

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 40669 of 2017

Date :18.7.2018

Between:

Mond Mahmooduddin Farooqi
S/o late Mohd. Fareeduddin
31 years R/o H No. 3-1-403/2
Nimboliadda, Kachiguda, Hyderabad.

....Petitioner

And

The State of Telangana
Rep by its Principal Secretary,
School Education Department,
Secretariat, Hyderabad and others.

.....Respondents

The Court made the following:



HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 40669 of 2017

ORAL ORDER:

Father of the petitioner while working as Head Master expired on 19.1.2002 leaving behind his wife, mother, two daughters and three sons. Petitioner being eldest of the siblings of late employee, applied for provision of appointment on compassionate grounds, claims to be within one year from the date of death. By then, petitioner was aged about 15 years and his application was rejected vide proceedings dated 9.2.2010 holding him as minor at the time of death of his father. Petitioner again represented to provide employment. His request was examined and Commissioner and Director of School Education vide proceedings dated 13.3.2010 reiterated his earlier decision. Thus, decision dated 9.2.2010 as affirmed vide proceedings dated 13.3.2010 remained unchallenged. Though claim was rejected by the Commissioner and Director of School Education, petitioner continued to pursue his claim to provide employment. Based on the fresh representation, the District Educational Officer submitted proposals to the Collector, Hyderabad district. The Collector vide his proceedings dated 1.6.2017 declined to accept the proposal suggesting to obtain necessary age relaxation orders from the Government. Petitioner submitted representation on 15.11.2017 addressed to Principal Secretary, School Education Department to grant age relaxation and to provide employment. Alleging inaction, this writ petition is filed.

2. Heard learned counsel for petitioner and learned Assistant Government Pleader for respondents.

3. According to learned counsel for petitioner, family of the petitioner is still in destitute circumstances and needs employment in Government service. Late father of the petitioner left behind a big family without any savings, therefore unless employment is provided, it would be difficult for the family to eke-out living. According to learned counsel, even though the claim is valid, request to provide employment is rejected holding that petitioner was a minor at the time of death of his father. She would submit that age relaxation was granted to several persons earlier and therefore not granting age relaxation to the petitioner amounts to arbitrary exercise of power and authority. Learned counsel refers to proceedings of the Government where under age relaxation was granted to similarly situated person pursuant to directions issued by Division Bench of this Court in W P No. 1424 of 2014. She would further submit that as held by the Supreme Court in **MGB Gramin Bank Vs Chakrawarti Singh**¹ and **Canara Bank Vs M Mahesh Kumar**², merely because of passage of time, claim for compassionate appointment cannot be rejected. Even if dependent of the employee is minor, offer of appointment should be kept open till minor attains the age of majority. She would further submit that petitioner has been prosecuting his grievance and there was no delay in making a claim, therefore, merely because 16 years lapsed from the date of demise of father of petitioner, if the claim is otherwise valid, cannot be refused on that ground.

¹ 2014 (13) SCC 583

² AIR 2015 SC 2411

4. According to learned Assistant Government Pleader vide proceedings dated 9.2.2010 itself, request for provision of employment was rejected as confirmed vide proceedings dated 13.3.2010, which decisions are not challenged, therefore, it is not open to petitioner to claim employment on compassionate grounds at this distance of time, having allowed the order of rejection to stand for more than eight years. He would further submit that petitioner earlier filed W.P.No.44274 of 2016 seeking identical relief and same was withdrawn, therefore, present writ petition is not maintainable. He would further submit that compassionate appointment cannot be granted whenever a person claims to provide employment, whereas the purpose of the scheme is to meet the immediate needs of the family due to sudden loss of bread winner. As father of petitioner died in the year 2002, it cannot be said that still that need survives to provide employment. He would further submit that there is no provision for relaxation of age of eligibility and if person is not aged about 16 years and more on the date of demise of father, he cannot claim employment on compassionate grounds.

5. The issue for consideration is whether claim of petitioner to provide employment on compassionate grounds after 16 years of death of employee is valid?

