

(1983) 09 AHC CK 0073

Allahabad High Court

Case No: None

Arun Misra

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Sept. 7, 1983

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (1984) 1 LLJ 429

Hon'ble Judges: K.N. Singh, J; Gopi Nath, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Gopi Nath, J.

This is a petition under Article 226 of the Constitution. It prays for issue of a Mandamus commanding the respondents to appoint the petitioner as Inspector in Central Excise.

2. The petitioner is the son of one Vidyadhar Misra who was employed as Superintendent in the Central Excise. He died on 16th February, 1977 in harness, leaving behind his widow Smt. Indra Misra and six children--five sons and one daughter. Their names are as under:

1. Dr. Ashok Misra.
2. Ajai Misra.
3. Arun Misra.
4. Anoop Misra.
5. Ratnesh Misra and
6. (Km.) Manju.

The petitioner is the third son of late Vidyadhar Misra. The first two sons are earning members, the first being a doctor and the second being an Advocate. On the death of Vidyadhar Misra, the petitioner's mother made an application to the Collector, Central Excise for the employment of the petitioner as Inspector in the Central Excise. This application was made on 20th February, 1977. The petitioner at that time was studying in class B.A. The Department on the death of Vidyadhar Misra,

granted enhanced family pension to the family of the deceased to meet the immediate necessities of the same. The petitioner passed his B.A. in the year 1977. On 15th November, 1977 the petitioner made a representation to the respondents to appoint him as Inspector in the Department on compassionate grounds. It is stated in the petition that the Department had taken a sympathetic attitude towards the family of the deceased at that time. The application of the petitioner was forwarded to the Central Board of Revenue, Delhi. In September 1978, the petitioner received an information from the Collector, Central Excise, Allahabad that his application had been rejected. The petitioner made a representation to the Ministry of Finance, Government of India in the last week of September, 1978. In his representation, it appears, he informed the Government that his two brothers who were earning members in the family, were not in a position to support the same as the eldest one, the doctor, had a wife and a son to support and the other, the lawyer, was not earning enough to support the family of the deceased, Sri Vidyadhar Misra. The Government was further requested not to take a biased view against the petitioner because of a litigation fought between the Government and the petitioner's father in respect of his dismissal at one stage of his service, which was set aside by a civil suit. During the pendency of the representation before the Ministry of Finance, the petitioner filed a writ petition in this Court, being Writ Petition No. 10467 of 1978, for the early disposal of the representation. The petition was allowed, and by an order dated 27th February, 1978 this Court directed the respondents to dispose of the petitioner's representation within six weeks. By an order dated 23rd March, 1979, the petitioner's representation was rejected by the Government of India. The rejection was communicated to the petitioner by a letter of the same date, a copy whereof has been filed as Annexure 11 to the Writ Petition. This communication, so far as material, reads as follows:

Your request for appointment in the Allahabad Central Excise Collectorate on compassionate grounds has been considered carefully by the Government of India but it has not been found possible to accede to it. Your request for appointment on compassionate ground, therefore, stands rejected.

3. Aggrieved the petitioner has filed this petition for issue of a Mandamus directing the respondents to appoint him as an Inspector in the Central Excise on compassionate ground. The petitioner has rested his case on consolidated instructions issued by the Ministry of Finance, Government of India in respect of compassionate appointments of son/daughter/near relative of a deceased Government servant who dies in harness. Para 5 of the Office Memorandum No. 14034/1-77 Estt. (D) dated 23rd May, 1978 a copy of which has been filed as Annexure 1 to the petition reads:

5. Where there is an earning member:-- In deserving cases even where there is an earning member in the family a son/daughter/ near relative of a Government servant who dies in harness leaving his family in indigent circumstances,. may be

considered for appointment to the post without reference to the employment exchange. All such appointments are however to be made with the prior approval of the Secretary of the Ministry/Department concerned, who before approving the appointment, satisfies himself that the grant of the concession is justified, having regard to the number of dependants left by deceased Government servant, the assets and liabilities left by him, the income of earning member as also his liabilities. It is, however, observed that in the past some cases were referred to this department wherein it was stated that an earning son or daughter in the family was either unwilling to look after, or neglecting the rest of the family including the mother, brother and sister etc., and as such the case for the compassionate appointment of another son/daughter was being sponsored. In this light, it is necessary to clarify that notwithstanding the fact that it is the endeavour of Government to provide employment for the son/daughter of a Government servant who dies in harness leaving his family in indigent circumstances, the primary source of succour to the member of the family of the deceased employee must still be the next of kin who are earning. If the next kin i.e. son/daughter (unmarried) chooses to neglect the family the Government is not obliged to come to the rescue of such families. It has to be remembered that if the Government were to provide compassionate appointment even in such cases, any number of cases may be of earning members in a family feigning to show neglect of the family with a view to securing employment for another member of the family.

