

G. Rajagopal Vs. Superintending Engineer and ors.

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Court : Chennai

Decided On : Mar-14-2008

Reported in : [2008(119)FLR313]

Judge : K.K. Sasidharan, J.

Acts : Code of Civil Procedure (CPC) - Sections 100; [Constitution of India](#) - Articles 14, 16, 16(1) and 16(2)

Appeal No. : S.A. (M.D.) No. 507 of 2007

Appellant : G. Rajagopal

Respondent : Superintending Engineer and ors.

Advocate for Def. : V. Panneerselvam, Adv. for; V. Kasinathan, Adv.

Advocate for Pet/Ap. : V. Sitharanjandas, Adv.

Disposition : Appeal dismissed

Judgement :

K.K. Sasidharan, J.

1. This appeal is directed against the judgment and decree dated 28.9.2005 in A.S. No. 24 of 2002 on the file of Principal District Judge, Madurai whereby the learned Principal District Judge? partly reversed the judgment and decree dated

21.6.1999 in O.S. No. 587 of 1997 on the file of Principal District Munsif, Madurai.

2. The appellant as plaintiff filed a Suit in O.S. No. 587 of 1997 before the Principal District Munsif, Madurai for a decree of declaration that he is the adopted son of Thiru. Govindarajulu and Subbulakshmi and for mandatory injunction directing the respondents 1 and 2 herein to provide employment to him in the Tamil Nadu Electricity Board by way of compassionate appointment.

3. In the plaint in O.S, No. 587 of 1997, it is the case of the appellant that he is the natural son of G. Radhakrishnan and Meena, respondents 3 and 4 in the present appeal. The appellant was adopted by Govindarajulu and his wife Subbulakshmi, respondent No. 5 in the present appeal and the adoption was on 10.2.1976 at Periyakulam Village in the presence of their relatives and friends in the village temple. The natural parents gave the appellant in adoption to Govindarajulu and fifth respondent and they took the appellant in adoption and the adoption had also been given effect to. The appellant was brought up by the adoptive parents and they treated him as their own son. The appellant was admitted in the school only as the son of Govindarajulu and in the official records, he was mentioned as the son of Govindarajulu. The adoption was accepted by the community and relatives and friends and the appellant was recognized as the son of Govindarajulu.

The appellant further contended in his plaint that Govindarajulu was working as Foreman Grade-1 in the Tamil Nadu Electricity Board and he died on 9.1.1990 leaving behind him the appellant as well as the fifth respondent. Immediately after the death of Govindarajulu, the first respondent called upon the fifth respondent to produce the death certificate and legal heir certificate and the same was furnished to the first respondent. Subsequently, the appellant and fifth respondent approached the Tamil Nadu Electricity Board for appointing the appellant in the Electricity Board by way of compassionate appointment in view of the death of Govindarajulu, while in service. However, at that time, the appellant was a minor and he was asked to apply for appointment after attaining majority. Subsequent to his attainment of majority, the appellant and the fifth respondent submitted an application dated 10.12.1996 before the Assistant Engineer, Tamil Nadu Electricity Board, Thirupparankundram. In reply to the said application, the first respondent,

as per communication dated 18.1.1997, required the appellant to contact the Assistant Executive Engineer, Distribution, Pasumalai. In the very same letter, there was a direction to the Assistant Executive Engineer to submit the field enquiry report with respect to the certificates enclosed along with the application form. Accordingly, the Assistant Executive Engineer conducted enquiry and submitted his report. After the receipt of the said report, the first respondent, as per communication dated 28.4.1997, required the appellant to produce documents to prove the adoption. Immediately, the appellant submitted copies of the legal heir certificate, community certificate and school transfer certificate along with other documents to prove his adoption. However, the first respondent failed to pass orders in the application for appointment. Subsequently, on enquiry, the appellant came to know that the first respondent required orders from the Court to prove the factum of adoption and accordingly, the fifth respondent filed O.P. No. 2 of 1991 for succession certificate. The District Munsif, as per certificate dated 10.2.1992, recognized the appellant as the son of Govindarajulu and Subbulakshmi. However, the first respondent did not proceed further in the matter of appointment and as such, the appellant was compelled to file the suit for declaration as well as mandatory injunction.

4. The suit was resisted by the respondents 1 and 2 and in the written statement filed by the first respondent and adopted by the second respondent, it was contended that the suit as framed is not maintainable and though the appellant was taken in adoption by Govindarajulu and Subbulakshmi, the same was not declared by Govindarajulu and as such, there is no record in the office of the first respondent to show that the appellant is the adopted son of Govindarajulu. The first respondent further contended that as per records, the fifth respondent alone is the legal heir and as such, monetary benefits payable on the death of Govindarajulu were, in fact, paid to the fifth respondent. The first respondent also admitted the receipt of application for appointment, the field enquiry conducted by the officers of the first respondent and the report submitted by them, accepting the theory of adoption as projected by the appellant. However, it was the further case of the first respondent that the matter has to be decided by the Electricity Board and ultimately, it was their prayer to dismiss the suit.

