

AFR

Court No. - 9

Case :- WRIT - A No. - 7353 of 2005

Petitioner :- Manoj Kumar

Respondent :- Chief General Manager S.B.I. And Others

Counsel for Petitioner :- V.P. Varshney, J.C. Sharma

Counsel for Respondent :- S.Chaturvedi, S.C.

Hon'ble Mahesh Chandra Tripathi, J.

1. The case has been listed under the category of 'infructuous cases'.

2. No one appears for the petitioner in the revised call. Shri Satish Chaturvedi appears for all the respondents.

3. By means of present writ petition, the petitioner has prayed for quashing the order dated 20.6.2003 passed by respondent no.1. He has further prayed for direction commanding the respondents to decide his representation dated 6.12.2004 and to appoint him under Dying in Harness Rules on compassionate ground in place of his deceased father.

4. Brief facts, giving rise to the present case, are that Shri Ripu Daman Singh Bhadauria-father of the petitioner was serving as Manager in State Bank of India, Chhatta Bazar, Agra. He died in harness on 07.9.1997, leaving his widow Smt. Rama Devi and two sons Shri Arvind Kumar and Shri Manoj Kumar (the petitioner). After the death of his father, the petitioner moved an application on 21.12.1997 to respondent no.2 for his appointment on compassionate ground. When no reply was received for more than ten months, the mother of the petitioner sent a representation on 6.7.1998 and reminder on 18.8.1999 for appointment of petitioner. The petitioner again submitted his application on 10.4.2000 on the proforma completed in all respect. His mother again sent reminder on 16.12.2002. In reply to the letters dated 9.1.2003 and 12.5.2003, the petitioner sent representations on 23.1.2003 and 27.5.2003 for his appointment in place of his father. By the impugned order dated 20.6.2003 the petitioner's representation has been rejected by the respondent no.1 on the ground of delay in filing the application. The petitioner again submitted his representation on 2.7.2003 for re-considering the decision as the condition of the petitioner's family was very critical. He sent reminders on 23.12.2003, 25.6.2004 and 6.12.2004.

5. Shri Satish Chaturvedi, learned counsel for the respondents submits that the scheme for providing appointment to the dependent of the deceased employee was introduced in State Bank

of India w.e.f. 1.1.1979 and in term of the Scheme, the bank is considering employment on compassionate ground to the dependents of the employees dying while in service and providing appointment in deserving cases. The object of providing compassionate appointment was to enable the family to tide over the sudden crisis due to the death of sole breadwinner. Mere death of the employee in harness was not enough to entitle the claimant to such a source of livelihood. The object was to offer compassionate appointment only when the Bank was satisfied that the conditions enumerated in the scheme entitle the claimant for appointment and one of the main condition was the financial condition of the family.

6. Shri Satish Chaturvedi further submits that the petitioner's father died on 1.10.2004. The petitioner applied on 6.6.2005 and 14.6.2005 requesting for appointment on compassionate grounds. During the pendency of the application, the Executive Committee of the Central Board approved a scheme on 4.8.2005 for payment of ex-gratia lump sum amount in lieu of appointment on compassionate ground. The Scheme provides that no request for compassionate appointment shall be entertained or considered by the Bank under any circumstances w.e.f. 4.8.2005. In the present case, the bank employee died while the scheme for appointment on compassionate ground was in force. The petitioner's application was rejected on the ground that penurious circumstances were not found to exist upon determination of income arising from terminal benefits and other sources of income of the family.

7. Shri Satish Chaturvedi submits that the compassionate appointment cannot be granted after lapse of a reasonable period. The financial condition of the petitioner's family is over and the compassionate appointment can be considered only in exceptional circumstances. The compassionate appointment cannot be claimed as a matter of right. The whole object of granting compassionate appointment is to enable the family to tide over the sudden crisis due to acute poverty after the death of sole earning member of the family, who dies in harness and to relieve the family of the deceased from financial destitution. He has relied upon a judgment of Supreme Court in **Umesh Kumar Nagpal vs. State of Haryana 1994 (4) SCC 138** and the judgment of this Courts in **Shiv Kumar Dubey vs. State of UP 2014 (2) ADJ 312 (Full Bench); Writ Petition No.13102 of 2010 (Union of India and ors vs. Smt. Asha Misra and another) decided on 7.5.2010; Writ Petition No.35858 of 2003 decided on 15.10.2014; Special Appeal No.14 of 2007 decided on 26.11.2014** in support of his

submission.

8. In **Pepsu Road Transport Corporation Vs. Satinder Kumar, 1995 Supp. (4) SCC 597**, the Supreme Court has held that the High Court should not compel the appointing authorities to appoint a person to a particular post possessing merely a minimum qualification and should only direct the authority to consider the appointment of the candidate to the post commensurate with his qualification, therefore, when in that case, the High Court directed the Corporation to appoint the respondent to the post of Clerk only on the ground that he possessed the minimum qualification for eligibility, namely, Matriculation, the Supreme Court has modified the order of the High Court in appeal by special leave. It was held that such order directing the Corporation to appoint the respondent to the post of Clerk only because he possessed the minimum qualification was not proper and the order of the High Court has been substituted by the Supreme Court directing the appellant Corporation to consider the case of the respondent for appointment on compassionate ground commensurate with his qualification.

9. In **Sushma Gosain Vs Union of India & ors., AIR 1989 SC 1976**, the Supreme Court held as under:-

" It can be stated unequivocally that 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. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant."

10. Aforesaid judgment was approved and the principle laid down therein was reiterated by the Hon'ble Supreme Court in **Smt. Phoolwati Vs. Union of India & ors, AIR 1991 SC 469**.