The case of the respondents is that since two members of the petitioner's family, namely Dr. Ashok Misra and Sri Ajai Misra, are earning members, it is their duty to look after the family, but they seem to be neglecting it. Facts and circumstances also did not justify a compassionate appointment to the petitioner. It is stated that on the death of Sri Vidyadhar Misra, an enhanced pension was sanctioned to the petitioner's family with a view to giving immediate relief to the same, and this had since been continued, that the petitioner had become overage for Government employment, and if by the assistance rendered by the Department he had not been able to make a mark in life, that is his fault. It was suggested that the petitioner was only endeavouring to obtain appointment in Government service by back-door method. The representation it was stated had been rejected after a careful consideration of the entire facts and circumstances of the case.

4. The petitioner's case is that the administrative instructions contained in Annexure 1 to the petition confer a right in his favour, and he is entitled to ask for an appointment in the Department on its basis. Reliance has been placed on [Union of India \(UOI\) Vs. K.P. Joseph and Others](#), to contend that even an administrative order confers a right, and a Mandamus can be issued to enforce the same. Further reliance has been placed on [State of Mysore and Another Vs. H. Srinivasmurthy](#), to submit that a principle of policy evolved by the State must be given effect to. These cases do not assist the petitioner in view of the policy declared by the Government in para 5 of the instructions as contained in Annexure 1 to the writ petition.

5. Two of the elder brothers of the petitioner are earning members in the family and the Government has in para 5 of Annexure 1 to the Writ Petition clarified the position that if the earning member chooses not to look after the family or neglects the same, the Government is not obliged to provide a compassionate appointment to another member, which is only a concession. It clearly states:

...If the next kin i.e. son/daughter (unmarried) chooses to neglect the family the Government is not obliged to come to the rescue of such families....

6. It is averred in the petition that the Government had provided appointments to the members of the families of Government servants who had died in harness even where one of them was an earning hand. Instances have been quoted in the petition. The respondents' reply is that each case has to be judged on its own merits, and the respondents had not adopted any discriminatory attitude towards the petitioner. Counter-affidavit further avers that the worst phase of the petitioner's family is already over. Two members of the family, namely Dr. Ashok Misra and Sri Ajai Misra, advocate, are already settled, and are in a position to look after the family. The petitioner graduated in the year 1977, and could compete for Central Government and other services or could try to enter the same through regular recruitment channel. He had now become overage, and was trying to enter the Government service through a back-door. Allowance of the same would not be conducive to the interest of the policy of the Government. It is further suggested that since the other members who are earning have neglected the family, there is no guarantee that the petitioner if appointed would look after it. In that case, his other brother would come up for appointment on compassionate grounds. The respondents have thus refused the appointment on a consideration of the entire facts and circumstances of the case. Their further case is that the office memorandum referred to above only gives a concession, and does not confer a right, and a Mandamus cannot be claimed in respect of a concession. Reliance has been placed on [K.V. Rajalakshmi Setty and Another Vs. State of Mysore and Another](#), [The Calcutta Gas Company \(Proprietary\) Ltd. Vs. The State of West Bengal and Others](#), and [The State of Orissa Vs. Madan Gopal Rungta](#). The question as to whether the government order creates a right or grants a concession is only academic in the instant case as para 5 of Annexure 1 to the petition makes the position abundantly clear that the Government is not obliged to provide a compassionate appointment to a son/daughter/ near relative of a deceased servant if there are earning members in the family, and they are not discharging their primary duty of looking after the same. As regards the issuance of a writ, it was held in [Mahabir Prasad Sharma and Others Vs. The State Transport and Another](#), that although Article 226 conferred very wide powers on High Courts, that power has its limitations as well, and the High Court cannot assume functions which are in the discretion of administrative bodies. To give a compassionate appointment in the instant case was the discretion of the respondents. If they have refused it on a consideration of the facts and circumstances of the case, this Court would not be

justified in inflicting it on them. The impugned order does not suffer either from any jurisdictional error or a patent error of law. The petition accordingly fails, and is dismissed. But, in the circumstances of the case, we make no order as to costs.