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Sarada Vs. Pradeep Kumar

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Court : Kerala

Decided On : Aug-18-2004

Reported in : 2004(3)KLT1019

Judge : N.K. Sodhi, C.J. and; P.R. Raman, J.

Acts : Kerala Education Rules, 1959 - Rule 51B

Appeal No. : W.A. No. 2680 of 2000 and O.P. No. 25865 of 2000

Appellant : Sarada

Respondent : Pradeep Kumar

Advocate for Def. : Roy Chacko, Sr. Government Pleader and; P. Narayanan and;

Advocate for Pet/Ap. : T.G. Rajendran, Adv.

Disposition : Appeal allowed

Judgement :

P.R. Raman, J.

1. Appellant in the Writ Appeal is the 1st respondent in O.P. No. 1088/2000. The 1st respondent herein filed an Original Petition seeking a writ of mandamus commanding the Assistant Educational Officer, the 2nd respondent in the Original

Petition to direct the Manager, the appellant in the Writ Appeal to give appointment to the petitioner under dying in harness scheme as provided under Chap. XIVA Rule 5 IB of the Kerala Education Rules, (hereinafter referred to as 'the K.E.R.') and also for restraining the A.E.O. from approving the appointment of any other person as Peon in Olavilam U.P. School before appointing the petitioner.

2. Petitioner is the son of one K.K. Kumaran who was an Assistant Teacher of Olavilam U.P. School. The said Kumaran died on 15.7.1975 while he was in service leaving behind his wife Leela and 3 children, namely, Pradeep Kumar (petitioner herein), Dinesh Kumar and Manoj Kumar. The claim of the petitioner is that since his father died while he was in service, his dependent is entitled to get appointment in any existing or next arising vacancy in the school and that the petitioner is fully qualified and eligible for being appointed to the post of Peon. He placed reliance on Rule 44 of the Chap. XIVA of the K.E.R. For his appointment as a dependent the petitioner submitted an application on 3.7.1998 before the 1st respondent-manager (appellant in the Writ Appeal). Since the Manager did not take any action, the petitioner filed O.P. No. 16014/98 wherein a direction was given to the Manager to pass appropriate orders as per the judgment in the said Writ Petition as evidenced by Ext. Pl. But according to the petitioner, instead of appointing him the Manager appointed the 4th respondent for the post of Peon on 1.9.1998 before passing orders in compliance with the judgment. Subsequently on 28.9.1998 as per Ext.P2 order, the Manager rejected the claim of the petitioner stating that the application was not in proper form and that in the application his educational qualification was not shown. It was further stated that the petitioner was an accused in a pending criminal case before the Judicial First Class Magistrate, Thalassery as C.C. No. 801/96 and hence his application cannot be considered before a decision is rendered in the said criminal case. According to the petitioner, thereafter, he submitted an application in proper form as per Ext.P3. He also submitted that the rule regarding appointment under dying in harness has retrospective operation in the light of the judgment of this Court and that mere pendency of a criminal case is no bar for appointment. He preferred Ext.P4 appeal before the Assistant Educational Officer and ultimately Ext.P6 order was passed on 13.4.1999 holding that the petitioner is entitled to be appointed as a claimant under Rule 5 IB of Chap.XIV of the K.E.R. and he refused to approve the

appointment of the 4th respondent made by the Manager. Aggrieved there by the Manager preferred an appeal before the higher authorities which was dismissed by Ext.P7 order. According to the petitioner, even after passing Ext.P7 order the Manager did not appoint the petitioner. It was in these circumstances that Original Petition was filed by the petitioner seeking appropriate relief for redressal of his grievance.

3. The learned Single Judge by judgment dated 27th July, 2000 directed the Manager to appoint the petitioner subject to the result of the Revision Petition if any pending, after holding that pendency of the criminal case is not a bar of any appointment in terms of the Kerala Education Rules.

4. Thereafter, the Revision Petition filed by the Manager before the Government was also dismissed. Challenging the same the Manager preferred O.P. No. 25865/2000. In view of the pendency of the Writ Appeal, the said Original Petition was also referred to be heard along with the Writ Appeal. Hence, both the Writ Appeal as well as the Original Petition are disposed of by this common judgment.

