

State Of J&K & Others vs Sajad Ahmed Mir on 17 July, 2006

Author: C.K. Thakker

Bench: Arijit Pasayat, C.K. Thakker

CASE NO. :
Appeal (civil) 6642 of 2004

PETITIONER:
STATE OF J&K & OTHERS

RESPONDENT:
SAJAD AHMED MIR

DATE OF JUDGMENT: 17/07/2006

BENCH:
ARIJIT PASAYAT & C.K. THAKKER

JUDGMENT:

JUDGMENT C.K. THAKKER, J.

The present appeal is filed by the appellant-State against the judgment and order dated December 2, 2002 passed by the Division Bench of the High Court of Jammu & Kashmir in L.P.A. No. 131 of 2000. By the said order, the Division Bench of the High Court quashed and set aside the order dated July 15, 2000, passed by the learned single Judge in SWP No.966 of 1999.

The facts in nutshell are that the father of Sajad Ahmed Mir respondent - applicant was working as the Lineman in Power Development Department (PDD), Civil Secretariat, Srinagar. He died on March 6, 1987 while in service. It appears that the applicant applied on September 20, 1991 for getting an appointment on compassionate ground against the vacant post resulted due to death of his father. It was the say of the applicant that his case was forwarded by the authorities with recommendation in 1993 to give him appointment on compassionate ground. It was also his case that the Administrative Department recommended to appoint the applicant after relaxation of qualification as well as in age. The matter was taken up by the Executive Engineer, Superintending Engineer as also by the Chief Engineer of the Civil Secretariat of the Power Development Department and the Administrative Department. According to the applicant, on or about June 8, 1999, the Administrative Department conveyed its decision to the Chief Engineer, Electric Maintenance and RE Wing, Srinagar that the request of the applicant could not be acceded to and no appointment could be given.

Being aggrieved by the said decision, a writ petition was filed by the applicant which came up for hearing before a single Judge. A detailed affidavit was filed by the authorities contending inter alia that the decision had already been taken in 1996 that compassionate appointment could not be

given to the applicant and the said decision was communicated on March 26, 1996, whereas the writ petition was filed in 1999 and thus there was gross delay and laches on the part of the applicant in approaching the Court. It was also contended that the applicant was not eligible and qualified for appointment.

The learned single Judge after considering the relevant facts and the reply affidavit held that the decision was taken in March, 1996 not to appoint the applicant on compassionate ground and he was informed accordingly. The applicant had never challenged that decision. What was done by the authorities in 1999 was merely reiteration of the decision taken in 1996. It was also observed by the learned single Judge that the whole purpose of compassionate appointment of a family member of a Government employee dying in harness is to obviate hardship likely to be caused to the family and adverse financial difficulties which it is likely to face due to death of its bread earner. Such appointment is not an appointment under statutory right but is in the nature of concession granted by the State Government, keeping in view extreme hardship of indigent family of the deceased employee. After considering the facts and circumstances, the Administrative Department declined to offer compassionate appointment to the applicant. From the record, it is clear that in 1996, the decision was taken that the applicant could not be appointed on compassionate ground and it was conveyed to the applicant. That action was never challenged. In 1999, the petition was filed. According to the learned Judge, once on consideration of facts and circumstances, a conscious decision was taken and the prayer was turned down, no case was made out by the applicant so as to entitle him to get relief and accordingly the petition was dismissed. Being aggrieved by the said order, the applicant approached the Division Bench by filing Letters Patent Appeal. The Division Bench of the High Court proceeded to consider the matter by observing "when compassion is sought, then reason has to take back seat". It then proceeded to consider the matter and observed that the applicant applied for compassionate appointment in September, 1991. At that time, he was underage. But his case was recommended by Administrative Department for relaxation of age bar. In the meantime, Jammu & Kashmir (Compassionate Appointment) Rules, 1994 came into force. The claim of the appointment was declined by the Administrative Department in 1996 and communicated vide letter dated June 8, 1996. The Division Bench noted that the said letter no doubt mentioned the fact that earlier also the claim of the applicant was declined. Reference was also made to earlier communications. According to the Division Bench, all the Departments were favourable to the applicant and recommended his case for compassionate appointment. The father of the applicant died in harness in 1987. The claim of the applicant for compassionate appointment was, therefore, supposed to be considered in terms of rules and regulations then in force. The Division Bench observed that earlier no limitation was fixed for applying for compassionate appointment and the claim of the applicant was wrongly rejected by the authorities. Accordingly, he was held 'entitled' to compassionate appointment in terms of rules and regulations which were in existence before coming into force of 1994 Rules and a direction was issued to consider the case of the applicant and to take decision within a period of six weeks from the date when the copy of the order would be made available to the authorities. The appeal was accordingly allowed holding that the applicant would be entitled to consideration from the date three years prior to the filing of the petition. The Court held that for that period, the applicant would be given notional benefits minus monetary benefits. Being dissatisfied with the order of the Division Bench, the authorities have approached this Court. On October 17, 2003, notice was issued on application for condonation of delay in filing

