
(2011) 05 UK CK 0078

In the Uttarakhand High Court

Case No : Special Appeal No. 59 of 2010

Zonal Manager and Others

APPELLANT

Vs

Rajkamal

RESPONDENT

Date of Decision : 16-05-2011

Acts Referred:

Citation : (2011) 05 UK CK 0078

Hon'ble Judges : Barin Ghosh, C.J;Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Barin Ghosh, C.J.—Father of the Respondent was an employee of Appellant, who died in harness on 4.8.1996. In 1990, Appellant framed a policy for giving appointments on compassionate ground, as contained in Circular dated 20.8.1990. The Policy applied to those employees, who died in harness and also to those, who were retired on medical ground before reaching the age of 55 years. In terms of the Policy, it was the zonal managers of the Appellant, who were competent to appoint in the zones. The Policy made it clear that the application for compassionate appointment should be made within one year of the death of the employee. The Policy directed, to the extent to which we are concerned, that "Compassionate Appointments shall be made only in deserving cases where there is no earning member in the family of the deceased/retired and the appointing authority should satisfy about the genuineness of the case". In view of the said Policy, the Respondent applied to the Appellant for compassionate appointment on 14.9.1996.

2. For no just reason, not forthcoming from voluminous pleadings filed before the writ court and before this Court, the said application was not considered until March, 1998, when the Respondent was asked to furnish information as to why in the application, it has not been shown that his sisters were dependent on the deceased. In June, 1998, the Respondent furnished the necessary clarification, even then the application of the Respondent was not considered. On 7.7.1998, a

ban was imposed on appointments on compassionate ground. The ban was lifted only on 5.6.2000. When the ban was lifted on 5.6.2000, the Appellant, by a Circular dated 5.6.2000, imposed a condition in its Policy that the yardstick of poverty line shall be applied to determine financial destitution/penurious condition of the family to decide whether or not, a case deserves consideration for compassionate appointment. It was indicated that, as on that date, according to Planning Commission, the poverty line amounts to those having income of Rs. 1767.20 for a family of 5 members. Circular dated 5.6.2000, however did not indicate whether income of Rs. 1767.20 was monthly or yearly income. Learned Counsel appearing on behalf of the Appellant, however, submitted that the same was monthly income.

3. Upon the ban to appointment on compassionate ground was lifted, in November and December, 2000, the concerned Zonal Office sat down to consider the pending requests for compassionate appointments. It transpired to them that there are 367 requests for compassionate appointments. It also appeared to them that having regard to 5% quota, available for appointment on compassionate ground, 107 posts are available for compassionate appointments. Although, it has not been stated in so many words in the pleadings filed in this Court, but on our enquiry, learned Counsel for the Appellant accepted that the case of Respondent, either on the basis of death or on the basis of application made, came within 107 of the vacancies, as were available. The zonal office, upon consideration of the request made by the Respondent, rejected the case of Respondent, as has been represented before us, but not before the writ court, on the ground "less liability case is of 1996". After having had thus rejected the case of the Respondent, the Zonal Office of the Appellant, by a letter dated 1.6.2002, informed the concerned regional office of the Appellant that the case of Respondent could not be considered for appointment. In the letter, it was not indicated that the request of Respondent for compassionate appointment has been rejected or that reason thereof was "less liability case of 1996". There is no pleading, nor there is any evidence that the contents of letter dated 1.6.2002, referred to above, was communicated in writing to the Respondent. The fact, however, remains that the Respondent was aware that his request for compassionate appointment, made on 14.9.1996, has been rejected and, accordingly, after having acknowledged the same, made a request for appointment to a vacant post of driver, but again on compassionate appointment. The date of making of this request is unknown. In the pleadings, the Appellant has not indicated when it received the said request. It appears that on 20.9.2004, mother of the Respondent was informed by the Appellant to apply for the post of Driver, in furtherance of his application for compassionate appointment. In that letter, no indication was given that the request of the Respondent has been rejected. The letter, by which the Respondent had asked for appointment on the post of Driver, was, therefore, written by him at the behest of the Appellant. Since the Respondent neither got compassionate appointment, nor any proper response to his request, he filed a writ petition in

the year 2005, where though he did not mention about the letter, by which he had asked for appointment on the post of Driver, he annexed the letter dated 20.9.2004, by which he was asked to apply for the post of Driver. A counter affidavit was filed to the writ petition, in which the letter of the Respondent, seeking appointment on the post of Driver, was not relied. When the writ petition was considered, the learned Single Judge also considered the report of a Committee, constituted by the Appellant, dated 25.11.1997, where it was reported that the Respondent and his mother were residing in one room and paying rent of Rs. 500/- per month and that the Respondent is unemployed and that the only source of survival of the family of the Respondent and his mother, was the savings, which were left by deceased employee. The Committee also opined that the family of deceased had no source of income to meet out the living expenditure and the Respondent and his mother were in impecunious condition and, accordingly, recommended that the Respondent may be given an appointment on the basis of his qualification. The learned Single Judge noted that the Respondent was subsequently asked to submit an application for an appointment on the post of driver, which he duly submitted. In the counter affidavit, it was contended by the Appellant, as was noted by the learned Single Judge, that appointment on compassionate ground, cannot be given as a matter of right and that the same is to be considered according to the need and requirement of the concerned Department.

4. The facts, as mentioned above, and in particular imposition of ban, lifting of ban, ground for rejection and the letter of the Respondent acknowledging rejection of his application while asking for appointment on the post of driver, were not brought to the notice of the learned Single Judge when His Lordship dealt with the writ petition. Inasmuch as, the matter was kept pending, in the background of the facts pleaded before the learned Judge for no just reason since 14.9.1996, the learned Judge felt that a positive direction is required to be given and, accordingly, while awarding cost of Rs. 5,000/- in favour of the Respondent, a mandamus was issued upon the Appellant to give appointment to the Respondent on compassionate ground within three months from the date of production of certified copy of the order of the learned Judge. Being aggrieved thereby, the present appeal has been filed and in the appeal, various facts and documents, as mentioned above, have been brought on record.

