

(2006) 08 JH CK 0047

Jharkhand High Court

Case No: Writ Petition (S) No. 218 of 2004

Bijay Kumar Sahay

APPELLANT

Vs

Damodar Valley Corporation and
Others

RESPONDENT

Date of Decision: Aug. 22, 2006

Citation: (2007) 1 BLJR 265 : (2007) 1 JCR 37

Hon'ble Judges: Permod Kohli, J

Bench: Single Bench

Advocate: R. Mukhopadhyay, for the Appellant; S. Choudhary, for the Respondent

Judgement

Permod Kohli, J.

Petitioner is aggrieved of non-consideration for appointment to the post of Junior Clerk-cum-Typist on compassionate basis.

2. Facts relevant for the purpose of present petition are noticed hereunder:

Father of the petitioner, namely, Uma Pati Sahay was an employee of Damodar Valley Corporation and was posted in T.S.C. Division III at Panchet. He died in harness on 28.7.1992. After death of the deceased-employee, petitioner's mother filed an affidavit dated 25.8.1992 seeking compassionate appointment for the petitioner. In this affidavit, it was disclosed that her eldest son, namely, Sanjay Kumar Sahay is an employee of D.V.C. at Maithon but he has no concern for the maintenance of her family and living separately. Petitioner's name was brought on the panel prepared for appointment on compassionate ground. This was pursuant to a formal application made by mother of the petitioner, namely, Bimla Sahay dated 4.2.1993 to the Director of Personnel, DVC seeking compassionate appointment for the petitioner. Even a form was filled up by the petitioner which was forwarded along with the aforesaid application and in this form in column-"E" while giving particulars of the family members of the deceased-employee name of Sanjay Kumar Sahay eldest brother of the petitioner was shown with the remarks

"Employed, Maithon Hydle Station, DVC". Deputy Director of Personnel(TSC) vide his letter dated 8th September, 1998 asked the Assistant Director of Personnel, Recruitment Section to clear the compassionate cases in order of date of death of the deceased employees to avoid future complication. Panel was also forwarded along with this letter and petitioner's name figured at Sl. No. 20 in the panel and another communication dated 9th September, 1999 was forwarded to the various Superintending Engineers for verification of the records of compassionate appointment cases including supplementary list of 35 persons. While the matter was pending for consideration, petitioner received a letter dated 12th September, 2000 asking him to appear before the Committee on 8th November, 2000 for preparation of panel for compassionate appointment. It is stated that petitioner appeared before the Committee with all necessary documents and without taking any decision he was again asked to appear before the interview Board vide letter dated 26.2.2001 for the same purpose and he again appeared before the interview Board. It is further submitted that without taking any decision on the basis of above interviews a notice was issued by the respondents dated 3rd November, 2002 inviting applications in the prescribed proforma from the interested dependants of D.V.C. employees died while in service/retired on invalid pension for employment on compassionate ground. Petitioner states that in response to the aforesaid notice, he again applied but no decision was taken and another office memorandum dated 5th December, 2002 was issued again inviting applications from the D.V.C.'s regular employees as well as empanelled casual, compassionate, displaced, contractor workers, seasonal message assistants and gaugo roadors for recruitment to the post specified in the memorandum. The notice further stipulated that compassionate category of candidates, even if not empanelled may apply giving the name of the deceased employee, the date of death and the relationship of the candidate with the deceased employee. Post for Junior Clerk-cum-Typist was advertised again. It is stated by the petitioner that he also responded to this memorandum and submitted another application. The date for written examination was fixed on 17.1.2004 for which call letters were issued. Petitioner did not receive any call letter and inquired about the same. He was informed that since his eldest brother is already an employee of D.V.C. therefore, he is not entitled to be considered for appointment on compassionate ground. Petitioner has, accordingly, filed this petition seeking a direction for his consideration for appointment to the post of Junior Clerk-cum-Typist on compassionate ground.

3. In the counter filed, respondents have denied the right of the petitioner for his consideration for compassionate appointment on the ground that eldest brother of the petitioner is already in service of D.V.C and second dependant is not entitled to be appointed. With a view to resist the claim of the petitioner, respondents have referred to a circular No. PLR /Misc /2 (Compassionate) -483 dated 17th July, 1984. Copy of the circular is placed on record. Clause-4 of the circular reads:

4. If the deceased employee's any son/daughter/widow is already in service either in DVC or elsewhere no second dependant will be considered for appointment in DVC on compassionate ground

4. Claim of the petitioner is required to be examined in the light of the aforesaid factual background. There is no dispute about the fact that petitioner's father was an employee of respondent-Company and died in harness. It is also undisputed that the petitioner's eldest brother is serving with the respondent-Company and was its employee even at the time of death of his father. Petitioner's mother had disclosed the fact in her first affidavit seeking compassionate appointment for the petitioner. Even in the form filled up this fact has been revealed. A panel was prepared for compassionate appointment and petitioner's name all along figured therein. Respondents have issued various communications asking the petitioner to appear for interview. He participated in all interviews for which he was asked to appear.

