

Commissioner Of Public Instructions & ... vs K.R. Vishwanath on 30 August, 2005

Equivalent citations: AIR 2005 SUPREME COURT 3275, 2005 AIR SCW 4102, 2005 LAB. I. C. 3597, 2005 AIR - JHAR. H. C. R. 2355, 2005 AIR - KANT. H. C. R. 2395, (2005) 8 JT 33 (SC), 2005 (8) JT 34, 2005 (7) SCALE 12, 2005 (7) SCC 206, 2005 (7) SLT 98, 2005 (8) SRJ 420, (2006) 2 JCR 59 (SC), (2006) 39 ALLINDCAS 559 (SC), (2005) ILR (KANT) 4879, 2005 SCC (L&S) 927, (2005) 107 FACLR 153, (2005) 4 LAB LN 71, (2005) 3 LABLJ 850, (2005) 7 SCALE 12, (2005) 5 KANT LJ 467, (2005) 4 SCT 186, (2005) 6 SCJ 577, (2005) 6 SUPREME 47

Author: Arijit Pasayat

Bench: Arijit Pasayat, H.K. Sema

CASE NO.:

Appeal (civil) 9132 of 2003

PETITIONER:

Commissioner of Public Instructions & Ors

RESPONDENT:

K.R. Vishwanath

DATE OF JUDGMENT: 30/08/2005

BENCH:

ARIJIT PASAYAT & H.K. SEMA

JUDGMENT:

J U D G M E N T ARIJIT PASAYAT, J.

The appellant-State and its functionaries call in question legality of the judgment rendered by a Division Bench of the Karnataka High Court holding that the respondent was entitled to be appointed on compassionate grounds. By the impugned judgment the view expressed by the Karnataka Administrative Tribunal (in short 'Tribunal') about such entitlement of the respondent was upheld.

Factual position is almost undisputed and needs to be noted in brief:

Respondent's father Ramachandra Narayan Bhat who was a government servant died on 21.12.1977. The respondent was born on 20.10.1977 and was hardly two months

old at the time when his father expired. He attained majority on 20.10.1995. He submitted an application on 2.12.1996 seeking appointment on compassionate grounds purportedly under the Karnataka Civil Services (Appointment on Compassionate Grounds) Rules, 1990 (in short the 'Rules'). The said application on 11/13.11.1997 was rejected on the ground that the application had not been filed within time i.e. within one year of attaining majority. Another application was filed on 22.4.1998 which was not entertained. Certain amendments were made to the Rules by the Karnataka Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998 (in short 'Amendment Rules') which were operative with effect from 1.4.1999. Respondent filed another application on 29.11.1999. The same was rejected on 9.6.2000 by stating that no application was pending on the date when Amendment Rules came into force and, therefore, the Rules as amended had no application to his case. The respondent approached the Tribunal questioning the order of rejection. By order dated 19.9.2001 Tribunal allowed the petition and directed the present appellants to consider the case of the respondent for appointment on compassionate grounds without regard to any period of limitation referred to in the letter dated 9.6.2000.

The appellants questioned correctness of Tribunal's decision before the High Court. As noted above, the High Court dismissed the writ petition.

In support of the appeal, learned counsel for the appellant submitted that the Tribunal and the High Court failed to notice the relevant provisions and proceeded on factually and legally erroneous premises. Rule 5 of the Rules as it originally stood reads as follows:

"Every dependant of a deceased Government servant, seeking appointment under these rules shall make an application within one year from the date of death of the Government servant, in such form, as may be notified by the Government, from time to time, to the Head of the Department under whom the deceased Government Servant was working.

Provided that in the case of a minor, application shall be made within a period of one year after attaining majority."

The said Rule was amended by the Amendment Rules w.e.f 1.4.1999 by substituting the existing proviso in the following manner:

"Provided that in the case of a minor, he must have make an application within one year from the date of death of the Government servant and he must have attained the age of eighteen years on the date of making the application.

Provided further that nothing in the first proviso shall apply to an application made by the dependant of a deceased Government Servant, after attaining majority and which was pending for consideration on the date of commencement of the Karnataka

Civil Services (Appointment on Compassionate Grounds) (Amendment) Rules, 1998."