6. First appointment to public post whether it is in State/Central service or service in the public-sector undertakings should be in accordance with the Rules/Regulations governing the services. Such recruitment should be open to all eligible candidates and selections are to be made in

transparent manner and should stand the test of Articles 14 and 16 of the Constitution of India. Certain exemptions are carved out to this constitutional norm to make recruitment and one such exception is “appointment on compassionate grounds”. In Public employment such scheme is prevalent. This scheme of compassionate appointment is in recognition of the employer’s commitment to look after the members of the family of the employee who had premature death/forced to retire from service on him/her being declared as medically unfit, much before he/she would attain the age of superannuation leaving the family members in lurch. The scheme is intended to give a kind of protection to the members of the deceased employee family due to loss of breadwinner in the family or premature retirement of bread winner on health groundsupsetting the family financial calculations.

7. The compassionate appointment is regulated by the scheme formulated by the employer. Ordinarily such scheme envisages provision of appointment to posts classified as Class-III and Class-IV which are at the bottom of hierarchical structure of any organization. Such appointment is extended to wife or children of the deceased employee/retired on medical invalidation and appointment should be provided soon after the occurrence of event. In case of death, ordinarily a ceiling of one year is imposed to make a claim for such appointment with relaxation of one more year in case the children are minors and would attain majority within two years from the date of demise. Some employers prescribe ceiling on consideration of such

claims and some employers provide financial package in lieu of such appointment.

8. Consideration of claim for compassionate appointment depends on various factors, such as, the nature of employment of former employee, the financial strength of the family, the number of dependents of Ex-employee, status of the family members and date of submission of application. The foremost factor for consideration by employer is destitute circumstances prevailing in the family requiring such employment. Thus, proximity to occurrence of event is very significant. If family has survived the calamity and sustained for reasonable time without the financial support in the form of salary of the earlier bread winner, it is presumed that the family is not in destitute circumstances requiring such appointment.

9. The scheme of compassionate appointment being an exception to the normal mode of recruitment to public service, it should receive strict and narrow construction.

10. It is wrong to assume that a right is vested in the dependent of ex-employee to seek employment at any time irrespective of date of demise/retirement on medical grounds and irrespective of the financial status of the family and after long lapse of time.

11. Provision of employment on compassionate grounds is carved out to meet a specific contingency, i.e., to provide succor in the form of employment to dependents of ex-employee who were suddenly deprived of an earning member and the

death/medical invalidation would lead them to penury unless employment is provided. It is intended to tide over the crisis engulfing the family. It is something akin to firefighting mechanism. This crisis cannot be treated as continuous. If claim is belated, the very fact that family has survived for a long time without such employment would militate against such claim. It is to be born in mind that there are millions of Indians who need succor and their families are also in dire need of employment. Highly educated people are driven to seek menial jobs out of desperation.

12. In the long line of precedent decisions this issue has come up for consideration before Supreme Court. Broad principles that emerge from the decisions of the Supreme Court in, i) **Umesh Kumar Nagpal v. State of Haryana**³; ii) **Union of India v. Bhagwan Singh**⁴; iii) **Director of Education (Secondary) v. Pushpendra Kumar**⁵; iv) **Bhawani Prasad Sonkar v. Union of India**⁶; v) **CCE & Customs v. Prabhat Singh**⁷; vi) **MGB Gramin Bank; vii) SBI v. Surya Narain Tripathi**⁸; viii) **Canara Bank**, are as under:

1. The appointment on compassionate grounds is an exception to the normal recruitment procedure to public posts. An exception can not subsume the main provision.

2. The object of granting compassionate employment is to relieve the family of financial constraints on account of untimely demise of bread winner/ bread winner developed serious health problem losing his job and to enable the family to tide over the sudden crisis.

³ (1994) 4 SCC 138

⁴ (1995) 6 SCC 476

⁵ (1998) 5 SCC 192

⁶ (2011) 4 SCC 209

⁷ (2012) 13 SCC 412

⁸ (2014) 15 SCC 739

3. Employment under the scheme can be provided only if the employer is satisfied that unless the employment is provided the family will not be able to meet the crisis and only after assessment of financial condition.

4. Posts in class III and class IV should alone be offered.

5. The consideration for employment on compassionate grounds is not a vested right which can be exercised at any time in future.

6. Claim for compassionate employment should be made within a reasonable time or within the time specified in the scheme formulated by employer. It cannot be claimed and offered after lapse of time and after crisis is over. Delay in seeking such a claim is anti thesis to the very objective of the scheme.

7. The scheme and the policy of compassionate appointment is binding both on the employer and the employee.

8. Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve.