5. Learned Counsel appearing for the petitioner has vehemently argued that if the claim of the petitioner was not admissible he should have been communicated initially so that he would have sought employment/avocation at some other place. However, right from 1992 till 2004 he was kept waiting and by including his name in the panel it was conveyed that he has a right to be considered for appointment. This has generated a legitimate expectation in the mind of the petitioner that he will be given consideration for compassionate appointment and will be appointed in due course. It is further stated that it was only after a period of 12 years, petitioner was informed that too verbally that his claim is not admissible under some circular of 1984.

6. The question arises whether the petitioner has a vested a right of appointment on compassionate basis. The answer to the question is simply no. It is no more res Integra that compassionate appointment is not a source of recruitment and no right is created in a dependant of the deceased-employee for compassionate appointment dehors the rules/policy. Hon"ble Supreme Court in [Commissioner of Public Instructions and Others Vs. K.R. Vishwanath](#), held as under:

The provision is clear and unambiguous. That being so, there was no scope for introducing a concept of condonation of delay as has been done by the Tribunal and the High Court. If the view is accepted it would mean that a belated application will be deemed to have been done within time. That would be in effect introducing a deeming provision by interpretative process which is not permissible.

7. Company has clearly indicated that under the policy of the Company which was framed as far back as in the year 1984 if one member of the family is already in employment of D.V.C or any other place claim for compassionate appointment for another member of the family is not admissible. This policy of the Company cannot be said to be illegal or arbitrary in any manner. Even if the plea of the petitioner that his mother disclosed that his eldest brother is already in the employment of

respondent Company and he is living separately is accepted, yet the mother alone had the right to seek compassionate appointment as who knows tomorrow the petitioner may also desert his mother and start, living separately after or before his marriage. The object and purport of the compassionate appointment is to provide financial help to such members of the family who are deprived of the source of income on account of death of bread-earner for the family. It all depends upon family circumstances and no fixed rules or guidelines can be laid down for this purpose. Hon'ble Supreme Court in case of State of H.P. and Ors. v. Rajesh Kumar, (2001) 9 SCC 174 held:

5. In the fact of this policy decision, the High Court was not justified in issuing a direction to the appellant to grant employment to the respondent on compassionate grounds as his elder brother was already in government service. No right vested in the respondent to claim an appointment on compassionate grounds. If at all, any claim could have been made, it could only have been made by the widow in accordance with the above policy of the Government for consideration in the light of the policy guidelines dated 18-1-1990. The directions of the High Court to grant employment to the respondent, under the circumstances, is erroneous and cannot be sustained. The judgment of the High Court is, accordingly, set aside.

8. In view of the law laid down by the Supreme Court in the aforesaid case and there being a clear policy of the Company laying down the norms for compassionate appointment which cannot be said to be arbitrary, no right vests with the petitioner for compassionate appointment. I decline the prayer of the petitioner. Though petitioner's prayer for compassionate appointment is declined, however, Court cannot shut its eyes and overlook the callous and negligent approach of the respondent-Company. Petitioner applied for compassionate appointment in the year 1992-93. His name was brought on the panel and various communications were issued over a period of almost 10 years asking him to apply again and again and appear for interview. This has definitely created an impression in the mind of the petitioner that he is sure to secure appointment as and when decision to take appointment is arrived at. He was kept waiting with hopes. A legitimate expectation was generated in the mind of the petitioner that he will secure appointment in due course of time. Circular of 1984 was in existence when the petitioner applied. It was only after almost 12 years petitioner was informed that he is not eligible under the norms of the Company. If the petitioner would have been informed and not kept on false hopes he would have tried for some job/avocation elsewhere and even might have secured an employment or engaged himself in some job to earn his livelihood. Precious 12 years of his young life have been wasted at the instance of the respondents. It is a case where petitioner needs to be compensated.

9. In the peculiar facts and circumstances of the case, I award a sum of Rs. 50,000/- as compensation to the petitioner to be paid by the respondent-Company within a period of 15 days from today. As a matter of fact, this amount in the present days

cannot be said to be a reasonable compensation to compensate such long period of petitioner's life. Compensation is only token.

10. This petition is disposed of in the above manner.