5. The Trial Court framed issues in accordance with the pleadings and ultimately, decreed the suit as prayed for.
6. The judgment and decree of the Trial Court dated 21.6.1999 in O.S. No. 587 of 1997 was taken up in appeal by the respondents 1 and 2 before the Principal District Court, Madurai. During the pendency of the appeal, the first respondent filed LA. No. 112 of 2005 to receive additional written statement as-well as LA. No. 111 of 2005 to receive certain documents as additional evidence.
7. As per the additional written statement filed by the first respondent and,, adopted by the second respondent, it was the contention of the first respondent'. that the appellant is not eligible to get employment in the Tamil Nadu Electricity Board on compassionate ground in view of the proceedings of the Tamil Nadu Electricity Board, whereby an adopted son is declared to be ineligible to get employment on compassionate ground, Accordingly/the first respondent prayed for dismissal of the suit.
8. The first respondent also preferred I.A. No. 111 of 2005 to receive the document which is nothing, but the scheme dated 22.7.1983 as amended by the amended scheme dated 5.8.1987, in and by which adopted children are declared to be ineligible to apply for compassionate appointment.
9. The learned Principal District Judge allowed LA. Nos. 111 of 2005 and 112 of 2005 and the additional written statement was taken on record. Similarly, the documents produced along with LA. No. III of 2005 were received and marked as Exs. B-3 and B-4.
10. The First; Appellate Court framed as many as six issues and answered the issue No. 1 in favour of the respondents 1 and % With regard to point No. 2, in respect of adoption, the Appellate Court found that the appellant was the adopted son of Govindarajulu and accordingly, answered the said issue in favour of the present appellant. The point No. 3 relates to the plea taken in the additional written statement in respect of inability of an adopted son to get compassionate appointment in the Electricity Board. The Appellate Court found that the guideline issued by the Board and the amendment made to the said guideline is binding on

the Board as well as those applicants seeking employment by relying on the said scheme and as such, held that the appellant is not entitled for mandatory injunction for appointment in the Electricity Board on compassionate ground. The issue regarding limitation and ouster of jurisdiction were answered by the First Appellate Court against the respondents 1 and 2 and ultimately, the appeal was allowed in part by modifying the judgment and decree of the Principal District Munsif, Madurai, whereby the judgment and decree with regard to declaration was confirmed, but dismissed in so far as the prayer for mandatory injunction.

11. The judgment and decree dated 28.9.2005 in A.S. No. 24 of 2002 on the file of Principal District Judge, Madurai is the subject-matter of the present Second Appeal.

12. In the above factual matrix, I have heard Mr. V. Stharanjandas,. learned Counsel appearing for the appellant and Mr. V. Panneerselvam, learned Counsel appearing, for the respondents 1 and 2.

13. The learned Counsel for the appellant vehemently contended that the amendment as found in Ex. B-4 were not in the original scheme in Ex. B-3 and it was only amended in the application form which is a format prescribed and annexed to the scheme and the said amendment, being an amendment made to a procedural provision, had no applicability in so far as the scheme is concerned. It is his further contention that procedure cannot be contrary to the scheme and as such, when there is nothing in the scheme to deny the compassionate appointment to an adopted son, the respondents 1 and 2 cannot deny the same by necessary amendments in the application form, without making amendments in the original scheme. The Counsel further contended that the application submitted by the appellant for compassionate appointment is still pending with the respondents 1 and 2, and the same has not been disposed of. He further contended that the officers of the first respondent conducted necessary enquiry and they were satisfied with the documents furnished by the appellant and they have also certified that the appellant is eligible for appointment under compassionate employment category. Therefore, the contesting respondents cannot be permitted to take away the right of the appellant to get employment by

making an amendment, in the application form and producing the same before the First Appellate Court and as such, the learned Counsel contended that the judgment and decree of the First Appellate Court is perverse warranting interference by this Court exercising jurisdiction under Section 100 of the Code of Civil Procedure.

14. The learned Counsel appearing for the respondents 1 and 2 supported the judgment and decree of the First Appellate Court and it is the contention of the learned Counsel that the respondents 1 and 2 amended the scheme with a view to avoid the misuse of the provision for compassionate appointment and as such, the appellant cannot be heard to say that he is not bound by the amendment, as it is made only in the application form for compassionate appointment.

