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Court : Patna

Decided On : Mar-07-2005

Judge : Chandramauli Kumar Prasad, J.

Acts : [Constitution of India](#) - Article 311

Appeal No. : C.W.J.C. No. 13993 of 2003

Appellant : Ram Babu Kumar

Respondent : State of Bihar and ors.

Advocate for Def. : P.K. Singh, JC to SC III

Advocate for Pet/Ap. : Amit Prakash and Soni Srivastava, Advs.

Disposition : Application dismissed

Judgement :

Chandramauli Kumar Prasad, J.

1. This application has been filed for quashing the order as contained in memo dated 10.10.2003 (Annexure-4) whereby the service of the petitioner has been terminated with immediate effect.

2. Facts lie in a narrow compass. Petitioner's father was an Operation Assistant and at the relevant time, posted in the Subdivisional Hospital, Sheohar who died

while in service on 22.1.2000. After his death, petitioner filed application in the prescribed proforma (Annexure-1) claiming appointment on compassionate ground and in Column No. 3 of serial No. 5, he stated that the wife of the public servant dying in harness, that is, the petitioner's mother, is working in the Subdivisional Hospital. Claim of the petitioner for appointment on compassionate ground was considered by the District Compassionate Committee and ultimately, by order dated 24.7.2001 (Annexure-2), petitioner was appointed on compassionate ground. It is common ground that the petitioner's mother at the time of the death of her husband was an employee of the State Government and she still continues as such. It seems that the attention of respondent No. 5 drawn to the appointment of the petitioner on compassionate ground notwithstanding that the petitioner's mother was still working as an employee of the State Government, by order as contained in memo dated 10.10.2003 (Annexure-3), it ordered for termination of the service of the petitioner in accordance with law. The Civil Surgeon-cum-Chief Medical Officer, by the impugned order of the same date, passed order terminating the service of the petitioner. It is the assertion of the petitioner that before terminating his service, no opportunity was given to the petitioner which in fact, has not been controverted by respondents in the counter affidavit.

3. Mr. Amit Prakash, appearing on behalf of the petitioner contends that respondents having not controverted the assertion made by the petitioner that his service has been terminated without giving any notice to him, there is no escape from the conclusion that the petitioner's service was terminated without giving any notice.

4. Junior Counsel to Standing Counsel No. III, however, contends that the appointment of the petitioner being illegal, there is no necessity of issuing notice to him. In answer thereto, Mr. Prakash contends that the impugned order visits the petitioner with civil consequences and as such, the order terminating his service cannot be passed without giving him opportunity. In support of the submission, reliance has been placed on a decision of this Court in the case of Sri Raghunath Singh and Ors. v. The State of Bihar and Ors., 1996 (2) PLJR 20, and my attention has been drawn to the following paragraph from the said judgment:

'22. It is obvious that termination of service of an employee will visit him with 'civil consequences'. In such cases the authority terminating the services of the petitioners is not merely acting administratively but is acting definitely in a quasi-judicial capacity inasmuch as it decides a 'lis', namely, the right of the petitioners to be absorbed in the services which they have been discharging for years together.'

5. It has further been contended that after a person is appointed on compassionate ground, he will have the same right as that of any other employee and as such, termination of service is not permissible without following the procedure prescribed under Article 311 of the [Constitution of India](#). In support thereof, reliance has been placed on a decision of this Court in the case of Ajoy Kumar Ambastha and Anr. v. The State of Bihar and Ors. 1997 (2) PLJR 664, and my attention has been drawn to paragraph 9 of the judgment which reads as follows :

'9. In this case, as noted above, the petitioners were not found fit for promotion atleast partly on the ground that their initial appointment was on compassionate ground and they were therefore, not entitled to promotion in terms of the Government circular. The decision of the municipal authorities to that extent was clearly wrong and untenable.'

6. Junior Counsel to Standing Counsel No. III, as stated earlier, contended that the petitioner's appointment being illegal, no notice is necessary and in support thereof, reliance has been placed on a Full Bench decision of this Court in the case of Awadhesh Kumar Choudhary and Ors. v. The State of Bihar and Ors. 1987 BLJR 907, and my attention has been drawn to para 17 of the judgment in this connection which reads as follows :

'17. To sum up, it is categorically held that no notice is required to be given in a case of termination simpliciter. It is further held that no notice is required to be given even if the termination is on the ground that the appointment itself was invalid and the principle of natural justice or Article 311 is not attracted in such a case. The substantial question posed at the outset is, therefore, answered in negative and it is held that no notice was required to be given to the petitioners before terminating their services since termination of their services was

termination simpliciter and no stigma was attached to it. It is further held that no notice was required to be given to the petitioner even if their termination was on the ground that their appointment itself was invalid.'

