
(2014) 08 AHC CK 0202

Allahabad High Court

Case No: Civil Misc. Writ Petition No. 39852 of 2014

Ravindra Kumar Yadav

APPELLANT

Vs

Mukhya Abhiyanta

RESPONDENT

Date of Decision: Aug. 4, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2014) 10 ADJ 97 : (2015) 2 AWC 1634 : (2014) 3 UPLBEC 2582

Hon'ble Judges: Suneet Kumar, J

Bench: Single Bench

Advocate: Rajesh Yadav, Advocate for the Appellant; Q.H. Siddiqui, Advocate for the Respondent

Judgement

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Suneet Kumar, J.

Heard learned Counsel for the petitioner and Sri Q.S. Siddiqui, learned Chief Standing Counsel for the respondents. The father of the petitioner was working with the respondent-Jal Nigam at Bareilly and was murdered on 9.12.2012, the petitioner being intermediate made an application for appointment under the dying in harness rules, accordingly, the petitioner was appointed on a substantive post of "helper" but subsequently claimed appointment on the post of clerk, as per his qualifications.

2. It is contended by learned Counsel for the petitioner that the respondents had assured the petitioner, that as and when vacancy would arise, the petitioner's case would be considered for appointment on the next higher post of clerk.

3. By means of the writ petition the petitioner is seeking a direction that the claim of the petitioner be considered for the post of clerk under the dying in harness rules.

4. Sri Siddiqui, learned Chief Standing Counsel appearing for the respondents submits that the petitioner had accepted the post of "helper", which was available at the relevant time, the petitioner subsequently, cannot turn around and make a choice for appointment on a higher post. The claim of the petitioner stood exhausted on being appointed on Class-IV post.

5. Submissions fall for consideration.

6. Supreme Court in [I.G. \(Karmik\) and Others Vs. Prahalad Mani Tripathi](#), held once the appointment on compassionate ground as per the scheme had been completed any further or second consideration for a higher post on the ground of compassion would not arise. Paras 7, 8, 9, 10 and 12 are as follows:-

"7. Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

8. In [National Institute of Technology and Others Vs. Niraj Kumar Singh](#), this Court has stated the law in the following terms:-

"16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder."

9. In [State of Rajasthan Vs. Umrao Singh](#), this Court has categorically stated that once the right is consummated, any further or second consideration for higher post on the ground of compassion would not arise.

10. Again in [State of Haryana and Another Vs. Ankur Gupta](#), this Court held;

"6. As was observed in State of Haryana v. Rani Devi, it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent 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 case it was held that the 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 LIC of India v. Asha Ramchandra Ambekar it was pointed out that the 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 contemplate such appointments. It was noted in Umesh Kumar Nagpal v. State of Haryana that as a rule, in public service appointments 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 the 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."

See also [Food Corporation of India and Another Vs. Ram Kesh Yadav and Another,](#) .

12. Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria."

Full Bench of this Court rendered in [Shiv Kumar Dubey and Others Vs. State of U.P. and Others,](#) inter alia held as follows:-

"(i) A provision for compassionate appointment is an exception to the principle that there must be an equality of opportunity in matters of public employment. The exception to be constitutionally valid has to be carefully structured and implemented in order to confine compassionate appointment to only those situations which subserve the basic object and purpose which is sought to be achieved;

(ii) There is no general or vested right to compassionate appointment. Compassionate appointment can be claimed only where a scheme or rules provide for such appointment. Where such a provision is made in an administrative scheme or statutory rules, compassionate appointment must fall strictly within the scheme

or, as the case may be, the rules;

(iii) The object and purpose of providing compassionate appointment is to enable the dependent members of the family of a deceased employee to tide over the immediate financial crisis caused by the death of the bread-earner;"

7. Supreme Court in [State of U.P. and Others Vs. Pankaj Kumar Vishnoi](#), held as follows:

"22. It is accepted position that the respondent appeared in the test and could not qualify. Once he did not qualify in the physical test, the High Court could not have asked the department to give him an opportunity to hold another test to extend him the benefit of compassionate appointment on the post of Sub-Inspector solely on the ground that there has been efflux of time. The respondent after being disqualified in the physical test could not have claimed as a matter of right and demand for an appointment in respect of a particular post and the High Court could not have granted further opportunity after the crisis was over".

8. Applying the law on the facts of the case in hand, it is not disputed that the petitioner was appointed on Class-IV post under the Dying in Harness Rules to tide over the distress which the family was facing by the sudden death of his father. The appointment exhausted his claim, once right is consummated any further or second consideration for compassionate appointment would not arise. Compassionate appointment is not a vested right and if such a plea is accepted it would violate the principles enshrined in Article 14 and 16 of the Constitution of India. For the facts and reasons stated herein above, the writ petition is devoid of merit and is, accordingly, dismissed.

No order as to cost.