15. I have considered the rival submissions as well as the judgment and decree of the Court below. I have also perused Exs. B-3 and B-4,

16. The proceedings in Ex. B-3 are referred to as the Board proceedings No. 411 dated 22.7.1983, wherein certain procedure is contemplated for-considering the application for employment under the category of dying in harness. As per Serial No. 2(i) of the said proceedings, the dependant of the deceased Hoad employee, who seeks employment assistance under the Board, should apply to the Superintending Engineer concerned/the Head of the Office concerned in the form prescribed in Annexure-1 and simultaneously send a duplicate copy of the application to the Chief Engineer. The Annexure-I to the proceeding is the formal of the application and Annexure-II is a proforma to be filled by the Field Officer of the Board not. below the rank of Assistant Divisional Engineer nominated by the Superintending Engineer/Head of the Office to conduct the field enquiry. A perusal of the proceedings dated 22.7.1983 shows that the Annexure I and II are part of the proceedings dated 22.7.1983. The memorandum dated 5.8.1987 marked as Ex. B-4 seeks to amend the Annexure-I and as per the said amendment, adopted children are not eligible for appointment. Based on this amendment made to the Annexure-I, the learned Counsel for the appellant contended that the amendment is only in the annexure and is not found in the proceeding, and as such, the amendment is not valid being an amendment made only to a procedural provision.

17. I have carefully considered Ex. B-4 and it is found that the very proceeding dated 22.7.1983 came to be amended as found in Serial No. 2 of the proceedings dated 5.8.1987, which is extracted below :

2. The term 'member of the family eligible for assistance' has been defined in Annexure-II to the B.P. third cited and in the Memo, fourth cited as wife/husband/son/unmarried daughter/legally adopted son or unmarried daughter. Since the extension of the concession to 'adopted' children has given scope for abuses, it is hereby ordered that the concession shall be available, in the case of children, only to natural born son or natural born unmarried daughter and not to adopted children.

18. The proceeding in Ex. B-4 clearly shows that the second respondent had taken a policy decision to restrict the appointment on compassionate ground to the natural born son or natural born unmarried daughter and not to the adopted children. The memorandum dated 5.8.1987 has already been marked as Ex. B-4 before the First Appellate Court with due notice to the appellant. However, the appellant did not choose to challenge the validity of the said notification in the manner known to law and as such, it is not open to the appellant to contend that the amendment is not applicable to the scheme, as the same is made only in the application form and not in the original proceeding.

19. It is trite law that appointment on compassionate ground is an exception to the normal mode of selection or appointment to any office under the state. The compassionate appointment is an exception and not a Rule. It is only when the scheme provides for making appointment for the dependants of the employees who died in harness that the dependants are eligible to make an application for such appointment. In the normal course, appointment to public service should be from the employment exchange or through other transparent methods, and all eligible candidates are entitled to apply in such selection. The scheme announced by the second respondent for appointment is in the nature of concession and in such cases, the scheme had to be interpreted strictly. As per the scheme, which is the subject-matter of the present appeal, the adopted children are not eligible for employment on compassionate ground. The proceeding dated 22.7.1983 was

subsequently amended after the decision of the Board which is evident by Ex. B-4 dated 5.8.1987. Ex. B-4 is to be read along with Ex. B-3 and the entire scheme had to be taken together. It is not the case of the appellant that he has been singled out and persons similarly situated, like him were given appointment. The second respondent has taken a policy decision to give employment only to the natural born son or natural born unmarried daughter and not to the adopted children. While making amendment to the original scheme dated 22.7.1983, the Board considered the fact that the inclusion of adopted children in the scheme has been misused and in fact, it had given scope for abuse and in the larger public interest, the Board dispensed with the earlier practice of giving employment to the adopted children. The scheme being a concession, the party who grants such concession is also having the power to amend or vary the scheme and such being the case, it cannot be said that the amendment made to the original proceeding has no validity and the case of the appellant shall be considered as per the original proceeding dated 22.7.1983 and as such, I do not find any merit in the contention of the learned Counsel for the appellant in respect of the validity of Ex. B-4.

20. The employment on compassionate ground is mainly given to tide over the difficulties which the family may suffer on account of the untimely death of the bread winner of the family. The employment under the dying in harness scheme cannot be postponed to a latter date so as to enable the dependants to attain majority. The appellant in the present case was a minor on the date of the death of his adoptive father and it was only after his attaining majority that he claimed appointment invoking the scheme of compassionate appointment formulated by the second respondent.

