

(2014) 05 JH CK 0006

Jharkhand High Court

Case No: W.P. (S) No. 1524 of 2005

Santosh Mandal

APPELLANT

Vs

The National Institute of
Technology

RESPONDENT

Date of Decision: May 2, 2014

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2014) 3 JLJR 60

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Rajiv Ranjan and Shresth Gautam, Advocate for the Appellant; Manish Mishra, Advocate for the Respondent

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties.

The petitioner herein, was appointed on compassionate ground in the Regional Institute of Technology now National Institute of Technology, Jamshedpur by appointment letter dated 8th December, 2001 on the ground of death of his father late Jagdish Mandal, Medical Attendant in harness on 7th July, 1989. His appointment has been terminated by the impugned order, Annexure-11 dated 17th February, 2005 issued by the Director of N.I.T., Jamshedpur. The same has been challenged by the writ petitioner on the grounds that the impugned order suffers from non-application of mind, as it does not deal with any of the contentions of the petitioner furnished by way of reply, Annexure-9 to the show cause notice dated 7th January, 2005, Annexure-8. It does not contain any reasons apart from the only purported reason that the order has been passed in pursuance of the directive of the Hon'ble High Court in a Contempt Case (Civil) No. 866 of 2002. The petitioner further defends his appointment on the ground that the appointment given to his elder brother, namely, Shyam Sunder Mandal was regularized in the year 1983 itself

admittedly and his father had died in 1989, therefore, consideration of the claim of the petitioner for compassionate appointment could not have been influenced by employment of brother of the petitioner under R.I.T., Jamshedpur.

It has further been urged on behalf of the learned counsel for the petitioner that the respondents themselves framed Scheme in the year 1997 for compassionate appointment under which committee was constituted in the year 1999 to scrutinize the applications of eligible candidates for compassionate appointment in the R.I.T., Jamshedpur. The petitioner's case was sponsored by her mother after initiation of the Scheme through an application dated 10th July, 2000 and on due consideration he has been appointed which does not suffer from any illegality or irregularity. It has further been urged that an unsuccessful candidate, Mithilesh Kumar urged before Hon'ble High Court in a Writ Petition No. 680 of 2002, instances of discrimination in the matter of compassionate appointment in the RIT and though the writ petition was dismissed, the respondents were directed to look into the matter of cases where appointments were made after delay of 12 years or the appointments have been illegally made by suppressing information. The respondents as per the show cause notice, Annexure-8 constituted a Committee under threat of the contempt proceeding before High Court pursued by Mithilesh Kumar and arrived at a decision to terminate the appointment of the petitioner and few others. The show cause is only an empty formality and the decision is a premeditated one.

2. Learned counsel for the petitioner has relied upon a judgment rendered by learned Single Judge of this Court in W.P. (S) No. 1595 of 2005 ED.-Reported in 2010 (1) JLJR 61 dated 16th September, 2009, in support of his contention that in similar circumstances when the compassionate appointment of the said petitioner was terminated acting upon directions passed in the case of Mithilesh Kumar by this Court, learned Single Judge interfered with the same having found that there was no illegality in the said appointment.

3. Learned counsel for the Respondent-NIT has submitted that the petitioner was 9 years of age admittedly at the time of death of his father on 7th July, 1989 and the widow of the employee, late Jagdish Mandal, in fact represented for compassionate appointment of another elder brother of the petitioner, namely, Sri Kant Mandal in the year 1990 itself. The application for appointment of the petitioner was made in July, 2000 after delay of 11 years from the date of death of employee. The purpose of giving compassionate appointment to ward off misfortune that has fallen on a family of deceased employee would be defeated if such belated appointments are made on compassionate grounds. It is further submitted that a Committee undertook an exercise to examine individual cases of such appointment and it came to a finding upon which show cause was issued to the petitioner, which cannot be said to amount to a premeditated state of mind to terminate his service. It is further submitted that the petitioner having been appointed after 12 years after death of the employee in harness, cannot have legally sustainable right to remain in employment under compassionate grounds. The case of the petitioner is distinguishable from that of Sudhanshu Sekhar ED.-Reported in 2010 (1) JLJR 61.

Learned counsel for the respondent has pointed out that the said person was, in fact, offered appointment after the death of his father in October, 1988 vide letter dated 13th September, 1993 and it was the Institute which had failed to allow him to join whereafter he had also approached this Court, which led to the issuance of the appointment letter in July, 2001 after contempt proceedings were also initiated. In those circumstances, learned Single Judge found that there was no delay on the part of the said petitioner in seeking compassionate appointment which was earlier granted to him in 1993, but was kept in abeyance till 2001 when finally it was given to him after the proceedings pursued before the High Court. In such a circumstances, the order of cancellation of appointment was interfered with by learned Single Judge Bench of this Court as the original appointment did not suffer from any illegality.

4. I have heard learned counsel for the parties and gone through the materials on record and considered the submissions urged on their behalf. The facts which are evident on record show that the father of the petitioner had died on 7th July, 1989 and an application for compassionate appointment of the petitioner was made only on 10th July, 2001 by his mother. The petitioner admittedly was minor at the time of death of his father aged about 9 years and the appointment itself has been made in the year 2001. The respondents appeared to have been undertaken an exercise pursuant to observation passed in the case of Mithilesh Kumar in W.P. (S) No. 680 of 2002 judgment dated 24th January, 2002 to examine the cases where appointments have been given after long delay of 12 years of the death in recent past or some person was illegally appointed after giving wrong information. The inquiry was conducted not only against the petitioner but also several others. The said inquiry led to the issuance of the show cause notice upon the petitioner to justify as to why the appointment be not cancelled having been made after 12 years of death of the employee. The other fact alleged was relating to employment of the elder brother, Shyam Sundar Mandal, of the petitioner, which however was regularized in the year 1983 itself. The petitioner seems to have furnished his reply defending his appointment on the ground that the same was made on due consideration by the Committee, which was constituted for the purpose in 1999 after the Compassionate Appointment Scheme was framed in the year 1997. However, an objective examination of the impugned action of the respondents does reveal that after 12 years of the death of the employee, an appointment on compassionate grounds could not have been granted. More so, when the petitioner was a minor at the time of death and ordinarily a stipulation of time is contained in any Scheme for compassionate appointment as it is meant to take care of family of destitute to provide some immediate source of sustenance after death of the sole bread earner. The ratio in this regard has been settled by judgment of Hon'ble Supreme Court that compassionate appointment is a departure to the normal rule where all eligible are to be considered in matters of public employment as conceived under Articles 14 and 16 of the Constitution. The respondents therefore after examining the case of the petitioner found that the appointment was made after 12 years of the death of the petitioner's father. The said appointment cannot be upheld in view of the law well settled in the manner of compassionate appointment though it may appear that the

impugned order may not be reflecting adequate reasons. Having examined the facts and the submissions of the parties, this Court is not inclined to exercise his discretionary jurisdiction to interfere in the impugned order of termination. Accordingly, the writ petition is dismissed.