9. The claim has to be considered within a reasonable period of time.

10. The Courts/Tribunals should not fall prey to any sympathy syndrome. The Courts are not supposed to carry Santa Claus's big bag on Christmas eve to disburse the gift of compassionate appointment to all those who seek a Court's intervention.

11. Consideration of claims should be to available vacancies. If there are more claims than available vacancies a fair and transparent selection process should be conducted based on a comparative compassion gradient or on some such like criteria.

12. An ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment. Courts/Tribunals cannot confer benediction impelled by sympathetic consideration.

13. In G.O.Ms.No.687 G.A.D., dated 03.10.1977, Government notified scheme of appointment on compassionate grounds. Clause (2) of the Scheme reads as under:

“(2) Application for appointment from such persons shall be entertained within the period of one year from the date of occurrence of the death of Government servant.”

14. In Memo No.618 Ser.A/78-11 General Administration (Ser.A) Department dated 17.12.1979, Government clarified that if dependent is a minor, he should apply immediately but consideration may be made in two years. Vide G O Ms No. 340 dated 12.6.1984, Government extended consideration to dependent aged 16 years. It reads:

“3(2).. The dependents of deceased Government employees who are 16 years of age may be considered for appointment to posts in the Last Grade Service in relaxation of rules subject to the condition that the service rendered prior to attaining majority shall not be counted till they attain majority.”

15. In G.O.Ms.No.165 General Administration Department dated 20.3.1989, Government ordered that minor dependent can apply within two years of date of demise of government servant. It reads:

“The Government, after careful consideration, direct the dependent of a Government employee who dies in harness or retires on medical invalidation grounds, who is a minor seeking employment on compassionate grounds ***should apply for appointment only after attaining the age of 18 years subject to the condition stipulated on Item 13 in Govt Memo first read above. Viz., the relief can be asked for within a reasonable time which may be two years from the date of demise of the Government servant*** but the spouse or the child of the deceased Government Servant should immediately apply for this relief.”

(emphasis supplied).

16. Further orders are issued in G.O.Ms.No.612 General Administration Department (Ser.A) dated 31.10.1991. To the extent relevant, it reads as under:

“(v) As the object of the social security scheme is to give immediate relief to the distressed family of the deceased Government employee, ***a minor who does not attain majority within two years as specified in Government Memo No. 618/Ser-A/78-11, General Administration Department, dt 17.12.1979 after the demise of the Government employee, shall not be considered for appointment.*** In such cases it is decided to grant ex-gratia to

the widow/dependent of the deceased employee. Orders regarding quantum of ex-gratia will be issued separately.”

(emphasis supplied)

17. Noticing indiscriminate entertainment of claims under the scheme, Government reiterated its resolve to restrict consideration to claims arising immediately after the death of breadwinner and to restrict such claims to most deserving persons.

18. It's useful to extract paragraphs 2 & 3 of Memo No.11083/Ser.A/80-1 GAD dated 01.08.1980. The paragraphs read as under:

“2. There is an unfortunate tendency to treat the cases of appointment of the dependents of Government servants who dies in harness with extra consideration and sympathy. Some departments are obtaining orders of Government in cases in which death had occurred prior to 27th October, 1973, there is delay in seeking employment, etc., and making compassionate appointments. This tendency is not correct. In the present day society getting a job in Government is vital and important for the economic welfare of any family, as it is to the family of a deceased Government servant. Indiscriminate compassionate appointments in the cases of deceased Government servants who dies in harness will deprive other equally deserving poor families in securing jobs.

3. ***The main objective in having the scheme is to see that the family of deceased Government servant is not thrown out on the streets, immediately after his death. The purpose would be achieved only if a family could be given an alternative bread winner almost immediately. The purpose certainly is not served if years after the death of the Government servant, for a dependent is proposed for appointment. It is because of this consideration that a dead-line has been fixed beyond which, rightly enough, no consideration should be given. If the policy of the Government and the objective behind this policy are to be implemented with sympathy all-round, request for compassionate appointment in cases which violate the conditions stipulated in the scheme should not be entertained at all.***

(emphasis supplied)

19. In G.O.Ms.No.400, dated 12.09.1996 Government reiterated that no case of relaxation of any of the conditions stipulated in the scheme should be entertained. The same is reiterated in Government Memo No.68215/Ser.A/99-2 G.A.(Ser.A) Department, dated 02.06.2000. In Government Memo No.6068/Ser.A/2003-1 General Administration (Ser.A) Department dated 12.08.2003 all earlier orders are consolidated and notified.