SLP (since there was delay of 172 days) as well as on Special Leave Petition. Interim stay was granted meanwhile. Thereafter, the matter was heard from time to time. Leave was granted on October 4, 2004 and hearing was expedited.

We have heard learned counsel for the parties. The learned counsel for the State submitted that the Division Bench has committed clear error of law in allowing Letters Patent Appeal and setting aside the order passed by the learned single Judge. He submitted that the father of the applicant died in 1987 and an application was made for the first time in 1991. Even on that day, the applicant was minor and was not eligible to be appointed. Moreover, the authorities considered the case of the applicant and in March, 1996, the claim of the applicant was rejected. The said fact was communicated not only to the Department but also to the applicant and applicant was aware of such decision. He, however, kept silence and did nothing, nor did he challenge the said decision at any time. After about three years, in 1999, when again there was a departmental communication, the applicant woke up and approached the Court and challenged the said decision. Thus, there was gross delay and laches on the part of the applicant in approaching the Court and invoking the writ jurisdiction of the High Court. The learned single Judge was, therefore, wholly justified in dismissing the petition. It was also argued by the learned counsel that the sole object of offering compassionate appointment is to ensure that the family of the employee who dies in harness does not suffer. When the father of the applicant died in 1987 and the applicant approached the Court in 1999, more than a decade had passed. Moreover, when the Division Bench heard the Letters Patent Appeal, more than fifteen years were over and the said fact ought to have been taken into account by the Division Bench and it ought not to have reversed the decision of the learned single Judge. He, therefore, submitted that the appeal deserves to be allowed by setting aside the order passed by the Division Bench restoring the order of the learned single Judge. The learned counsel for the respondent, on the other hand, supported the order passed by the Division Bench. He stated that discretion has been exercised by the Division Bench keeping in view the principles of justice, equity and good conscience. The Bench was fully justified in observing that when 'compassion' was sought, the approach of the Court would be liberal and pragmatic rather than rigid and pedantic. The approach adopted by the Division Bench in showing sympathy cannot be faulted with and the appeal deserves to be dismissed.

Having heard the learned counsel for the parties, in our opinion, the appeal should be allowed. Certain facts are not in dispute. The father of the applicant who was in service, died in harness in March, 1987 and for the first time, the application was made by the applicant after more than four years i.e. in September, 1991. The family thus survived for more than four years after the death of the applicant's father. Even at that time, the applicant, under the relevant guidelines, could not have been appointed and hence relaxation was prayed. It is no doubt true that the case of the applicant was favourably considered by the Departments and recommendation was made, but it is also a fact which has come on record that in March, 1996, a decision was taken by the authorities not to give appointment to the applicant on compassionate ground. From the affidavit in reply filed by the authorities in the High Court as also from the finding of the learned single Judge, it is clear that the applicant had knowledge about rejection of his application in 1996 itself. Nothing was done by the applicant against the said decision. Considerable period elapsed and only in 1999, when there was some inter- Departmental communication and Administrative Officer informed the Chief Engineer

