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(2016) 04 PAT CK 0184

PATNA HIGH COURT

Case No: Civil Writ Jurisdiction Case No.20164 of 2014

Md. Muzibur Rahman — APPELLANT

Vs

Union of India — RESPONDENT

Date of Decision: April 22, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2016) 4 PLJR 677

Hon'ble Judges: Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench: Division Bench

Advocate: Mr. S.D. Sanjay, Additional Solicitor General and Mr. Ravinder Kumar Sharma, C.G.C, for the Respondents; Mr. Alim Jang Khan and Mr. Bankey Bihari Singh, Advocates, for the Petitioners

Final Decision: Dismissed

Judgement

Mr. Hemant Gupta, J.(Oral) - Heard learned counsel for the parties.

2. The order dated 16.10.2014 passed by the Central Administrative Tribunal, Patna Bench, Patna (hereinafter referred to as "the Tribunal") in O.A.No. 050/00733 of 2014 with M.A. No. 050/00443 of 2014, is the subject matter of challenge in the present writ application, whereby the Tribunal has dismissed an Original Application filed by the petitioner seeking appointment on compassionate ground as barred by limitation.

3. The father of the petitioner died on 8th July 2004 leaving behind his wife and five sons. The petitioner is the eldest son, who passed Secondary Examination in the year 2005 and the Intermediate examination in the year 2008. The application for appointment on compassionate ground was rejected on 3rd December, 2009, whereas the petitioner has invoked the jurisdiction of the Tribunal on 12th September, 2014. Thus, the Tribunal held that the petitioner did not give any explanation as to why he was in deep slumber during all these years, therefore, for the delay in filing the Original Application, the same was

dismissed.

4. Learned counsel for the petitioner vehemently argued that the rejection order dated 3rd December, 2009 was never communicated to the petitioner. He came to know about the rejection order only in the year 2013 when such information was supplied to him in response to the information sought under the Right to Information Act.

5. Be that as it may, the fact remains that the father of the petitioner died on 8th July 2004 whereas the petitioner invoked the jurisdiction of the Tribunal on 12th September, 2014 i.e., more than ten years later.

6. The appointment on compassionate ground is to provide immediate financial assistance to the family in distress. The petitioner has not shown any distress in ten years so as to insist upon appointment on compassionate grounds by invoking the jurisdiction of the competent court. We find that the Original Application has been rightly dismissed for the reason that it is barred by limitation.

7. Learned counsel for the petitioner refers to an order of the Supreme Court reported as **Smt. Sushma Gosain & Ors. v. The Union of India & Ors. 1991(1) PLJR 1**, wherein it has been held that even if no suitable post for appointment is available, supernumerary post should be created. Thus, the reasoning given by the department that there is no post available, is not tenable and that the department is bound to create supernumerary post for appointment of the petitioner on compassionate ground.

8. We do not find that there could be any direction to create supernumerary post for the petitioner. The judgment in Sushma Gosain''s case (Supra) has been considered in **Hindustan Aeronautics Ltd. v. A. Radhika Thirumalai, (1996) 6 SCC 394**. The Court held:-

"5. In **Umesh Kumar Nagpal; {(1994) 4 SCC 138**} this Court has pointed out that appointment in public services on compassionate ground has been carved out as an exception, in the interests of justice, to the general rule that appointments in the public services should be made strictly on the basis of open invitation of applications and merit and no other mode of appointment nor any other consideration is permissible. A compassionate appointment is made out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided the family would not be able to make both ends meet and the whole object of granting such appointment is to enable the family to tide over the sudden crisis. This Court has also laid down that an appointment on compassionate ground has to be given in accordance with the relevant rules and guidelines that have been framed by the authority concerned and no person can claim appointment on compassionate grounds in disregard of such rule or such guideline see:**LIC v. Asha Ramchhandra Ambedkar; {(1994) 2 SCC 718}.**

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7. In Umesh Kumar Nagpal (supra) it has been indicated that the decision of Sushma Gosain has been misinterpreted to the point of distortion and that the decision does not justify compassionate appointment as a matter of course. The observations on which reliance has been placed by the learned Single Judge in Sushma Gosain have to be read in the light of the facts of that particular case. In that case the appellant, Smt. Sushma Gosain, after the death of her husband, who was working as storekeeper in the Department of Director General Border Road, sought appointment as Lower Division Clerk on compassionate grounds. In January 1983 she was called for the written test and later on for interview and had passed the trade test. She was, however, not appointed till January 1985 when a ban was imposed on appointment of ladies in the said Department. Having regard to these facts this Court has observed:

"ï¿½ Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid Government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter."

8. In the instant case the ban on fresh recruitment was in force when the respondent submitted the application for appointment on compassionate grounds. The decision in Sushma Gosain has, therefore, no application in the facts of this case."

