

Sri Subimal Sarkar Vs. State of West Bengal and Others

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Court : Kolkata

Decided On : Apr-30-2012

Judge : The Honourable Mrs. Justice Nishita Mhatre & the Honourable Mrs. Justice Anindita Roy Saraswati

Appeal No. : W.P.S.T. NO. 90 OF 2012

Appellant : Sri Subimal Sarkar

Respondent : State of West Bengal and Others

Judgement :

NISHITA MHATRE, J.

1. The challenge in this petition is to the judgement and order of the West Bengal Administrative Tribunal in O.A. No. 306 of 2011 rejecting the petitioner's claim for appointment on compassionate grounds.

2. The petitioner's father was employed with the respondents and posted in the Bhatpara State General Hospital. He died in harness on 26th, January 2003 leaving behind his wife, two sons including the petitioner and two daughters. The family received the dues payable to them after employee's death. They were paid Provident Fund of ` 1,20,000/-, Gratuity of ` 54,000/- and ` 12,000/- on account of Insurance. Besides this the widow was being paid family pension of ` 3,800/ p.m. She continues to draw this amount. The elder brother of the petitioner is earning about ` 1,500/- p.m.

3. The petitioner applied for appointment in a Group-D post on compassionate grounds in accordance with the scheme available for employees of the State Government.

4. The petitioner's application has been rejected on the ground that although he applied soon after his father's death for compassionate appointment, he was not entitled to the same as the family was not living in penury. While rejecting the petitioner's case, it was observed by the authorities that the family was paid the aforesaid amounts on the death of the employee and, therefore, there was no need to grant any compassionate appointment. The petitioner had applied on 15th July, 2004. However, he was informed of the rejection of his claim by a letter dated 26th February 2009. Aggrieved by that decision the petitioner approached the West Bengal Administrative Tribunal.

5. The Tribunal has observed that the petitioner had not caused any undue delay in submitting his claim for compassionate appointment. However it endorsed the view of the authorities that the petitioner was not entitled to the appointment because the family had been paid the benefits after the death of the employee.

6. Several judgements have been cited for us by both parties in support of their contentions. In **V. Sivamurthy vs. State of A.P.** reported in **(2008) 13 SCC 730** the Apex Court considered the manner in which appointment on compassionate grounds are to be made. These appointments are made by carving out an exception to the mandate envisaged in Articles 14 and 16 of the Constitution while dealing with public employments. The court observed that compassionate appointments are to be made only on the basis of well-recognised contingencies, namely, (i) to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service and (ii) to meet the crisis in a family on account of medical invalidation of the breadwinner.

7. In the case of **Bhawani Prasad Sonkar vs. Union of India and Ors.** reported in **(2011) 4 SCC 209** the Supreme Court considered several of its earlier judgements and observed that the following factors have to be borne in mind while considering a claim for employment on compassionate grounds :-

“(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment de hors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased incapacitated employee’s family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased / incapacitated employee viz. Parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts.”`

8. This is the consistent view of Supreme Court in all the judgements cited by learned advocate for the respondents, namely, *General Manager (D and PB) and Ors vs. Kunti Tiwary and Anr.* reported in (2004) 7 SCC 271 ; *Punjab National Bank and Ors. vs. Ashini Kumar Taneja* reported in (2004)7 SCC 265 ; *Union Bank of India and Ors. vs. M.T. Latheesh* reported in (2006) 7 SCC 350; *Santosh Kumar Dubey vs. State of Uttar Pradesh and Ors.* reported in (2009) 6 SCC 481 and the judgements of this court in the case of *Union of India and Ors. vs. Sheela Rani Soam* reported in (2008) 1 CHN 264 and *Maisur Khan vs. Eastern Coalfields Ltd. and Ors.* reported in 2009(2) CLJ (Cal)101.

9. In all these judgements the courts have held that penury of the family and distressed circumstances on account of losing the breadwinner suddenly would be of paramount importance while considering an application for compassionate appointment. The other aspect which is essential while dealing with an application

for appointment on compassionate ground is whether the application has been made belatedly and whether the family on account of the passage of time has been able to tide over the sudden crisis on account of the death of the breadwinner.

10. In the case of **I.G. (Karmik) and Ors. vs. Prahalad Mani Tripathi** reported in **(2007) 6 SCC 162** the Apex Court dealt with a case where the son of a police constable who died in harness was offered the post of a peon, which he accepted without demur. He later made a representation to the authorities claiming that he was entitled to the post of constable. The authorities found that he was not eligible as he did not comply with the essential criteria for appointment to that post. In these circumstances the Court held that having accepted the appointment in the lower post he could not be permitted to contend that he was entitled to a higher post, though not eligible for the same. This judgement in our opinion is not relevant to the facts and circumstances of the present case.