7. Having considered the rival submission, there is no difficulty in accepting the broad submission of Mr. Prakash that the order terminating the service visits an employee with civil consequences. But the question which needs answer is as to whether before terminating the services of the petitioner notice was necessary and failure thereof, would vitiate the impugned order.

8. It is not in dispute that at the time when the petitioner's father died, his mother was in service who still continues to be an employee of the State Government. In view of the resolution of the State Government, in case of the other spouse of the employee dying in harness, the dependent children are not entitled to be appointed on compassionate ground. It has been held so by a Division Bench of this Court in the case of Ashok Kumar Choudhary v. The State of Bihar and Ors., 2000 (4) PLJR 651, and in para 13 thereof, it has been clearly held that if both the husband and wife are in Government service and one of them die, in that situation, the benefit of appointment on compassionate ground will not be available to the dependent of the family. Relevant portion of the judgment reads as follows :

'13. According to the aforesaid provision, if both the husband and wife are in Government service and one of them dies; in that situation the benefit of appointment on compassionate ground will not be available to the dependent of the family. If the aforesaid Sub-clause 1 (Anga) is read in isolation without considering the other provisions of the Circular/Instructions including the application form as contained in Annexure-1 and the object of appointment on compassionate ground, then the submission advanced on behalf of counsel for the petitioner has some force, but after taking into consideration other provisions of the Circular/Instruction and the object of compassionate appointment. I am not inclined to accept the submission advanced on behalf of the petitioner. If any statutory provision which is subject matter of consideration is clear and unambiguous, then the plain meaning has to be given, unless the said meaning defeats the object of the provision or leads to anomaly, absurdity and

inconsistency. If the provision is capable of more than one meaning the principle of purposive construction should be applied, so that the purpose and object for which the provision has been made are given effect to. The sole purpose of appointment on compassionate ground is to tide over the financial crisis in case of emergency. If at the relevant time the family has financial resources to meet the hardship, then no dependent can be appointed on compassionate ground. If the provision as contained in Clause 1 (Anga) is interpreted in the manner as suggested by the petitioner, then that would frustrate the very object of appointment on compassionate ground. If one of the spouses dies and the other spouse retires, then the dependent is to be appointed on compassionate ground even though the source of livelihood is available to the family in the shape of pension and other retiral benefits. If appointment on compassionate ground is made in such a situation, then it would be an appointment on the ground of descent and not to meet the sudden hardship caused to the untimely death of an employee.'

9. Principle of natural justice is not an unruly horse and its application depends upon the facts and circumstances of each case. Here, the petitioner undisputedly was not entitled to be appointed on compassionate ground, petitioner is not in a position to assail the order terminating the service on merit but on technical plea that before terminating his service, he was not given any opportunity. Nothing has been placed on record to show that the petitioner's appointment was valid and in the light of resolution of the State Government, he was entitled for appointment on compassionate ground. In fact, the Division Bench of this Court in the case of Ashok Kumar Choudhary (supra) has clearly held that such dependent shall not be entitled for appointment on compassionate ground. In such a situation, I am of the opinion that failure to give notice itself shall not vitiate the order. The view which I have taken finds support from the Full Bench judgment of this Court in the case of Awadhesh Kumar Choudhary (supra).

10. Now, I revert to the decision of this Court relied on by the learned counsel for the petitioner. In the case of Dilip Kumar Das (supra), this Court found that the termination of service of the employee was on wrong interpretation of the Government resolution and after holding so, this Court, observed that service of said employee ought not to have been terminated without giving him an

opportunity. In this case, petitioner is not entitled to be appointed on compassionate ground and finding so, lateron, the service of the petitioner has been terminated.

11. In the case of Ajoy Kumar Ambasth (supra), this Court was concerned with the right of such person who are appointed on compassionate ground and in that context, it was held that such employee has to be treated like any other employee. In the present case, I am not concerned with the service benefit which the petitioner shall be entitled on account of his appointment on compassionate ground but its validity itself. Having found that the petitioner had no right to be appointed, the decision relied on has no bearing in the facts of the present case.

12. Mr. Prakash lastly submits that the petitioner had not suppressed the fact of her mother being as employee of the State Government and he has been appointed taking into account the said fact and hence, lateron, his service cannot be terminated on the ground of his mother being an employee of the State Government. In this connection, he has drawn my attention to the statement made in the application form. I do not find any substance in this submission of the learned counsel. The question of fraud and misrepresentation in the present case has no relevance at all. Petitioner, on his own pleading, is not entitled to be appointed on compassionate ground. In fact, the petitioner has not assailed the termination of his appointment on that ground. In a case in which the dependent is not entitled to be appointed on compassionate ground whether he had made false representation or committed fraud, has no bearing at all to determine the validity of appointment.

In the result, I do not find any merit in this application and it is dismissed accordingly. No cost.

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