5. Rule 51B of Chap. XIVA of the K.E.R. which was inserted by G.O.(P) 55/90/G.Edn. dated 30.3.1990 is reproduced as hereunder:-

'51B. The Manager shall give employment to a dependent of an aided school teacher dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall mutatis mutandis, applying in the matter of such appointments.'

6. A similar rule contained in R.9A of Chap.XXIV of the K.E.R. confers a right on the dependents of a non-teaching staff of an aided school who died in harness.

7. In the present case, the father of the petitioner who was the Teacher in the U.P. School died on 15.7.1975 and the petitioner as a dependent claims the benefit of Rule 5 IB of Chap.XIV A of the K.E.R. seeking appointment in the school as a Peon, but the claim was made only on 3.7.1998, 23 years after the death of his father. According to the petitioner, he was minor at the time of death of his father and subsequent to the attainment of the majority when a retirement vacancy arose

for the post of Peon, he submitted his application. Admittedly, the 4th respondent was appointed by the Manager in 1998 as a Peon to which approval was not accorded in the light of the rival claim made by the petitioner for the said post. But the fact remains that the 4th respondent was working in the school as a Peon ever since his appointment. The question that arise for consideration is as to whether the petitioner, in the circumstances, is entitled to be appointed in the vacancy which arose in 1998 claiming the benefit of Rule 5 1B of Chap.XIV A of the K.E.R. replacing the 4th respondent. According to the petitioner, the only ground on which his claim was rejected being the pendency of criminal case and in the absence of any such inhibition contained in Rule 51B, the refusal to appoint him to the post is in clear violation of Rule 5 IB of the K.E.R. He also contended that subsequently he was discharged from the criminal case and as such as of now there cannot be any objection to appoint him.

8. The appellant (Manager) contended that as per a Circular issued on 22.4.1972 produced as Annexure- I along with the Writ Appeal, the candidate seeking appointment has to make a declaration at the time of approval to the effect that he has not been convicted by a Court of Law and no criminal case is pending against him. But in the case of the 1st respondent (petitioner in O.P. No. 1088/2000) since at the relevant time there was a criminal case pending against him, he could not have given any such declaration and therefore he is disqualified for getting appointment. He also submits that as per Rule 5 IB of Chap.XIVA a Manager can suspend the employee, if he is an accused in a criminal case. The purpose of the declaration to be made as contained in the Circular and the power of the Manager to suspend an employee, if he is an accused in criminal case, would show that it is not an unfettered right to be appointed in an aided school when a person is an accused in a criminal case.

9. In the counter-affidavit filed by the 4th respondent in O.P. No. 1088/2000 it was averred that he was appointed as a Peon with effect from 1.9.1998 in the retirement vacancy and that he was continuing in the post since then. But he was not paid salary, as his appointment was not approved and the delay in approving his appointment is due to the objection raised by the petitioner. In paragraph 7 of the counter-affidavit it is averred that the petitioner's father died way back in 1975

while working as a Teacher of the School, that the claim of the petitioner is highly belated and that even otherwise he does not satisfy the requirements of Rule 51B of Chap. XIV A of the K.E.R.

10. Thus, it can be seen that the 4th respondent has raised a contention that the claim put forward by the petitioner is highly belated, but which aspect has not been considered by the learned Single Judge. It will be advantageous to refer to a decision of the Apex Court on this point.

11. In State of Manipur v. Md. Rajaodin (JT 2003 (8) SC 57) it was held by the Apex Court that appointment on compassionate ground cannot be claimed as a matter of right and that die-in-harness scheme cannot be made applicable to all types of posts irrespective of the nature of service rendered by the deceased employee. In that case it was contended that the respondent was a minor at the time of his father's death. He was 10 years of age in 1980. Even if a reasonable period after he attained majority, he made an application in 1997. It was held that the application was highly belated and that such a claimant had no right much less a legal right to ask for an appointment. It was also held that the claim for appointment on compassionate ground as a dependents of the deceased employee strictly cannot be upheld on the touchstone of Arts. 14 and 16 of the Constitution of India. However, such claim is considered as reasonable and permissible on the basis of sudden crisis occurring in the family of such employee who served the State and dies while in service. After referring to the decision in Smt. Sushma Gosain and Ors. v. Union of India and Ors. (JT 1989 (3) SC 570) it was also observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that and when such minor becomes a major he can be appointed without any time consciousness or limit. The same view was reiterated in Smt. Phoolwati v. Union of India and Ors. (1991 Supp. (2) SCC 689), Union of India and Ors. v. Bhagwan Singh ((1995) 6 SCC 476) and Director of

Education (Secondary) and Anr. v. Pushpendra Kumar and Ors. (JT 1998 (4) SC 155).

