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Vasanth J. Vs. State of Karnataka and ors.

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Court : Karnataka

Decided On : Jan-19-2006

Reported in : ILR2006KAR1764; 2006(2)KarLJ565

Judge : B.S. Patil, J.

Acts : Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 - Rules 2, 2(1), 3(2) and 3(3); Constitution of India - Articles 14 and 16

Appeal No. : Writ Petition No. 35094 of 2004

Appellant : Vasanth J.

Respondent : State of Karnataka and ors.

Advocate for Def. : Deshraj, Additional Govternment Adv.

Advocate for Pet/Ap. : M.N. Prasanna and Raghavendra P. Hogadi, Advs.

Disposition : Petition dismissed

Judgement :
ORDER

B.S. Patil, J.

1. In this writ petition, the petitioner is challenging the endorsement issued on 11-11-2003 and 4-6-2004, vide Annexures-H and J rejecting the request made for

compassionate appointment of the petitioner. The claim for compassionate appointment is rejected on the ground that as per Sub-rule (2) of Rule 3 of the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1996 (for short 'the Rules'), there is no provision for grant of compassionate appointment to the step children of the deceased.

2. Before dealing with the legal point that is canvassed by the Counsel for the petitioner, few facts which will have bearing on the question raised can be referred to.

Petitioner is the son of Smt. Janakamma born out of the wedlock between Smt. Janakamma and her first husband. After the death of the father of the petitioner Smt. Janakamma contracted another marriage with one S. Keriyappa on 24-4-1986. This was a registered marriage. It is claimed that at the time of this marriage, the petitioner was already 10 years old. Petitioner was staying along with his mother and his step father Sri S. Keriyappa. In support of the same, he has produced ration card and identity card. He claims that in all respects, he was treated as a son of Sri S. Keriyappa from the date of the marriage. Sri S. Keriyappa, the step father of the petitioner was working as a Second Division Assistant in the office of the Taluk Panchayat, Sagar. He died in harness on 12-4-2001 leaving behind his wife Smt. Janakamma, one son born out of their wedlock and the petitioner herein as a step son. After the death of Keriyappa, petitioner gave a representation seeking appointment on compassionate grounds. The mother of the petitioner, on her behalf and also on behalf of her second son Prashanth, who was a minor, filed an affidavit dated 13-11-2001 stating that they had no objection to provide appointment to the petitioner on compassionate grounds. This application is rejected by the respondents on the ground that there was no provision for compassionate appointment in favour of a step son.

3. Learned Counsel appearing for the petitioner attaching the endorsement issued submits that the provisions contained in Rule 2 of the Rules if read keeping in mind the object and purpose for which they have been enacted would make it very clear that even a step son is entitled for claiming appointment on compassionate grounds. Sri M.N. Prasanna, Counsel appearing along with Sri Raghavendra P.

Hogade, appearing for the petitioner have painstakingly canvassed this proposition taking support from number of judgments rendered by the Apex Court in this regard. As the petitioner is the only major son in the family eligible to claim appointment, his claim ought to have preferred is what is urged. The Counsel contends that the rejection of the claim on the ground that he is a step son is contrary to the letter and spirit of the provisions in Sub-rule (2) of Rule 3 of the Rules. He further submits that while the Rule making authority has advisedly excluded an adopted son or an adopted daughter of the deceased Government servant from claiming appointment under the Rules a step son is not so excluded, which, by implication suggests that a step son is entitled to claim appointment on compassionate grounds. He also submits that what is required to be looked into is whether the step son was dependent upon the deceased and was living with him at the time when the death occurred. If these essential concomitants are satisfied then denial of appointment on the ground that he was a step son would be resorting to a pedantic and wooden approach in construing the provision. Citing several judgments pertaining to interpretation of statutes, learned Counsel has submitted that literal construction of the provision should not be resorted to as the Court must always look to the object and purpose of the legislation. In this regard, he has placed reliance on the judgment in the cases of The Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. v. Ramjee : [1977]2SCR904 and Seaford Court Estates Limited v. Asher (1949) 2 All ER 155. He draws particular attention of the Court to the observations made at page 164 to the following effect:

Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity. The English language is not an instrument of mathematical precision. Our literature would be much the poorer if it were. This is where the draftsmen of Acts of Parliament have often been unfairly criticised. A Judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, laments that the draftsmen have not provided for this or that, or have been guilty of some or other ambiguity.

