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Vir Pratap Singh Vs. Uoi and anr

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Court : Delhi

Decided On : Mar-14-2013

Judge : Pratibha Rani

Appellant : Vir Pratap Singh

Respondent : Uoi and anr

Judgement :
$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: March 14, 2013 + W.P.(C) 8462/2011 VIR PRATAP SINGH ..... Petitioner Represented by: Mr.Arvind Nayar, Mr.Zeyaul Haque and Mr.S.P.Sethi, Advocates. versus UOI AND ANR ..... Respondents Represented by: Mr.Amit Dubey, Advocate. CORAM: HON'BLE MR. JUSTICE PRADEEP NANDRAJOG HON'BLE MS. JUSTICE PRATIBHA RANI PRATIBHA RANI, J (Oral) 1. This writ petition highlights how in the name of compassion the policy of the Government to provide employment to the dependent of the deceased employee to save them from starvation, is being misused. We notice that gesture of the employer towards the dependents in consideration of the services rendered by the deceased employee, has in fact become akin to a right to inherit. We cannot lose sight of the fact that there is throat cut competition to seek public employment, but even after decades of the death of the employee, backdoor entry is being provided to the dependents of the deceased employee when the family has already overcome the crisis.

2. This writ petition raises an important issue about the rights of the survivors of an employee who dies while in service, to seek employment on compassionate

ground to overcome the crisis, to reserve a berth for them to be availed at their convenience.

3. A brief look at the facts of this writ petition reveals that the deceased Kunwar Pal Singh was working as C & W Fitter with the respondents. After a prolonged illness, he died on 22.05.1984. Family pension was sanctioned vide order dated 25.03.1985. On 26.12.1986, Smt.Urmila, widow of Kunwar Pal Singh filed an application with the respondents seeking registration of her eldest son aged 6 years at that time, for employment on compassionate ground on his attaining the age of majority. There is an endorsement on the application by the respondents to get the request processed when her son (petitioner herein) attains the age of 18 years.

4. The petitioner claims his date of birth as 15.06.1981 [as per middle school (Class VIII) certificate submitted by him to the respondents, his date of birth is 01.01.1984]. The petitioner prayed for his appointment on compassionate ground only 03.09.2003 i.e. after attaining the age of more than 22 years. However, we notice that in communication dated 12.05.2006 (Annexure P-19 page-83) the Divisional Railway Manager wrongly calculated the age of majority i.e. 18 years being attained on 15.06.2001, as in 2001 he was 20 years old. The request being filed in 2003, was after 4 years of attaining the age of majority. As the petitioner had passed 8th class in the year 1998, the matter was referred to the competent authority for approval.

5. During verification the middle class (VIII Std.) certificate was found to be bogus by the Principal of Shiksha Sadan Inter College, Jatpura- Sankhani, Bulandshahr (U.P.) who certified that the petitioner had never studied or was enrolled at Sl.No.9825 in their institution and the certificate obtained by the petitioner was also not issued by the said institution. Consequently, on 12.01.2007 the claim of the petitioner to seek employment on compassionate ground was rejected by the respondents and prayer for reconsideration was also declined by the respondents vide communication dated 31.12.2007. However, the respondents preferred not to initiate any criminal action against the petitioner for filing bogus/fake school certificate to seek employment on compassionate ground and closed the matter by

just intimating the petitioner that his act invited penal action.

6. On being denied the employment on compassionate ground, the petitioner filed Original Application No.2442/2010 before the Central Administrative Tribunal. The Tribunal, though took note of the fictitious certificate submitted by the petitioner, dismissed the O.A. observing that for an event happened in 1984, compassionate appointment to be asked for after decades will defeat the entire purpose of compassionate appointment.

7. Undeterred by the observations made by the Railway authorities as well as the Tribunal that the claim staked by the petitioner was on bogus certificates containing his different date of births and perhaps encouraged by the fact that no penal action was taken, the petitioner had kept this issue alive by invoking writ jurisdiction of this Court. We are of the view that a person, who seeks public employment and that too on compassionate ground on the basis of forged certificates, is required to be dealt with sternly by the concerned authorities.