It is pointed out that the respondent had filed first application on 2.12.1996 which was rejected on 11/13.11.1997. He filed another application on 22.4.1998 which was also not entertained. The last application was filed on 29.11.1999, obviously, after the Amendment Rules came into force. The Tribunal and the High Court proceeded on the basis as if the application was pending when the amendment came into force w.e.f. 1.4.1999. the High Court rightly noted that the effect of the amended first proviso is that in the case of minor, he cannot make an application within one year from the date of death of the government servant and he must have attained the age of eighteen years on the date of making the application. The High Court was of the view that the second proviso makes it clear that nothing contained in the first proviso shall apply to the application made by the dependant of the deceased government servant after attaining majority and which was pending for consideration on the date of commencement of the amended Rules. It was held that there can be no condonation of delay in making the application. Learned counsel for the appellant pointed out that the view is clearly contrary to the applicable provisions and it would render the very purpose of enacting the Rules. Factually, it was pointed out that there were elder members in the respondent's family. Keeping in view the object of compassionate appointment, the High Court's view is indefensible.

In response, learned counsel for the respondent submitted that the Rules are merely directory and even if it is conceded that there was no application pending that will not change the situation. No technical view should be taken as the object is to provide sustenance to distressed members of a deceased government servant.

A bare reading of the second proviso makes the position that unless the application is pending at the time of commencement of the Amendment Rules, the same can have no application. If the second proviso has no application, then the question of any subsequent application being considered does not arise. 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.

Now comes the question of the object of compassionate appointment.

As was observed in *State of Haryana and Ors. v. Rani Devi & Anr.* (AIR 1996 SC 2445), it need not be pointed out that the claim of person concerned for appointment on compassionate ground is based on the premises that he was dependant 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's case (supra) it was held that 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 *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr.* (1994 (2) SCC 718), it was pointed out that 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 contemplates such appointments. It was noted in *Umesh Kumar Nagpal v. State of Haryana and Ors.* (1994 (4) SCC 138), that as a rule in public service appointment 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 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.

In *Smt. Sushma Gosain and Ors. v. Union of India and Ors.* (1989 (4) SCC 468), it was observed that in all claims of appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread-earner in the family. Such appointments should, therefore, be provided immediately to redeem the family in distress. The fact that the ward was a minor at the time of death of his father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor becomes a major he can be appointed without any time consciousness or limit. The above view was reiterated in *Phoolwati (Smt.) v. Union of India and Ors.* (1991 Supp (2) SCC 689), and *Union of India and Ors. v. Bhagwan Singh* (1995 (6) SCC 476). In *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* (1998 (5) SCC 192), it was observed that in matter of compassionate appointment there cannot be insistence for a particular post. Out of purely humanitarian consideration and having regard to the fact that unless some source of livelihood is provided the family would not be able to make both ends meet, provisions are made for giving appointment to one of the dependants of the deceased who may be eligible for appointment. Care has, however, to be taken that provision for ground of compassionate employment which is in the nature of an exception to the general provisions does not unduly interfere with the right of those other persons who are eligible for appointment to seek appointment against the post which would have been available, but for the provision enabling appointment being made on compassionate grounds of the dependant of the deceased-employee. As it is in the nature of exception to the general provisions it cannot substitute the provision to which it is an exception and thereby nullify the main provision by taking away completely the right conferred by the main provision. In *State of U.P. and Ors. v. Paras Nath* (1998 (2) SCC

412), it was held that the purpose of providing employment to the dependant of a Government servant dying-in-harness in preference to anybody else is to mitigate hardship caused to the family of the deceased on account of his unexpected death while in service. To alleviate the distress of the family, such appointments are permissible on compassionate grounds provided there are Rules

providing for such appointments.

The ratio in Life Insurance Corporation of India's case (*supra*) is fully applicable to the present case. Above being the position, the Tribunal and the High Court were not justified in directing that the respondent's case be considered for appointment in terms of the Rules without taking note of the limitation prescribed. The judgments are set aside. The appeal is allowed without any order as to costs. Our interference shall not stand on the way of the respondent's case being considered on the basis of applicable existing or future Rules as may be applicable.