9. In **V. Sivamurthy v. State of A.P., (2008) 13 SCC 730**, the Supreme Court while considering the claim for compassionate appointment of a dependant of a Government servant found medically unfit held as under:

"35. The issue is not what is most advantageous to the Government servant, but what is the actual term of the scheme. The question is not whether an interpretation which is more advantageous or beneficial to the Government servant should be adopted. The question is whether the policy as it stands which is clear and unambiguous, is so unreasonable or arbitrary or absurd as to invite an interpretation other than the normal and usual meaning. Matters of policy are within the domain of the executive. A policy is not open to interference merely because the court feels that it is not practical or less advantageous for Government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible. Compassionate appointment being an exception to the general rule of appointment, can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. The fact that on account of certain delays in processing the application, a Government servant may lose the benefit of the scheme, is no ground to relax the terms of the scheme. If in a particular case the processing of an application is deliberately delayed to deny the benefit to the Government servant, the inaction may be challenged on the ground of want of bona fides or ulterior motives. But where the time taken to

process the application (through the Medical Board, District/State Level Committee and the Government) is reasonable, the Government servant cannot contend that relief should be extended, even if the left over period is less than five years. Let us give an example. If an application for compassionate appointment on the ground of medical invalidation is given five years and one week before the date of superannuation, obviously the Government servant cannot expect that the entire process of scrutiny, medical examination, recommendation and consideration at three levels should be completed in one week. He cannot contend that when he had made the application the left over period was more than five years and therefore his dependant is entitled to appointment. As stated above, these are matters of policy and the courts will not interfere with the terms of a policy, unless it is opposed to any constitutional or statutory provision or suffers from manifest arbitrariness and unreasonableness."

10. A perusal of the aforesaid judgment shows that the appointment can be made only in terms of the policy framed and not dehors of the same. The Supreme Court in **Local Admn. Deptt. v. M. Selvanayagam, (2011) 13 SCC 42** has also held that the appointment on compassionate ground should be sought soon after the loss of bread winner and not after the attaining of majority of the dependent member. The Court held as follows:-

"11. It has been said a number of times earlier but it needs to be recalled here that under the scheme of compassionate appointment, in case of an employee dying in harness one of his eligible dependants is given a job with the sole objective to provide immediate succour to the family which may suddenly find itself in dire straits as a result of the death of the breadwinner. An appointment made many years after the death of the employee or without due consideration of the financial resources available to his/her dependants and the financial deprivation caused to the dependants as a result of his death, simply because the claimant happened to be one of the dependants of the deceased employee would be directly in conflict with Articles 14 and 16 of the Constitution and hence, quite bad and illegal. In dealing with cases of compassionate appointment, it is imperative to keep this vital aspect in mind.

12. Ideally, the appointment on compassionate basis should be made without any loss of time but having regard to the delays in the administrative process and several other relevant factors such as the number of already pending claims under the scheme and availability of vacancies, etc. normally the appointment may come after several months or even after two to three years. It is not our intent, nor it is possible to lay down a rigid time-limit within which appointment on compassionate grounds must be made but what needs to be emphasised is that such an appointment must have some bearing on the object of the scheme.

13. In this case the respondent was only 11 years old at the time of the death of his father. The first application for his appointment was made on 2-7-1993, even while he was a minor. Another application was made on his behalf on attaining majority after 7

years and 6 months of his father''s death. In such a case, the appointment cannot be said to subserve the basic object and purpose of the scheme. It would rather appear that on attaining majority he staked his claim on the basis that his father was an employee of the Municipality and he had died while in service."

11. Still further, in another judgment, reported as **Director General of Posts v. K. Chandrashekar Rao, (2013) 3 SCC 310**, the Court held the appointment can be made in terms of the policies. It was so observed:-

"22. From the above Scheme and office memorandum, it is clear that where on the one hand, the State had formulated a welfare scheme for compassionate appointments, there on the other, because of limitations of its financial resources it decided to take economic measures by reducing the extent of appointment by direct recruitment from the Financial Year 2001-2002. Both these matters falling in the domain of the Government and being matters of policy, the Court is hardly called upon to comment upon either of them. These are the acts which fall in the domain of the State and do not call for any judicial interference. All that we propose to hold is that State has to abide by the Scheme it has floated for compassionate appointment".

12. Learned Counsel for the Petitioner could not show any policy decision that the Government is bound to create posts for appointment on compassionate grounds. The policy of the Central Government is to reserve 5% vacancy to be filled up by way of compassionate appointment. If there is no vacancy, meant for the compassionate appointment, the petitioner cannot be directed to be appointed by creating supernumerary post. The appointment on compassionate ground is an exception to the general rule. General rule is to fill up the post through wide advertisement by giving an opportunity to all the eligible candidates to apply and compete for appointment.

13. In view of the aforesaid, we do not find any error in the order passed by the Tribunal which may warrant interference in the present writ application.

14. The writ application stands dismissed accordingly.