21. The Apex Court in *Commissioner of Public Instructions v. K.R. Vishwnath* : 2005 (107) FLR 153 (SC). considered the earlier judgments in respect of compassionate appointment and reiterated the legal position thus:

10. As was observed in *State of Haryana and Ors. v. Rani Devi and Anr.* 1997 (74) FLR 2023 (SC) it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant on the deceased-employee. Strictly this claim cannot be upheld on the

touchstone of Article 14 or 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 has served the State and dies while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative orders which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be-claimed-as a matter of right. 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 Rani Devi's case (supra) it was held that 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. In Life Insurance Corporation of India v. Asha Ramachandra Ambekar (Mrs) and Anr. : 1994 (68) FLR 791 (SC), it was pointed out that High Courts and Administrative Tribunals cannot confer benediction impelled by sympathetic considerations to make appointments on compassionate grounds when the regulations framed in respect thereof do not cover and contemplates such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana and Ors. : 1994 (68) FLR 1191 (SC) that as a rule in public service appointment should be made strictly on the basis of open invitation of applications and merit. The appointment on compassionate ground is not another source of recruitment but merely an exception to the aforesaid requirement taking into consideration the fact of the death of employee while in service leaving his family without any means of livelihood. In such cases the object is to enable the family to get over sudden financial crisis. But such appointments on compassionate ground have to be made in accordance with the rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased.

11. In Smt. Sushma Gosain and Ors. v. Union of India and Ors. : 1989 (59) FLR 626 (SC) it was 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 as and when such minor becomes a major he can be appointed without any time consciousness or limit.

12. In *State of LLP. and Ors. v. Paras Nath* : 1998 (2) SCC 412 it was held that the purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointments.

22. The scheme framed by the State Bank of India for appointment on compassionate ground was the subject-matter before the Apex Court in *State Bank of India v. Somvir Singh* : 2007 (113) FLR 225 (SC) and while considering the question as to whether there is any right to claim appointment on compassionate ground, the Apex Court observed thus:

7. Article 16(1) of the [Constitution of India](#) guarantees to all its citizens equality of opportunity in matters relating to employment or appointment to any office under the State. Article 16(2) protects citizens against discrimination in respect of any employment or office under the State on grounds only of religion, race, caste, sex, descent. It is so well settled and needs no restatement at our ends that appointment on compassionate grounds 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. Such appointments are required to be made on the basis of open invitation of applications and merit. Dependants of 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.

8. In *Umesh Kumar Nagpal v. State of Haryana* : 1994 (68) FLR 1191 (SC), this Court held, 'As a rule, appointments in the 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 dependants 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 dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased'

(emphasis added)

9. In *Union Bank of India and Ors. v. M.T. Latheesh* : 2006 (111) FLR 77 (SC) : 2006 AIC 65 (SC) this Court while dealing with the similar question observed that indiscriminate grant of employment on compassionate grounds would shut the door for employment to the ever growing population of unemployed youth.

10. There is no dispute whatsoever that the appellant-Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such left with any of the authorities to make compassionate appointment de hors the scheme. 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.

23. The claim for employment under compassionate ground under the Electricity Board came up for consideration before the Division Bench of our High Court in *Ramasamy v. Tamil Nadu Electricity Board and Ors.* 2007 WLE 796 and after considering the scheme as well as the decided cases on the point, the Honourable the Chief Justice speaking for the Bench observed thus:

16. It is, thus, clear that the Courts cannot direct appointments on compassionate grounds de hors the provisions of the Scheme in force governed by rules/regulations/instructions. If in a given case, the department of the Government concerned declines, as a matter of policy, not to deviate from the mandate of the provisions underlying the Scheme and refuses to relax the stipulation in respect of ceiling fixed therein, the Courts cannot compel the authorities to exercise its jurisdiction in a particular way and that, too by relaxing the essential conditions, when no grievance of violation of substantial rights of parties could be held to have been provided, otherwise. The purpose of providing employment to a dependant of a Government servant dying in harness in preference to anybody else is to mitigate the hardship caused to the family of the employee on account of his unexpected death while still in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules providing for such appointment. None of these considerations can operate when the application is made after the death of the employee. The reason for making compassionate appointment, which is exceptional, is to provide immediate financial assistance to the family of a Government servant who dies in harness, when there is no other earning member in the family.

24. The claim of the appellant for compassionate appointment on the basis? of Ex. B-3 and the effect of amendment as per Ex. B-4 were considered by the First Appellate Court by taking into account the reason which weighed with the Electricity Board to dispense with the provision for employment to the adopted children, as the same was found to be misused extensively and the learned Judge rightly concluded that the appellant is not entitled for compassionate appointment. The appellant is entitled to get employment under the scheme, only if he fulfills the eligibility criteria as stipulated in the scheme and while interpreting a provision, individual difficulties of a particular applicant b insignificant and as such, it cannot be said that the amendment made to the scheme is invalid, as it causes prejudice to those dependants, whose Applications were under consideration when the scheme was amended.

25. On a careful consideration of the entire matter with reference to the scheme framed by the second respondent, I am of the view that the finding of the First

Appellate Court is perfectly in order and the same does not call for interference in an Appeal under Section 100 of the Code of Civil Procedure. I do not find any question of law much less substantial question of law involved in the matter and therefore, the appeal is liable to be dismissed.

26. In the result, the Second Appeal is dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

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