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Court : Uttaranchal

Decided On : Nov-02-2012

Judge : Kalyan Jyoti Sengupta

Appeal No. : Writ Petition No. 74 of 2005 (S/S)

Appellant : Satish Kumar

Respondent : Garrison Engineers, M.E.S. Prem Nagar, District Dehradun and Others

Judgement :

Kalyan Jyoti Sengupta, J.

In this writ petition, the petitioner being son of one Late Sri Satya Prakash, who was an employee of the establishment of respondent No.1, assails order passed by respondent No. 1 rejecting the prayer for compassionate appointment. Undisputed facts are stated hereunder:

The father of the writ petitioner died on 1st August, 2001 in harness. Almost immediately after the date of death, the petitioner on 5th November, 2001 applied for compassionate appointment in any post befitting to his qualification. This application was received and entertained and action was taken by the respondents authority asking Tehsildar concerned to furnish a report about the petitioner owing

any movable and immovable property. In response to the letter dated 8th July, 2002 written by the respondent for above purpose, the Tehsildar concerned reported that his family did not have any property either movable or immovable in nature. On receipt of this report, the reaction of the respondents authority was communicated by a letter dated 10th April, 2003 telling that there has been no vacancy on that date as the quota of post earmarked being 5% for the compassionate appointment is exhausted. By the said letter, it was assured that case would be reconsidered by fresh Board of Officer in due course of time. Thereafter, on 10th April, 2003 which is under challenged here, the order of rejection was communicated mentioning amongst other, that the petitioners case is not a fit to be considered as on death of his father, the family has received substantial amount as a terminal benefit. They also own property worth Rs.10,000/-, therefore, this family is not in a distress condition for which compassionate appointment was warranted. In the writ petition, plea of discrimination and arbitrariness has been taken. It is alleged that the plea of the respondents, that the petitioners family is possessing immovable property of Rs.10,000/- is absolutely incorrect and the extent of pecuniary benefit as alleged, received as from the respondent is not correct. He has stated in writ petition a meager amount of pension of Rs. 1,350/- is being received by the widow of the deceased to maintain a family consisting of widow, three sons and one unmarried daughter and the members of the family are residing in a rented house as they do not own any house to dwell. In the counter affidavit, the statement as to the financial condition as well as the proprietary status have not been denied or disputed. It is reiterated what has been stated in the impugned order of rejection.

The learned counsel for the petitioner contends that the order of rejection is absolutely illegal, arbitrary and contrary to the norms followed by them systematically. The plea of no vacancy at the earlier stage or subsequent stage is falsified by the fact that another candidate who was similarly situated was given a compassionate appointment on death of another employee which occurred subsequent to the death of the father of the petitioner. This fact has been stated in the rejoinder affidavit in paragraph 6. This statement has never been attempted to be dealt with by filing any affidavit.

In view of the aforesaid situation, the rejection order must be quashed and the respondent be directed to give appointment to the petitioner befitting to his qualification.

Learned counsel for the respondents submits that the compassionate appointment is not a matter of right, rather concession. The case has to be considered according to the financial condition of the family and the family which have no means of survival should be preferred. The petitioners case does not fall within this category. He also reminds me of the principle of giving compassionate appointment as laid down by the Honble Supreme Court in various its pronouncements.

I have considered the facts narrated above and documents annexed to the affidavit and oral submission of the learned counsel for the parties. It has been well settled by judicial pronouncement that compassionate appointment would not be made as matter of right. It must be done in a case when without compassionate appointment the family left by deceased employee cannot survive. It depends on nature of every individual case taking note of socio-economic conditions of the place where the family is residing for its application. Penury condition of a family residing in rural area cannot be standardized with that of urban area or vice-a-versa for minimum standard of living in urban area is higher than that of rural area in our social system.

While going through the impugned order and the communication made by the respondents to the petitioner, I find the following factual position:

The initial approach of the respondents was that the petitioners case could not be considered because of non-availability of vacancy, and at that point of time it was not a case of the respondent the petitioner was having sufficient means for which compassionate appointment should be denied.

The Tehsildars report indicates that the petitioner alongwith the other member of the deceased employee do not have any movable or immovable property. It is stated on oath that they are residing in a rented house. The meager amount of Rs.1,000/- and odd being monthly pension is nothing to keep a family consisting of

five members surviving. I do not know how they are surviving. They are forced to do anything to maintain their biological survival. The ground taken by the respondents that they have the financial means is totally falsified by the record. Shifting stand of the respondents for rejecting the compassionate appointment is not supported by any sense of morality or consistency. Moreover, it appears from the affidavit that compassionate appointment is made to another candidate who is similarly placed and for it there was no dearth of accommodation. No explanation is forthcoming under what compelling circumstances and situation such appointment has been made. It was incumbent upon the respondent to do so as in the petitioners case ground of no vacancy has been taken. No scheme has been laid down nor has the same been disclosed to guide giving compassionate appointment. It has been stated baldly without any supporting document that the concern Board follows certain norms and guidelines which is neither here nor there. In the circumstances, I am of the view that the order smacks of treatment with discrimination and arbitrariness. This order of rejection therefore cannot be sustained. The same is quashed.

I, therefore, direct the respondents authority to take step afresh for appointment of the petitioner on compassionate grounds as it is a fit case where compassionate appointment should be made conforming to the principle laid down by judicial pronouncement. Apparently, there is time long of eleven years. But, there is no lack of sincere effort of the petitioner to pursue the matter, rather it is the fault of the respondents who could have granted him employment at appropriate time earlier as it has been done in another case. Just because the family could survive without employment for eleven years that does not mean it should be denied for compassionate appointment. Nothing has been produced by the respondents to show the petitioner alongwith other member have sufficient means. In absence of material, the presumption is in favour of the writ petitioner. Accordingly, the appointment should be granted on first available vacancy of course within five percent quota and, no vacancy in this should be filled up without giving appointment to the petitioner.

The writ petition is allowed accordingly. No order as to costs.