11. In the case of **Govind Prakash Verma vs. Life Insurance Corporation of India and Anr.** reported in **(2005) 10 SCC 289** the Supreme Court dealt with a factual situation which was almost identical to the one before us. The employee died during the course of employment. His widow was drawing a monthly pension of ₹. 4,735/- apart from the terminal benefits which were paid to her namely, Gratuity, Provident Fund, Additional Gratuity etc. The elder brother of the applicant was engaged as a painter but did not disclose his income. On enquiries being made by the authorities it was found that the elder brother was engaged in cultivation and was living separately. The Court observed in para 6 thus :-

“6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate

appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules. So far as the question of gainful employment of the elder brother is concerned, we find that it had been given out that he has been engaged in cultivation. We hardly find that it could be considered as gainful employment if the family owns a piece of land and one of the members of the family cultivates the field. This statement is said to have been contradicted when it is said that the elder brother had stated that he works as a painter. This would not necessarily be a contradiction much less leading to the inference drawn that he was gainfully employed somewhere as a painter. He might be working in his field and might casually be getting work as painter also. Nothing has been indicated in the enquiry report as to where he was employed as a regular painter. The other aspects, on which the officer was required to make enquiries, have been conveniently omitted and not a whisper is found in the report submitted by the officer. In the above circumstances, in our view the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.”

12. The learned advocate for the respondents was at pains to point out that the Supreme Court has not considered any of its earlier judgements in the case of **Govind Prakash Verma** (supra). He urged that this judgement deals with only the factual situation which arose before the Supreme Court and does not lay down any principle of law.

13. Even applying the principles as enunciated in **Bhawani Prasad Sonkar vs. Union of India and Ors.** reported in **(2011) 4 SCC 209** and the earlier judgements of the Supreme Court, in our view the respondent authorities have wrongly refused compassionate appointment to the petitioner. The petitioner had applied soon after his father's death for compassionate appointment in order to meet the crisis faced by the family on account of the death of the breadwinner while in service. The Tribunal has observed that there was no delay in preferring the application. As

observed in **Bhawani Prasad Sonkar's** case (supra), the application has to be considered within a reasonable period of time. The petitioner was informed of the rejection of his application only after five years of submitting the same. In our opinion this period of five years cannot by any stretch of imagination be said to be reasonable. The applicant's claim for compassionate appointment cannot be denied by the authorities by keeping the application pending for an unreasonably long period of time, only in order to frustrate the purpose of the application. The respondents cannot be heard to say, as has been argued in this case, that due to the passage of time the necessity for compassionate appointment has blown over. In fact the Petitioner had sent several reminders to the authorities after he first submitted his application in 2004; but to no avail.

14. There is no doubt that compassionate appointments are to be made as an exception and not as a matter of course. They are not to be made by way of a largesse, irrespective of the financial condition of the deceased or incapacitated employee's family. In **Kunti Tiwary's** case (supra) the Supreme Court observed that the exception carved out to the general rule for appointment on the basis of open invitation of applications and merit could be resorted to in cases of penury where the dependants of an employee are left without any means of livelihood and when unless some source of livelihood was provided the family would not be able to make both ends meet.

15. Thus, the financial condition of the family has to be considered while deciding whether to engage a person on compassionate grounds. In the present case, the only source of monthly income is the family pension of ` 3,800/- and ` 1,500 approximately which is earned by the elder brother. These amounts can hardly be sufficient to make ends meet for a family of five, that is the widow and her four children including the petitioner. The death benefit received by the family is ` 1.3 lakhs which was paid in 2003. The family is staying in a rented accommodation. They have no landed property or other means of livelihood. In these circumstances we find that the family is in dire financial straits and certainly cannot be considered to be well to do. We find that the respondents have not acted justly and in accordance with law while rejecting the petitioner's claim. Compassionate appointments are not a source of recruitment in the normal course. Such

appointments are made by way of concession, only to provide succour to the distressed family. The appointment on compassionate grounds is available to the heirs of an employee who dies in harness, irrespective of the family pension paid to the employee. The scheme does not in any way indicate that an applicant whose family draws family pension on the death of the employee is not entitled to compassionate appointment, if the family is living in penury.

16. In the result the petition is allowed. The order of the Administrative Tribunal is set aside. The petitioner shall be appointed on compassionate grounds, if he fulfils all the eligibility criteria like educational qualifications etc.

17. Urgent certified photocopies of this order, if applied for, be given to the learned advocates for the parties upon compliance of all formalities.

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