20. Thus, policy of the Government is clear. An application must be submitted within the time specified and no relaxation of time to submit application should be considered.

21.1. At this stage, it is expedient to consider the decision of Supreme Court in ***Eastern Coalfields Ltd. v. Anil Badyakar⁹***, wherein somewhat similar issue was considered by the apex Court.

21.2. To appreciate the issue the facts in a nutshell are as under:

Employee died on 31.12.1981 while in service. Immediately his wife made an application for provision of employment on compassionate appointment. On 07.03.1983 his daughter submitted application for provision of employment. It took some time among the family members to reach a consensus on who should be sponsored and on consent being given by other family members, claim of the husband of the daughter was considered. By orders dated 10.05.1993, the respondent was appointed under the scheme and he joined service. While so, the higher authority in the company reviewed that appointment and by his order dated 23.09.1993 cancelled the provisional appointment issued in favour of the respondent as it was belated appointment and, therefore, not entitled for such appointment. On challenge, the learned single Judge of the High Court set aside the said cancellation, which was affirmed by the Division Bench.

⁹ (2009) 13 SCC 112

21.3. On appeal by the company, Supreme Court reviewed the case law on the subject and held as under:

“20. The principles indicated above would give a clear indication that the compassionate appointment is not a vested right which can be exercised at any time in future. The compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.

21. In the instant case the employee died in harness in the year 1981 and after a long squabble by the dependants of the deceased, they arrived at a settlement that the son-in-law of the second daughter who is unemployed may request for appointment on compassionate grounds. The request so made was accepted by the Personnel Manager of the Company subject to the approval of the Director of the Company. The Director (P), who is the competent authority for post facto approval, keeping in view the object and purpose of providing compassionate appointment has cancelled the provisional appointment on the ground that nearly after 12 years from the date of death of the employee such an appointment could not have been offered to the so-called dependant of the deceased employee.”

(emphasis supplied)

22. In **UMESH KUMAR NAGPAL**, Supreme Court delineated scope of claim for compassionate appointment. It is held:

“2. 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

3. 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 and sometimes even in posts above Classes III and IV. That is legally impermissible.

4. It is for these reasons that we have not been in a position to appreciate judgments of some of the High Courts which have justified and even directed compassionate employment either as a matter of course or in posts above Classes III and IV. We are also dismayed to find that the decision of this Court in *Sushma Gosain v. Union of India* [(1989) 4 SCC 468 : 1989 SCC (L&S) 662 : (1989) 11 ATC 878 : (1989) 4 SLR 327] has been misinterpreted to the point of distortion. The decision does not justify compassionate employment either as a matter of course or in employment in posts above Classes III and IV.”(emphasis supplied)

23. Learned counsel sought to contend that though application was made in time, it was rejected only holding that petitioner was minor when employee died whereas similar claims were accepted and relaxation was granted.

24. In the case on hand, the employee died on 19.1.2002; claim was rejected vide proceedings dated 9.2.2010 and 13.3.2010 holding that petitioner was aged less than 16 years on the date of death of his father. Petitioner allowed said decisions to become final. However, he went on making representations requesting to grant relaxation on age restriction and alleging that illegally age relaxation is not granted to him while granting such benefit to others, in spite of filing fresh representation this writ petition is filed.

25. As per the policy of Government, dependent should make application within one year of demise. A year of relaxation is given if child is minor falling short of 18 years of age at the time of death of employee. In the case on hand, petitioner was aged about 15 years and 4 months when death occurred. Thus, he is not eligible to claim employment as per the scheme. There

is no provision to enlarge the time and entertain application whenever a minor attains majority.

26. Having regard to Government policy and the object of the scheme of compassionate appointment propounded in the precedent decisions, the decision of the respondents rejecting the request of petitioner cannot be faulted.

27. Learned counsel for petitioner placed reliance on two decisions of the Supreme Court. In **Canara Bank**, two distinguishable features are: 1), there was change in the scheme. Supreme Court observed that the scheme in force when cause of action arose is relevant; 2), the scheme envisaged that if dependent was minor on the date of death of employee the bank may keep the offer of appointment open till he attains age of majority. In paragraph 20 of the judgment while laying down principles to consider claim for appointment on compassionate grounds, having regard to peculiar facts of the case, noted above, upheld the decision of the High Court directing consideration. Further, in **MGB Gramin bank**, relied by learned counsel for petitioner, Hon'ble Supreme Court was considering the effect of change in the scheme. The High Court directed application of the scheme of appointment which was dispensed with and ex-gratia system was introduced. Supreme Court reversed the decision of the High Court and directed the Bank to apply new scheme. In the facts of this case the decisions relied by learned counsel for petitioner do not come to his aid.