5. It is the case in the appeal that there were more seekers of compassionate appointments than jobs available and, accordingly, considering the status of the applicants, Zonal Office decided to give compassionate appointment to more deserving people. The Appellant has filed a statement showing cases scrutinized by the Zonal Office for appointment on compassionate ground. Instead of cases of 367 applicants, the statement contains cases of 107 successful candidates and that of the Respondent. In the statement, against the Remark column, it has been stated that the application of the Respondent has been rejected, but as aforesaid, the reason for rejecting the application of the Respondent was "less liability case is of 1996", as has been disclosed in another statement filed by the

Appellant under its heading "recommendation". In such view of the matter, it is reasonable to doubt the informations furnished in the said statement. It has been shown in the said statement that the Respondent and his mother have parental property and some un-irrigated land. Although the said statement is type written, but by hand, Bhargaon, Pauri Garhwal has been written to suggest that the parental property and un-irrigated land is situated at Bhargaon, Pauri Garhwal. The said conduct on the part of the Appellant, smacks confidence. Be that as it may, a look at the said statement would suggest that except a few, almost all the 107 people, who were fortunate to get appointments, had applied at least one year after the Respondent had applied for compassionate appointment, inasmuch as employees, on whose death or retirement on medical ground such appointments were given, died or retired at least one year after the death of the father of the Respondent. It is well settled in law that a request for compassionate appointment should be considered as quickly as possible, provided there is a Scheme for giving compassionate appointment. It is true that there was a bar to give compassionate appointments but the bar came on 17.7.1998. There is no reason why the application of 14.7.1996 could not be dealt with and decided before the ban was imposed. It is not known why the clarification was sought in March, 1998 when the application itself indicated all necessary particulars. Sisters were not shown as dependent, since they were married. The Appellant, in the statement referred to above, has also proceeded on that basis. It is not known why the Appellant has not placed its cards sincerely before the court. Why it has not indicated how many posts were available in 1996, 1997 and 1998 for giving compassionate appointments? In the event, there had been sufficient number of posts during those years, question of comparing the case of the Respondent with others, as was done subsequently, would not have had arisen. Furthermore, the Policy, as above, did not authorize any comparison. The decision to reject, as referred to above, is squarely on the basis of a comparison, which is not contemplated in the Policy and, accordingly, is not permissible. In November and December, 2000, the Circular of 5.6.2000 was in force but while the decision was taken, it was not decided that 107 people come below poverty line, as mentioned in the said Circular and at the same time, it was not mentioned that the Respondent is above the poverty line, mentioned in the said Circular.

6. The facts, as narrated above, would clearly depict that the Appellant is seeking to take advantage of its own laches and negligence. In the event, the Appellant had decided the application of the Respondent within a reasonable time, the complex situation, as purported to be projected by the Appellant, would not have had arisen. No court, far less a writ court, can permit a litigant to take advantage of his own wrong.

7. Learned Counsel for the Appellant drew our attention to a judgment of Hon"ble Supreme Court, rendered in the case of A.P.S.R.T.C. and Anr. v. Dannina Rajeswari reported in 1999 SCC 1182, for the proposition that the Court cannot give direction for appointment. The learned Counsel, according to us, without

reading the said judgment of the Hon''ble Supreme Court, or if he read without understanding the purport of the said judgment, cited the same for the purpose of propagating that the court is bereft of any power to direct appointment on compassionate ground. A look at the said judgment would show that in that case, the High Court had directed giving of appointment by creating a supernumerary post. In that judgment, the Hon''ble Supreme Court reiterated that it has already declared that there cannot be any direction for creation of a supernumerary post and, accordingly, held that the direction of the High Court, directing creation of a supernumerary post, was unjust. While holding so, the Hon''ble Supreme Court, in that case, directed that if any vacant post becomes available for the Respondent before the Hon''ble Apex Court in the near future, to consider her case and to appoint her as early as possible. In the instant case, as is depicted from the facts as above, somebody else was appointed in the post, which was available for the Respondent, to be supplied in 1996 or 1997 or 1998. There was no just reason not to appoint the Respondent in one of such posts and to appoint someone else in his place and stead. In a situation of this nature, if the writ court is thought to be incompetent to pass a positive order, then the very existence of the writ court would be in question. We do not think that the writ court is so powerless.

8. It was contended that there was suppression of the letter by which Respondent had asked for appointment on the post of driver. It was contended that discloser of that letter would have shown that the application of the Respondent has already been dismissed. The letter was with the Appellant. Why it did not disclose the same before the writ court, has not come on record. It was contended that because of that suppression, the appeal should be allowed. For what has been stated above, the letter came to existence only after 20.9.2004 and as such, there was no laches or delay in taking legal remedy. In law, suppression will nonsuit a litigant only when suppression is such that discloser thereof will take away his whole cause of action. In the litigation, Respondent was challenging non-acceptance of his request. Discloser of the letter would also have shown the same. It was contended that the decision to reject the request had not been challenged. Admittedly, there is no formal communication thereof.

9. We, accordingly, uphold the judgment under appeal including the direction upon the Appellant to give appointment to Respondent. It shall be open to Appellant to give appointment to the Respondent in an existing vacancy and, if no such existing vacancy is available, to the vacancy, in which he ought to have had been appointed in 1996, 1997 or 1998, by removing such person, who was unjustly appointed in the said vacancy.

10. With the observations as above, we dismiss the appeal with cost of Rs. 5,000/-.