11. In **Umesh Kumar Nagpal Vs. State of Haryana & ors., (1994) 4 SCC 138**, the Hon'ble Supreme Court has considered the nature of the right, which a dependent can claim while seeking employment on compassionate ground. The Court has observed as under:-

" It appears that there has been a good deal of obfuscation on the issue. As a rule, appointment 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 case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependants 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 dependants 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.....

.....The favourable treatment given to such dependent of the deceased employee in such posts has a rational nexus with the object sought to be achieved, viz. relief against destitution. No other posts are expected or required to be given by the public authorities for the purpose, it must be remembered in this connection that as against the destitute family of the deceased, there are millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs of the family engendered by the erstwhile employment which are suddenly upturned.... Unmindful of this legal position, some Governments and public authorities have been offering compassionate employment sometimes as a matter of course irrespective of the financial condition of the family of the deceased..... The decision does not justify compassionate employment either as a matter of course.... The only ground which can justify compassionate employment is the penurious condition for such employment is not a vested right.... The object being to enable the family to get over the financial crisis."

12. The same view has been reiterated in **Jagdish Prasad Vs. State of Bihar, (1996) 1 SCC 301; State of Bihar Vs. Samsuz Zoha, AIR 1996 SC 1961; Himachal Road Transport Corporation Vs. Dinesh Kumar, (1996) 4 SCC 560; and Hindustan Aeronautics Ltd. Vs. A Radhika Thirumalai, (1996) 6 SCC 394**. It has categorically been held that compassionate employment cannot be claimed as a matter of course not being a vested right.

13. In **Haryana State Electricity Board & Anr. Vs. Hakim Singh, JT 1997 (8) SC 332**, the Hon'ble Supreme Court placed reliance upon the judgments referred to above and observed that the object of providing for compassionate employment is only to relieve the family from financial hardship, therefore, an

ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment.

14. Similarly, in **Haryana State Electricity Board Vs. Naresh Tanwar & Anr., (1996) 8 SCC 23**, the Hon'ble Supreme Court reiterated and followed the law laid down in Umesh Nagpal's case (supra) and directed the applicants involved therein to apply for employment on compassionate ground " by giving full details of the family circumstances and the economic conditions".

15. In **Director of Education (Secondary) & Anr. Vs. Pushendra Kumar & ors., (1998) 5 SCC 192**, the Supreme Court has observed as under:-

" The object underlying a provision for grant of compassionate employment is to enable the family of the deceased employee to tide over the sudden crisis resulting due to death of the bread-earner which has left the family in penury and without any means of livelihood. Out of pure humanitarian consideration and having regard to the fact that unless some source of a livelihood is provided, the family would not be able to make both the ends meet, a provision is made for giving gainful appointment to one of the dependants of the deceased who may be eligible for such appointment. Such a provision makes a departure from the general provisions providing for appointment on the post by following a particular procedure. Since such a provision enables appointment being made without following the said procedure, it is in the nature of an exception to the general provisions. An exception cannot subsume the main provision to which it is an exception and thereby nullify the main provision. Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provision, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds for the dependant of a deceased employee."

16. Undoubtedly, in **Balbir Kaur Vs. Steel Authority of India & ors. (2000) 6 SCC 493**, the Hon'ble Supreme Court held that appointment on compassionate ground is not a vested right but it should not be denied in deserving cases for the reason that it would be tantamount to denial of economical and social justice as enshrined in the Constitution and law must be, in its adaptability and flexibility, applied depending upon a situation for the benefit of the society.

17. In **Sanjay Kumar Vs. State of Bihar, JT 2000 (10) SC 156**, the Hon'ble Supreme Court again reiterated that the purpose of the rules providing for compassionate employment is only 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 pecuniary and without any means of livelihood, but such an appointment cannot be held as if a reservation for the dependents of the deceased Government servant who died in harness. In **Regional Manager, A.P.S.R.T., Nellore Vs. C.M. Pawana Kumari, 2001 AIR SCW 4779**, the Supreme Court held that direction cannot be issued to appoint a person on compassionate ground dehoes the scheme framed by the employer nor the court has a power to modify the scheme or rules framed in this regard.

18. In **Surya Kant Kadam Vs. State of Karnataka & ors., AIR 2001 SC 3145**, the Supreme Court held that in absence of any statutory rules, appointment on compassionate ground can be governed by the executive instructions and in spite of the fact that the said instructions may not have a statutory force, the same are bound to be observed by the employer.

19. While reiterating the purpose of making appointment on compassionate ground, the Hon'ble Supreme Court in **Haryana State Electricity Board Vs. Krishna Devi, 2002 (2) LLJ 773** held that the main object behind giving such employment is to provide immediate financial help to the family of the deceased employee. Such appointment cannot be made in absence of Rules or Instructions. Application for such employment must be made within the period prescribed by the Rules/Instructions. Application made at a belated stage cannot be entertained for the reason that by lapse of time, the purpose of making such appointment stands evaporated.

20. The issue involved herein requires consideration in the light of the settled legal principles discussed herein above. The Rules have been carved out as an exception to the service jurisprudence, which mandatorily require that any appointment in public office is to be made in consonance to the mandate of Articles 14 and 16 of the Constitution of India as any appointment, even on temporary or ad-hoc basis, if found to be violative of the said provisions of the Constitution, would remain unenforceable being in valid.

21. In the aforesaid facts and circumstances, this Court is not inclined to exercise its discretionary jurisdiction under Article 226 of Constitution of India.

22. The writ petition is accordingly **dismissed**.

Order Date :- 29.4.2015

RKP