

Kapil Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-04-2008

Reported in : 2009(1)AWC910

Judge : S. Rafat Alam and ;Sudhir Agarwal, JJ.

Appellant : Kapil Kumar

Respondent : State of U.P. and ors.

Disposition : Appeal dismissed

Judgement :

S. Rafat Alam and Sudhir Agarwal, JJ.

1. Aggrieved by the Judgment dated 22.1.2007, passed by the Hon'ble single Judge dismissing the appellant's Civil Misc. Writ Petition No. 40099 of 2006, this intra-court appeal under the rules of the Court has been preferred by the appellant contending that there is no substantial distinction between a regular employee and a seasonal employee and, therefore, once the scheme for compassionate appointment was extended and adopted for regular employees, the same would be deemed applicable to the seasonal employees. It is further contended that being a seasonal employee, the father of the petitioner-appellant had a right to be engaged continuously in the successive seasons, meaning thereby, for all purposes he was a regular employee and, therefore, cannot be denied the benefit

of the provisions of compassionate appointment only on the basis that the petitioner-appellant's father was engaged as seasonal employee. Lastly, it is contended that the sugar company itself a seasonal department and, therefore, it cannot be said that the seasonal employees are not at par with the regular employees. For this purpose reliance has been placed on *Aspinwall and Co., Kulshekar, Mangalore v. Lalitha Padugay and Ors.* : AIR 1996 SC580 . Placing reliance on a Division Bench Judgment of this Court in the case of *State of U.P. and Ors. v. Smt. Malti Devi* 2006 (1) ESC 316, it is contended that in respect to a Government servant, this Court has taken a view that even a daily wager is entitled to get the benefit of the Rules pertaining to compassionate appointment and, therefore, there is no reason for not extending the same to the seasonal employees of the sugar mills and any view otherwise is violative of Articles 14 and 16 of the Constitution of India.

2. From the record it appears that the appellant's father late Sri Bir Singh was engaged as Seasonal Clerk in Sahkari Ganna Vikas Limited, Daurala, district Meerut sometimes in February, 1997 and died while working in the same capacity on 1.6.2005 leaving behind his widow and other children including the appellant. The appellant said to have filed applications on 13.7.2005 and 22nd December, 2005 before the Secretary, Ganna Vikas Limited, Daurala, district Meerut and the District Cane Officer, Meerut requesting them to grant compassionate appointment to him. The aforesaid authorities found that there is no provision for giving compassionate appointment to the legal heirs of seasonal employee, hence could not accept the request of the appellant. The petitioner appellant further made a representation to the Cane Commissioner, Meerut in this regard which was also rejected vide order dated 27th March, 2006 whereupon the appellant preferred Civil Misc. Writ Petition No. 40099 of 2006 challenging the order dated 27th March, 2006 of the Cane Commissioner, Meerut as also the order dated 26th May, 2000, copies whereof are enclosed as Annexures-1 and 6 to the writ petition. He also sought a writ of mandamus commanding the respondents to provide appointment on compassionate basis commensurating to his qualification. The Hon'ble single Judge, having considered the submissions at length has dismissed the writ petition vide judgment dated 22.1.2007 which is impugned in this intra-Court appeal.

3. Learned Counsel for the appellant vehemently contended that the denial of beneficiary scheme of compassionate appointment to the legal heirs of the seasonal employee is patently arbitrary, particularly, when such a scheme is available to the legal heirs of regular employees and in support of the aforesaid submission placed reliance on the aforesaid decisions, namely, *Aspinwall (supra)* and *State of U.P. and Ors. v. Smt. Malti Devi (supra)*.

4. However, we do not find any reason to take a different view what has been taken by the Hon'ble single Judge.

5. The learned Counsel for the appellant could not dispute this fact that either on the date of death of his father or even thereafter no such provision or scheme was/is in existence which provides for appointment on compassionate basis to the legal heirs of seasonable employee in a Co-operative Sugar Development Society. Suffice it to mention at this stage that compassionate appointment is not a matter of right unless it is provided in the statute or in a scheme, having force of law or binding upon the employer or the employee of the concerned department. The appointment in harness is not a regular source of recruitment. It can be given only if it is provided in the statute, scheme or otherwise. In normal course, there are two sources of recruitment generally provided, one is direct and second is by promotion of the employees working in the establishment itself. In respect to the direct recruitment a procedure consistent with Article 16 of the Constitution of India is to be followed, i.e., advertisement of the vacancies to public at large to ensure their right of consideration for employment of those persons, who are eligible for consideration for such employment. The Apex Court has observed, time and again, that the appointment on compassionate ground is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. The dependants of the employees died-in-harness do not have any special or additional claim to public services other than the one conferred, if any, by the employer. (See *State Bank of India and Anr. v. Somvir Singh JT 2007 (3) SC 398 : 2007 (2) AWC 1552 (SC)*).