Further, Counsel has placed reliance on the judgment in the case of State of Kerala v. M.K. Krishnan Nair and Ors. : [1978]2SCR864 to contend that interpretation of a definition clause which opens with an expression unless the context otherwise requires should not be given literal meaning. Although the Counsel for the petitioner has referred to several other judgments in the course of his arguments, as all of them pertain to interpretation of the statute keeping in mind the purpose and object of the legislation, in my view, it is unnecessary to deal with those judgments as there can be no dispute regarding the general propositions laid down.

4. The question, in the instant case is as to what is the intention of the rule making authority in defining the expression 'dependant of the deceased Government servant'. The expression 'widow, son (unmarried daughter and widowed daughter)' are immediately preceded by the qualifying word 'his'. Therefore, it is clear that the dependent shall have to be the widow or son or unmarried daughter or widowed daughter of the deceased male Government servant. Admittedly, the petitioner in this case is not the son of the deceased Government servant. He is the son born to his widow from out of the first marriage. He is no doubt the son of the widow of the deceased employee. Counsel for the petitioner argues that petitioner becomes the step son and a step son is also a son for the purpose of Sub-clause (i) to Rule 2(1)(a). A perusal of Sub-rule (3) of Rule 3 would disclose that an adopted son or an adopted daughter of a deceased Government servant is held not eligible for appointment under these Rules. An adopted son is in fact a son to both the parents but he is excluded from the benefit. This is a sufficient indication of the intention of the Legislature in restricting and confining the expression 'son' to mean 'the son of the deceased and not to include a step son'.

5. Looked from the object and purpose behind the Rule also, it has to be stated that compassionate appointment is designed as an exception to the process of general recruitment so as to come to the aid of the family in distress as an immediate measure. Any provision made by way of an exception to the general process cannot be interpreted liberally so as to subsume the general provision itself. It is held by the Apex Court in the case of Director of Education (Secondary) v. Pushpendra Kumar : [1998]3SCR432 that an exception cannot subsume the

general provision. It is further held therein that provisions pertaining to grant of compassionate appointment which are exceptions to the principles contained under Articles 14 and 16 of the Constitution have to be given strict interpretation in conformity with the relevant Regulations. In the recent judgment of the Apex Court in the case of Commissioner of Public Instructions and Ors. v. K.R. Vishwanath : (2005)IIILLJ850SC it is held that the appointments on compassionate grounds have to be made strictly in accordance with the rules, regulations or administrative instructions. Earlier decision of the Apex Court in the case of Life Insurance Corporation of India v. Mrs. Asha Ramachandra Ambekar : (1994)IILLJ173SC has been referred to and relied upon while holding that the clear and unambiguous provision pertaining to limitation provided for making the application did not permit of an interpretation so as to read the intendment in prescribing the limitation as directory and not mandatory. In Asha Ramachandra Ambekar's case, the Apex Court has held that 'Justice according to law is a principle as old as the hills. The Courts are to administer law as they find it, however, inconvenient it may be, the Court cannot confer benediction impelled by sympathetic considerations when the same is not sanctioned by law'.

6. A careful examination of the definition clause contained in the Rules clearly shows that the expression 'his widow, son, unmarried daughter and widowed daughter' as found in the clause would disclose that the expression 'son' cannot be interpreted to include the step son of the deceased employee.

For the foregoing reasons, the endorsement issued by the respondents herein does not suffer from any infirmity. Writ petition lack merits and the same stands dismissed with no order as to costs.

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