

Anupam Kumar Gupta Vs. Finance

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Court : Jharkhand

Decided On : Nov-25-2017

Appellant : Anupam Kumar Gupta

Respondent : Finance

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI W.P. (S) No. 5589 of 2012
Anupam Kumar Gupta, son of late Mahesh Prasad Gupta, Resident of Dhobi
Ghat, Lower Burdwan Compound, P.O. & P.S. Lalpur, District Ranchi.
Petitioner Versus 1. State of Jharkhand.

2. Secretary, Finance Department, Government of Jharkhand, Project Building,
P.O. & P.S. Dhurwa, District-Ranchi.

3. Secretary, Department of Personnel, Administrative Reforms and Raj Bhasa,
Government of Jharkhand, Project Building, P.O. & P.S. Dhurwa, District-Ranchi.

4. Deputy Commissioner, Ranchi, P.O. Court Compound, P.S. Kotwali, District
Ranchi. 5. Treasury Officer, Ranchi, P.O. Court Compound, P.S. Kotwali, District
Ranchi. Respondents --- CORAM : HON'BLE MR. JUSTICE PRAMATH
PATNAIK --- For the Petitioners : Mr. Rajendra Krishna, Adv. For the Respondents
: Mr. Bhawesh Kumar, S.C.II. . CAV on 19/04/2017 Pronounced on 25/11 /2017
Per Pramath Patnaik, J.

In the accompanied writ application, the prayer has been made for quashing the order dated 07.09.2012 contained in memo no.2095 (vide Annexure-10) issued under the signature of Treasury Officer, Ranchi pertaining to termination of services of the petitioner and the petitioner has further prayed for quashing of the recommendation of the District Compassionate Committee contained in memo no.1093 dated 28.07.2012 and the letter dated 03.09.2012 issued under the signature of Deputy Commissioner, Ranchi addressed to the Treasury Officer, Ranchi to take action regarding termination of the services of the petitioner in the light of the decision taken by the District Compassionate Committee on 28.07.2012.

2. The brief facts, as averred in the writ petition, is that the father of the petitioner who was working on deputation in Treasury as Assistant Accountant died in harness on 11.06.2005. The father of the petitioner was working as regular employee of the Bihar State Food and Civil Supply Corporation Limited, however, he became an employee of the State of Jharkhand in Treasury Branch and only an official declaration in regard to absorption was to be issued. Pursuant to deputation, the father of the 2 petitioner rendered his services satisfactorily in the Finance Department, Govt. of Jharkhand. While rendering services on deputation, father of the petitioner died on 11.06.2005. After death of the father on 11.06.2005 the petitioner filed representation before the respondents for consideration of his appointment on compassionate ground against Class-III posts since the petitioner was having all the requisite qualification and was fulfilling all eligibility criteria. In pursuance to representation of the petitioner the respondent authority took over the matter with regard to compassionate appointment against Class-III post, and decision was taken by the District Compassionate Committee who recommended the case of the petitioner for giving compassionate appointment which is evident from the proceedings of the District Compassionate Committee dated 21.07.2006 as per Annexure-4 to the writ application. Pursuant to the recommendation letter of appointment was issued under the signature of District Establishment cum Deputy Collector, Ranchi on 24.07.2006 vide Annexure-5 to the writ application. The petitioner was posted against Class-III post and the petitioner submitted his joining on the said post. After rendering considerable length of services proceeding of the District Compassionate Committee took place on 28.07.2012 and the

compassionate appointment was considered by the committee and the case of the petitioner was reconsidered in the committee in the light of letter dated 12.04.2012 of the Finance Department and considering the same decision has been taken to cancel the earlier recommendation made on 20.07.2006 for temporary appointment of the petitioner on compassionate ground vide Annexure-8 to the writ petition. Pursuant to the proceeding of the District Compassionate Committee dated 28.07.2012, the Deputy Commissioner Ranchi vide his letter dated 03.09.2012 directed the Treasury Officer to take further steps in regard to the termination of the services of the petitioner as evident from Annexure-9 to the writ petition. In pursuant to the letter dated 03.09.2012 the Treasury Officer has issued the office order dated 07.09.2012 informing the termination of the petitioner in the light of letter issued by the Deputy Commissioner, Ranchi dated 03.09.2012 as per Annexure-10 to the writ petition. The petitioner was also directed vide letter dated 07.09.2012 to handover the charge to another employee vide Annexure-11 to the writ petition. Being aggrieved by and dissatisfied with the impugned orders vide Annexures-8, 9, 10 and 11, the 3 petitioner has knocked the doors of this Court, invoking extraordinary jurisdiction under Article 226 of the Constitution of India for redressal of his grievances.

