed before the Compassionate Appointment Committee of the University which in its meeting held on 29th August, 2006 observed that his case had already been considered and rejected on 30th September, 2005 as being barred by time. The petitioner was also informed that any request made by him in future for this purpose will not be entertained.

3. Sri Lal Babu Lal, learned counsel appearing for the petitioner submitted that even though the petitioner was a minor when Aditya Nath Pandey died in harness on 9th May, 1983 but after attaining majority, the petitioner filed an application in the University on 20th August, 2003 seeking compassionate appointment but the said application was wrongly rejected on the ground that it was filed beyond the period prescribed under the Rules. He further submitted that the University has failed to take into consideration the fact that as a minor the petitioner could not have been granted appointment earlier.

4. Sri Pankaj Naqvi, learned counsel appearing for the respondent University has contended that the Executive Council in its meeting on 18/19th January, 1986 had clearly resolved that request for consideration on compassionate grounds must be made within five years of the death of the employee and subsequent requests cannot be acceded to. He further submitted that the petitioner is seeking appointment on compassionate ground as an adopted son but the affidavit in support of the writ petition has been filed by his father Om Prakash Pandey.

5. In order to appreciate the contentions advanced by the learned counsel for the parties it would first be appropriate to ascertain why compassionate appointment is provided to a member of the deceased employee.

6. The Supreme Court in Commissioner of Public Instructions & Ors. Vs. K.R. Vishwanath, 2005 AIR SCW 4102, dealt at length with the object regarding compassionate ground and observed:

"As was observed in State of Haryana and Ors. v. Rani Devi & Anr. (AIR 1996 SC 2445), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased employee. Strictly this claim cannot be upheld on the touchstone of Article 14 or 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and

16. Appointment on compassionate ground cannot be claimed as a matter of right. Dieinharness Scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In Rani Devi's case (supra) it was held that scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. In Life Insurance Corporation of India v. Asha Ramachandra Ambekar (Mrs.) and Anr. (1994 (2) SCC 718), it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. (1994 (4) SCC 138), that as a rule in public service appointment should be made strictly on the basis of open invitation of application and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration 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. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased."

In Smt. Sushma Gosain and Ors. v. Union of India and Ors. 1989 (4) SCC 468, it was observed that in all claims of appointment on compassionate grounds, 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 breadearner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in Phoolwati (Smt.) v. Union of India and Ors., 1991 Supp (2) SCC 689, and Union of India and Ors. v. Bhagwan Singh 1995 (6) SCC 476. In Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. 1998 (5) SCC 192, it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the

deceased employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision." (emphasis supplied)

7. In *Umesh Kumar Nagpal Vs. State of Haryana & Ors.* reported in (1994) 4 SCC 138 the Supreme Court observed:

"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 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. The posts in Classes III and IV are the lowest posts in nonmanual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destination and to help it get over the emergency.....For these very reasons, the compassionate employment cannot be granted after a lapse of reasonable period which must be specified in the rules. The consideration for 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 crisis which it faces at the time of the 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)

8. The aforesaid decision of the Supreme Court leaves no manner of doubt that though the claim for appointment on compassionate grounds cannot be upheld on the touchstone of Article 14 or 16 of the Constitution but such a claim can be considered to be reasonable and permissible on the basis of sudden crisis occurring in the family of the employee who dies while in service. The appointment on compassionate grounds, therefore, cannot be claimed as a matter of right but can be claimed only in terms of the Rules or Regulations framed in this regard and that the Courts cannot confer "benediction impelled by sympathetic consideration" dehors the Rules. Such an appointment, therefore, should be immediately provided to a member of the family to redeem the sudden financial crisis in the family.

9. The contention of the learned counsel for the petitioner is that he was a minor when his father died in harness and, therefore, he moved the application only when he attained majority.

10. The Supreme Court has time and again dealt with the issue where the applicants who were minor at the time of death of the deceased who died in harness sought appointment on compassionate ground after attaining the age of majority.

11. In *Haryana State Electricity Board & Anr., Vs. Hakim Singh* JT 1997 (8) SC

332, the Supreme Court examined the case of a widow who had applied after a period of 14 years for appointing her son who was only four years old when his father died in harness contending that she could make the application only when her son attained majority. The High Court had allowed the writ petition but while allowing the Appeal, the Supreme Court observed:

"We are of the view that the High Court has erred in over stretching the scope of the compassionate relief provided by the Board in the circulars as above. It appears that High Court would have treated the provision as a lien created by the Board for a dependent of the deceased employee. If the family members of the deceased employee can manage for fourteen years after his death one of his legal heirs cannot put forward a claim as though it is a line of succession by virtue of a right of inheritance. The object of the provisions should not be forgotten that it is to give succor to the family to tide over the sudden financial crisis befallen the dependents on account of the untimely demise of its sole earning member.