12. A Division Bench of this Court in Deepak v. Secretary. General Education Department (2002 (3) KLT 288) considered the scope of Rule 51B of Chap.XIVA of the K.E.R. and held that if an application is made for compassionate appointment there must be some proximity between the date of death as well as the date of application. The object of compassionate appointment, as the Apex Court observed, is to tide over the sudden financial crisis resulting due to the death of the bread-earner. It is not as if on the death of an employee, claim of the dependent is kept open for ever. Once a dependent is not always a dependent. There cannot be reservation of vacancy till such time the applicant becomes major or till such time the applicant acquires qualification. It was also held that provision like Rule 5 IB and other Government Orders pertaining to compassionate appointment are all made on humanitarian consideration and it is always in the nature of an exception to the general provision. Exception cannot always occupy the place of the main provision and thereby nullify or dilute the efficacy of the main provision by denuding the right conferred by the main provision to persons otherwise eligible. That was also a similar case where the petitioner's mother there in was a Teacher in the High School died in harnesson 7.2.1978. On 5.1.1999 the writ petitioner submitted an application before the Manager of the School for appointment under dying in harness scheme in accordance with Rule 5 IB of Chap.XIV A. The writ petitioner was seeking employment as Lab Assistant or Peon in the Higher Secondary School based on the Rule 51B of Chap.XIV A which came into force on 30.3.1990. The Division Bench also indicated in its judgment referring to a Single Bench decision of this Court in Sajeesh Babu v. State (1996 (2) KLT 542) that the learned Single Judge of this Court expressed the necessity of laying down time limit for submitting application for appointment on compassionate ground under Rule 5 IB and it seems that on 24.5.1999 the Government has issued orders fixing two years as the time limit for making application for appointment on compassionate ground.

13. In the case on hand, the death occurred in 1975 and the claim for employment as a dependent of a person who died in harness, was made only in 1998, after 23

years of his father's death and hence it is highly belated.

14. It is contended by the 1st respondent in the Writ Appeal (petitioner in the Original Petition) that there was no plea regarding delay raised earlier and placing reliance or the decision of the Supreme Court reported in Dr. R.K.S. Chauhan and Anr. v. State of U.P. and Ors. (1995 Supp (3) SCC 688) it was contended that in similar circumstances, the Apex Court held that the High Court fell in error in making out a case of delay in the absence of any plea raised by the unsuccessful candidates either before the Tribunal or even before the High Court and that the appellants had hardly any opportunity to place their point of view in that behalf and in that view of the matter, the judgment of the High Court was set aside. However, in the present case the 4th respondent, in his counter affidavit, reference to which was already made in paragraph 9 above, had raised the plea of long delay in making the application and thus the appellant had an opportunity to rebut the same by filing a reply affidavit. Thus the factual matrix in the present case is totally different.

15. In the circumstances, we have no hesitation to hold that the writ petitioner is not entitled to the relief sought for in the original petition. We, therefore set aside the judgment of the learned Single Judge and allow this appeal and dismiss the original petition.

16. The learned Single Judge has given a direction to appoint the petitioner (1st respondent in the Writ Appeal) subject to the decision of the Revisional Authorities in which Revision Petition is pending. The Revisional Authority having dismissed the revision filed by the Manager, he has preferred O.P. No. 25865/2000. We have already found that the writ petitioner has no rightful claim for being appointed under Rule 5 IB for the reasons already given above. The Educational Authority having take a contrary view the Writ Petition O.P. No. 25865/2000 has to be allowed and we quash Exts.P8, P9 and P10.

Accordingly, the Writ Appeal is well as O.P. No. 25865/2000 are allowed.

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