3. Learned counsel for the petitioner has strenuously urged that the action of the respondents in terminating the petitioner from services is actuated by arbitrary and mala fide exercise of powers since there has been breach of principles of natural justice. Learned counsel further submits that the petitioner after adhering to due process of selection was given appointment on compassionate ground and the action of the respondent in canceling the recommendation of the District Compassionate Committee on 20.07.2006 after six years without any valid reasons is wholly unjust and illegal. When the petitioner has not obtained the compassionate appointment against Class- III by applying representations based on fraud, the action of the respondents in passing the order of termination of services is violative of Article 14, 16 and 21 of the Constitution of India.

4. Controverting the averments made in the writ application, a counter affidavit has been filed on behalf of the respondents. It has been contended in the counter affidavit that one Madhuri Devi filed a writ petition bearing W.P.(S) No.454 of 2011

for compassionate appointment who was an employee of Bihar State Construction Corporation and was serving the District Treasury, Ranchi on deputation. In the aforesaid writ petition it was pointed out by Mrs. Madhuri Devi that her case was similar to that of present petitioner and the writ petition was disposed of with direction to the respondents to pass a reasoned order. In compliance of the direction of the Honble Court the respondents passed a reasoned order dated 12.04.2012 holding therein that the petitioner was not entitled to the relief of compassionate appointment. While bearing in mind the present petitioner the respondents took note of the fact that the Deputy Commissioner, Ranchi sought necessary guidelines from the Department of Personnel and Administrative Reforms which was never received, however very surprisingly, no instruction were sought from the Department of Finance, the nodal department. The respondents observed that since the appointment had been made by the Deputy Commissioner, Ranchi it was his duty to take the same to a logical end as per Annexure-A to the counter affidavit. Therefore, in course of taking the case of petitioner to its logical end, the case of the 4 present petitioner was placed before the District Compassionate Appointment Committee in its meeting held on 28.07.2012 and therein a decision has been taken to terminate the services of the petitioner. The father of the petitioner was serving in the Government Treasury, Ranchi on deputation and his substantive service was with the Bihar State Food and Civil Supplies Corporation and hence the petitioner could have made an application for compassionate appointment before the Bihar State Food and Civil Supplies Corporation and not before the Deputy Commissioner, Ranchi. It has also been submitted that till the death of the father of the petitioner no order was passed by the State Government absorbing his services in the Government Treasury. It has further been stated that it is an established law that till a declaration is made to that effect an employee cannot claim himself to be an employee of the State Government.

5. A supplementary counter affidavit has been filed on behalf of Department of Personnel, Administrative Reforms and Raj Bhasa, wherein it has been submitted that compassionate appointments were being made in accordance with provisions contained in Circular No.13293 dated 05.10.1991 and it is crystal clear that the provisions contained in the circular mentioned above had extant to the various

public undertakings, autonomous bodies, authorities, corporations, Boards and State subsidized institutions. Thus the petitioner had to be appointed on compassionate ground in the organization where his father was appointed. So far as any adverse decision of Department of Personnel Administrative Reforms and Rajbhasa as referred in the order of removal dated 3.9.2012 is concerned, on receipt of letter no.144(i) dated 12.05.2012 from the Deputy Commissioner, Ranchi containing order of the Finance Department vide order dated 12.04.2012, the Department of Personnel Administrative Reforms and Rajbhasa communicated to the Deputy Commissioner, Ranchi that it was already informed earlier vide letter dated 24.04.2012 that necessary action has to be taken in accordance with the provisions contained in Circular no.13293 dated 05.10.1991 as per Annexure- A series to the said affidavit.