12. In Jagdish Prasad Vs. The State of Bihar & Anr., JT 1995 (9) SC 131 the Supreme Court rejected the case of a minor for giving compassionate appointment after he attained majority and observed as follows:

"It is contended for the appellant that when his father died in harness, the appellant was minor; the compassionate circumstances continue to subsist even till date and that, therefore, the Court is required to examine whether the appointment should be made on compassionate grounds. We are afraid, we cannot accede to the contention. The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted, it amounts to another mode of recruitment of the dependent of a deceased Government servant which cannot be encouraged, de hors the recruitment rules."

13. In Haryana State Electricity Board Vs. Naresh Tanwar & Anr., reported in JT 1996 (2) 542, the question of providing compassionate appointment to the heir of the deceased employee of the Haryana State Electricity Board was considered. The widow of the deceased employee made an application after 12 years that since her son had attained majority, he should be given employment on compassionate ground. This was rejected and, therefore, she filed a writ petition in the High Court. The High Court allowed the writ petition holding that the compassionate appointment to achieve its purpose cannot be restricted to 3 years and if assistance to the members of the deceased employee is required to be given, the family member must necessarily attain majority and then become eligible to apply for getting appointment. The Supreme Court allowed the Appeal and set aside the judgment of the High Court observing:

"It has been indicated in the decision of Umesh Kumar Nagpal (Supra) that compassionate appointment cannot be granted after a long lapse of reasonable period and the very purpose of compassionate appointment, as an exception to the general rule of open recruitment, is intended to meet the immediate financial problem being suffered by the members of the family of the deceased employee. In the other decision of this Court in Jagdish Prasad's case, it has been also indicated that the very object of appointment of dependent of deceased employee who died in harness is to relieve immediate hardship and distress caused to the family by sudden demise of the earning member of the family and such consideration cannot be kept binding for years.

It appears to us that the principle of compassionate appointment as indicated in the aforesaid decisions of this Court, is not only reasonable but consistent with the principle of employment in government and public sector. The impugned decisions of the High Court therefore cannot be sustained."

14. In Sanjay Kumar Vs. The State of Bihar & Ors., 2000 (10) SC 156 the Supreme Court again considered the case for compassionate appointment made by a minor after he attained majority and it was observed as follows:

"We are unable to agree with the submissions of the learned senior counsel for the petitioner. This Court has held in a number of cases that compassionate appointment is intended to enable the family of the deceased employee to tide over sudden crisis resulting due to death of the bread earner who had left the family in penury and without any means of livelihood. In fact, such a view has been expressed in the very decision cited by the petitioner in Director of Education and another v. Pushpendra Kumar and others, (supra). It is also significant to notice that, on the date when the first application was made by the petitioner on 2.6.88, the petitioner was a minor and was not eligible for appointment. This is conceded by the petitioner. There cannot be reservation of a vacancy till such time, as the petitioner becomes a major after a number of years, unless there are some specific provisions. The very basis of compassionate appointment is to see that the family gets immediate relief."

15. The aforesaid decisions emphasise that the appointment on compassionate grounds is given to tide over the immediate difficulties faced by the family of the deceased. It has also been emphasized by the Supreme Court that a minor cannot claim appointment on compassionate ground unless the Scheme itself envisages that as and when such a minor becomes a major, he can be appointed without any time consciousness or time limit.

16. In the present case the application was filed after a delay of twenty years and the only reason for the delay is that he was a minor at the time when his father died in harness. The resolution dated 18/19th January, 1986 which deals with compassionate appointment clearly provides that the request for consideration on compassionate grounds must be made within five years of the death of the University employee in harness and subsequent requests will not be

accepted. To grant any relief to him would not only be contrary to the aforesaid resolution but would also be contrary to the decisions of the Supreme Court where the cases of the minors had been considered and rejected on the ground that there cannot be a reservation of vacancy till such time as the minor becomes a major.

17. It is, therefore, not possible for this Court to issue any directions to grant appointment to the petitioner on compassionate grounds.

18. This apart, even after filing of the application in the year 2003, the petition has been filed in the year 2006. This shows that the family had been able to maintain itself for a period of more than 25 years after the death of Aditya Narain Pandey on 9th May, 1983. The petition is also liable to be dismissed on this ground.

19. In this connection reference may be made to the decision of the Supreme Court in State of J&K & Ors., Vs. Sajad Ahmed Mir. 2006 AIR SCW 3708 the Supreme Court observed:

"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 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."

20. There is, therefore, no merit in this petition. It is, accordingly, dismissed.