28. At this it is appropriate to note the observations of Supreme Court in paragraph 15 in **MGB Gramin bank**. It reads as under:

“15. The Court considered various aspects of service jurisprudence and came to the conclusion that as the appointment on compassionate ground may not be claimed as a matter of right nor an applicant becomes entitled automatically for appointment, rather it depends on various other circumstances i.e. eligibility and financial conditions of the family, etc. the application has to be considered in accordance with the scheme. In case the scheme does not create any legal right, a candidate cannot claim that his case is to be considered as per the scheme existing on the date the cause of action had arisen i.e. death of the incumbent on the post. In *SBI* [(2010) 11 SCC 661 : (2011) 1 SCC (L&S) 150] , this Court held that in such a situation, the case under the new scheme has to be considered.”

29. Petitioner filed WP No 44274 of 2016 praying to declare that not granting appointment as petitioner did not attain 18 years within two years of demise of his father as arbitrary and illegal and sought consequential directions to appoint him in a suitable post by granting relaxation of rules. In that writ petition petitioner did not challenge the rejection orders. Petitioner relied on decision of Division Bench of this Court in WP No 1424 of 2014 to claim relief of employment. For reasons best known he withdrew the said writ petition on 2.11.2017 and filed this writ petition. The liberty sought to file fresh petition was granted to the limited extent if fresh cause of action arises. He makes a representation to government on 15-11-2017 highlighting grant of relaxation to others, decision of Division Bench in WP No 1424 of 2014, seeks relaxation of age restriction and files this writ petition on 28-11-2017. Thus, it

cannot be said that within few days of withdrawing his earlier writ petition and by referring to his latest representation fresh cause of action arose. The issue of entitlement of petitioner to secure employment is denied as he was falling short of two years limitation. No new reasons are assigned, nor new aspect of claim surfaced. The decisions relied were also made long before he filed WP No 44274 of 2016 and relied in that writ petition. Thus, the conduct of petitioner in withdrawing earlier writ petition and filing this writ petition amounts abusing the process of the court.

30. As noted from the precedent decisions, appointment on compassionate grounds is an exception to normal method of recruitment to public employment. It is intended to alleviate suffering of dependents due to sudden death of bread winner and intended to tie over immediate difficulties. It is not intended to act as a reserve right for a family member of deceased to stake claim whenever he wants employment. After 16 years, it cannot be said that family is still in destitute circumstances to grant such employment. Further claim was rejected on 9.2.2010 and 13.3.2010 and this writ petition is filed 8 years after that rejection. The reason assigned to reject claim was that he was a minor. Decision to reject has become final long ago. In the earlier writ petition also, rejection orders were not challenged. There is inordinate delay and laches in making a claim to provide employment on compassionate grounds by granting relaxation of minimum age and invoking the jurisdiction of this Court. Petitioner cannot seek to resurrect his claim in the guise of making further representations.

31. It is no doubt true that in WP No 1424 of 2014, the Division Bench of this court upheld the direction of APAT to consider the claim to grant appointment on compassionate grounds by granting relaxation of two years condition and noted the view expressed by this court in W.P.No.26184 of 2011 that government cannot grant benefit to one set of people and deny to others, in the facts of this case said decision do not come to aid of petitioner to resurrect a cause extinguished long ago and for the reasons discussed above.

32. The writ remedy is equitable remedy and writ court has wide amplitude of discretion to grant or refuse to grant relief. Writ Court may refuse to entertain writ petition even if claim is valid if such claim is made after long lapse of time. Thus, even if there was no consistency in considering the claims of minors and relaxation was extended to some arbitrarily, the Court need not grant the relief at this distance of time. There is no indefeasible right to claim compassionate appointment. It cannot be said the family of the deceased employee should be extended the benefit of the scheme at this stage, i.e., after 16 years of the death of employee.

33. The Writ Petition deserves to be dismissed. It is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P NAVEEN RAO

DATE: 18-07-2018
tvk/kkm

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