6. Another supplementary counter affidavit dated 12.02.2016 has been filed on behalf of respondent no.2. It has been filed in compliance to the order dated 03.12.2014 passed by this Court. In the affidavit it has been submitted that services of 22 employees who were substantively the employees of the 5 State Food & Civil Supplies Corporation and had been serving in the various treasuries in the State of Jharkhand on deputation have been absorbed in the State Services vide Memo No.464 dated 29.02.2012 as evident from Annexure-A to the affidavit. The term and conditions which would govern the services of the 22 employees so absorbed have been enumerated in memo No.464 dated 29.02.2012. Since the father of the petitioner does not figure in the list of 22 employees whose services have been absorbed by the State Government and father of the petitioner had already died on 11.06.2005 much before the date of absorption of other State Food & Civil Supplies Corporation hence his case for absorption could not be considered. Therefore, benefit of the scheme of compassionate appointment can only be extended to regular employees and not to the dependents of the employees who were serving the State Government on deputation.

7. Learned counsel for the State has strenuously urged that since the deceased father of the petitioner was working in the Bihar State Food and Civil Supplies Corporation Limited as regular employee placed on deputation in Treasury Branch, Jharkhand died in harness before his services could be permanently

absorbed, therefore, petitioner by no stretch of imagination could have been appointed on compassionate ground. Though the petitioner was appointed having been considered by the District Compassionate Committee and the appointment of the petitioner was with a condition that if any adverse decision will be taken by the Personnel, Administrative Reforms and Raj Bhasa Department, Government of Jharkhand the recommendation of petitioners appointment on compassionate ground will be cancelled. Therefore, no illegality or irregularity has been committed by the respondents in terminating the services of the petitioner vide order dated 07.09.2012 Annexure-10 to the writ application.

8. After giving my anxious consideration to the rivalized submissions of both the parties and on perusal of the records, I am of the considered view that that petitioner has been able to make out a case for interference due to the following facts and reasons: (I) Admittedly the deceased father of the petitioner being a regular employee of Bihar State Food and Civil Supply Corporation Limited was a deputationist to the State of Jharkhand in the Treasury Branch. Though the substantive services of the father of the petitioner was with the Bihar State 6 Food and Civil Supply Corporation Limited, there is no gainsaying of the fact that the case of the father of the petitioner was under consideration for being absorbed in the State of Jharkhand but unfortunately prior to the date of absorption the father of the petitioner died. Similarly placed employees who had been serving in the various treasuries in the State of Jharkhand on deputation have been absorbed in the State services vide memo dated 29.02.2012 as per Annexure-A to the affidavit dated 12.02.2016 filed on behalf of respondent no.2. The terms and conditions which have been enumerated in the absorption order, certainly would have been made applicable to the father of the petitioner, had he been alive but as ill luck would have it before absorption in the State of Jharkhand, the father of the petitioner died. Due to indigent financial condition, the petitioner having the requisite qualification applied for compassionate appointment against Class- III post. On receipt of the said application the District Compassionate Committee took a conscious decision and recommended the case of the petitioner for compassionate appointment as evident from the proceedings of the District Compassionate Committee dated 21.07.2006 vide Annexure-4 to the writ petition. Consequent thereof the petitioner was appointed on Class- III post. After rendering

considerable length of services the impugned order dated 07.09.2012 vide Annexure-10 has been issued terminating the services of the petitioner solely on the ground that the benefit of compassionate appointment could not have been extended to the petitioner in the absence of any order of absorption of the father of the petitioner in the State of Jharkhand services but not on the ground of any unsatisfactory services rendered by the petitioner or any fraud committed by the petitioner. The appointment of the petitioner can be construed to be an irregular appointment not an illegal appointment on the ground that compassionate appointment is granted as a matter of concession and general procedure of selection is not adhered to, therefore, the case of the petitioner ought to have been considered in a liberal manner. (II) Keeping in view the peculiar undisputed facts of the case and having regard to the totality of the circumstances, I am of the considered view that the respondents were not justified in terminating the petitioners services and the grounds on which the services of the petitioner has been terminated after rendering considerable length of uninterrupted services, does not appear to be 7 well founded and for this reason the action on the part of the respondents in terminating the services of the petitioner cannot be countenanced. (III) The view of this Court gets fortified by the decision of the Honble Apex Court reported in AIR 2016 SC2237(Md. Zamil Ahmad vs. State of Bihar). (IV) In the light of the foregoing discussion, the impugned order dated 07.09.2012 vide Annexure-10 to the writ petition is hereby quashed and set aside and as a consequence thereof the respondent-State is directed to reinstate the petitioner in services with all consequential benefits except back wages.

9. Accordingly, the writ petition stands allowed. (Pramath Patnaik, J.) Saket/-

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