8. The paper-book reveals that not only 8th class certificate, the petitioner has also placed on record Intermediate certificate to establish his date of birth and qualification which is like a structure without foundation and has to collapse for obvious reason that a person who could not pass VIII Std., was not even eligible to seek admission in Intermediate and have a certificate. The affidavit filed by mother of the petitioner contains the admission that the 8th class certificate filed by the petitioner to seek employment had his date of birth recorded as 01.01.1984 and as per 10 th class certificate his date of birth is 15.06.1981. The 10th class certificate could not have a different date of birth if admission in 9 th standard is on the basis of 8th class school record. Even otherwise, father of the petitioner expired on 22.05.1984. Application to seek employment on compassionate ground was filed on 26.12.1986 stating the age of the petitioner as 6 years at that time claiming him to be the eldest with three more siblings younger to him. It is improbable to have three younger siblings with date of birth of the petitioner being 01.01.1984 as recorded in VIII class certificate submitted by the petitioner to seek employment.

9. Taking this issue no further, we find that the Tribunal has rightly rejected the O.A filed by the petitioner to get a job on compassionate ground. The appointment

of dependent of an employee who dies in service, is to mitigate the sudden miseries and hardships faced by the family due to sudden death of sole bread earner of the family. The object being to relieve unexpected hardships and distress caused to the family and to enable them to get over the financial crisis, employment on compassionate ground cannot be claimed or granted when the crisis is already over.

10. In State of Haryana and others vs. Rani Devi and another AIR 199.SC 2445.the Supreme Court deprecated the practice of appointment on compassionate ground being made even after 10-15 years of the death of the deceased employee just for the reason that the children of the employee were minor at the time of death of such employee. In para-5 of the Report, it was observed:

5. It cannot be disputed that appointment on compassionate ground is an exception to the equality clause under Article 14 and can be upheld if such appointee can be held to form a class by themselves, otherwise any such appointment merely on the ground that the person concerned happens to be a dependant of an exemployee of the State Government or the Central Government shall be violative of Articles 14 and 16 of the constitution. But this Court has held if an employee dies while in service then according to rule framed by the Central Government or the State Government to appoint one of the dependants shall not be violative of Articles 14 and 16 of the Constitution because it is to mitigate the hardship due to the death of the bread earner of the family and sudden misery faced by the members of the family of such employee who had served the Central Government or the State Government. It appears that this benefit has also been extended to the employees of the authorities which can be held to be a State within the meaning of Article 12 of the Constitution. But while framing any rule in respect of appointment on compassionate ground the authorities have to be conscious of the fact that this right which is being extended to a dependent of the deceased employee is an exception to the right granted to the citizen under Articles 14 and 16 of the Constitution. As such there should be a proper check and balance. Of late, it appears the right to be appointed on compassionate ground is being claimed as a right of inheritance irrespective of the nature of service

rendered by the deceased employee. In many cases, applications for appointments on compassionate grounds are being made even after 10-15 years because on the date of the death of the employee the applicant was a minor and could not have been appointed..

11. family Thus, the purpose behind is to provide relief against destitution to the of the deceased employee giving due consideration to the services rendered by the employee till he was alive as well as legitimate expectancy of the survivors due to the death of the sole earning member.

12. In Eastern Coalfields Limited vs. Anil Badyakar and others (2009) 13 Supreme Court Cases 112, after referring to its various earlier decisions on the subject, it was held by the Apex Court that the compassionate appointment is not a vested right which can be exercised at any time in future and that the compassionate employment cannot be claimed and offered after a lapse of time and after the crisis is over.

13. In the instant case, Kunwar Pal, father of the petitioner expired on 22.05.1984. The petitioner attained the age of 18 years (calculated from 15.06.1981) on 14.06.1999, but applied for employment after a lapse of 19 years of death of his father. Thus, on this score alone the petitioners case was liable to be rejected.

14. We do not find any illegality, infirmity or perversity in the view taken by the Tribunal. The writ petition is devoid of any merit and is accordingly dismissed with no order as to costs. (PRATIBHA RANI) JUDGE (PRADEEP NANDRAJOG) JUDGE MARCH 14 2013 dc

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