vide a letter dated 8th June, 1999 that the applicant could not be appointed on compassionate ground that the applicant woke up and filed a writ petition in the High Court. It is also pertinent to note that the letter of 1999 itself recites that the case of the applicant for compassionate appointment was considered and the prayer had already been turned down by the Administrative Department and the said fact had been communicated to the office of the Chief Engineer. A copy of the said letter was also annexed to the letter of 1999. In our opinion, therefore, the learned single Judge was right in dismissing the petition on the ground of delay and laches by holding that the applicant had not done anything for a considerable period after March, 1996 when his claim was rejected even though he was informed about the decision and was very much aware of it. The Division Bench, in our view, was not justified in setting aside the said order and in directing the authorities to consider the case of the applicant for compassionate appointment and by giving directions to give other benefits.

We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought 'compassion', the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed except where compelling circumstances demand, such as, death of sole bread earner and likelihood of the family suffering because of the set back. Once it is proved that in spite of death of bread earner, the family survived and substantial period is over, there is no necessity to say 'goodbye' to normal rule of appointment and to show favour to one at the cost of interests of several others ignoring the mandate of Article 14 of the Constitution. In *State of Haryana and Ors. v. Rani Devi and Anr.* [(1996) 5 SCC 308 : AIR 1996 SC 2445], it was held that the claim of applicant for appointment on compassionate ground is based on the premise 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. However, such claim is considered reasonable as also allowable on the basis of sudden crisis occurring in the family of the employee who had served the State and died while in service. That is why it is necessary for the authorities to frame rules, regulations or to issue such administrative instructions which can stand the test of Articles 14 and 16. Appointment on compassionate ground cannot be claimed as a matter of right.

In *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) & Anr.* [(1994) 2 SCC 718], it was indicated 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 contemplate such appointments.

In *Umesh Kumar Nagpal v. State of Haryana & Ors.* [(1994) 4 SCC 138], it was ruled that public service appointment should be made strictly on the basis of open invitation of applications and on merits. The appointment on compassionate ground cannot be a source of recruitment. It is merely an exception to the requirement of law keeping in view 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. Such appointments on compassionate ground, therefore,

have to be made in accordance with rules, regulations or administrative instructions taking into consideration the financial condition of the family of the deceased. This favorable treatment to the dependant of the deceased employee must have clear nexus with the object sought to be achieved thereby, i.e. relief against destitution. At the same time, however, it should not be forgotten that as against the destitute family of the deceased, there are millions and millions of other families which are equally, if not more, destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectation, and the change in the status and affairs of the family engendered by the erstwhile employment, which are suddenly upturned. In *Smt. Sushma Gosain & Ors. v. Union of India & Ors.* [(1989) 4 SCC 468], it was observed that in claims of appointment on compassionate grounds, there should be no 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. Recently, in *Commissioner of Public Instructions & Ors. v. K.R. Vishwanath*, [(2005) 7 SCC 206], one of us (Pasayat, J.) had an occasion to consider the above decisions and the principles laid down therein have been reiterated.

In the case on hand, the father of the applicant died in March, 1987. The application was made by the applicant after four and half years in September, 1991 which was rejected in March, 1996. The writ petition was filed in June, 1999 which was dismissed by the learned single Judge in July, 2000. When the Division Bench decided the matter, more than fifteen years had passed from the date of death of the father of the applicant. The said fact was indeed a relevant and material fact which went to show that the family survived in spite of death of the employee. Moreover, in our opinion, the learned single Judge was also right in holding that though the order was passed in 1996, it was not challenged by the applicant immediately. He took chance of challenging the order in 1999 when there was inter-departmental communication in 1999. The Division Bench, in our view, hence ought not to have allowed the appeal. For the foregoing reasons, the appeal deserves to be allowed and it is accordingly allowed. The order passed by the Division Bench is set aside and that of the learned single Judge is restored. In other words, the petition filed by the respondent herein applicant before the learned single Judge is ordered to be dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.