6. The whole object of granting compassionate appointment to enable the family to tide over the sudden financial crisis. The object is not to give a member of such family a post much less a post held by the deceased. Deprecating the large scale appointments on compassionate basis ignoring the normal process of recruitment, in *Union of India and Ors. v. M.T. Latheesh* 2006 (7) SCC 350, the Apex Court said that indiscriminate grant of employment on compassionate basis would shut the door for employment to the ever-growing population of unemployed youth. Since the appointment on compassionate basis is an exception to the general rule of recruitment, it has to be followed strictly and cannot be expanded by process of interpretation or by other means. The general judicial approach in such a matter is not in favour of widening the scope of compassionate appointment. The object is to provide appointments in accordance with the general rule of recruitment consistent with Article 16 (1) of the Constitution, except strictly of such cases which fall within the four corners of the scheme meant for compassionate appointment.

7. In *Umesh Kumar Nagpal v. State of Haryana* JT 1994 (3) SC 525, the Apex Court held 'As a rule, appointments in public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Government nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying-in-harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment.'

8. In *State Bank of India and Anr. v. Somvir Singh* (supra), the Apex Court also observed that the compassionate appointment can be considered only in accordance with the scheme framed by the employer and no discretion as such is

left with any of the authorities to make compassionate appointment de hors the scheme. The Apex Court therein held 'in our considered opinion the claim for compassionate appointment and the right, if any, is traceable only to the scheme, executive instructions, rules etc., framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.'

9. Earlier also similar view was taken in *Indian Drugs and Pharmaceuticals Ltd. v. Devki Devi and Ors.* : (2006)IIILLJ783SC . Referring to *State of Haryana v. Rani Devi* : AIR 1996 SC2445 , the Apex Court observed in para 11 of the judgment in *Indian Drugs and Pharmaceuticals Ltd. v. Devki Devi and Ors.* (supra) that the appointment on compassionate ground cannot be claimed as a matter of right. Dying-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee.

10. In *State of Haryana v. Rani Devi* (supra), the Apex Court held that a scheme regarding appointment on compassionate ground if extended to all types of casual or ad hoc employees including those who worked as apprentices cannot be justified on constitutional grounds. Such kind of claim though cannot be upheld on the touchstone of Articles 14 and 16 of the Constitution of India but has been upheld only on the consideration of providing measure of sustenance to the family of the deceased employee due to sudden demise of the sole bread earner to save the family from starvation and penury.

11. In *L.I.C. of India v. Asha Ramchandra Ambedkar* : (1994)IILLJ173SC , the Apex Court held that if the regulations framed by L.I.C. do not contemplate compassionate appointment, it is not permissible for the Court or the Tribunal to confer benediction impelled by sympathetic considerations.

12. In the case in hand, it is admitted position that there is no scheme for providing compassionate appointment to the seasonal employee. The question as to whether the claim for compassionate appointment can be considered at par with the regular employee, we do not propose to repeat except to find it appropriate to record our agreement with detailed reasons given by the Hon'ble single Judge

considering the distinction between regular and seasonal employees and various terms and conditions of their services in order to hold that they do not stand at par, but constitute two different classes.

13. The judgments cited by the learned Counsel for the appellant do not apply at all to the basic issue raised in this matter and, therefore, do not help him in any manner. In *Aspinwall (supra)*, the dispute was with respect to computation of gratuity of seasonal workers under the Payment of Gratuity Act and there is nothing which may help the appellant in respect to the issues raised before this Court in this special appeal. Similarly *Smt. Malti Devi (supra)* also has no application to the issue involved in this case.

14. In view of the aforesaid discussions, we do not find any error in the judgment of the Hon'ble single Judge impugned in this appeal and, in our view, the writ petition has rightly been dismissed by his Lordship holding that the petitioner-appellant was not entitled for any relief.

The special appeal lacks merit and it is, accordingly, dismissed.