

I.G. (Karmik) & Ors vs Prahalad Mani Tripathi on 27 April, 2007

Equivalent citations: 2007 AIR SCW 3305, 2007 (6) SCC 162, 2007 (4) ALJ 308, 2007 (3) AIR JHAR R 428, AIR 2007 SC (SUPP) 1264, (2007) 3 SCT 483, (2007) 3 ALLMR 866 (SC), (2007) 6 SCALE 370, (2007) 3 LAB LN 96, (2007) 4 SUPREME 256, (2007) 114 FACLR 9, (2008) 1 SERVLJ 89, (2008) 1 ESC 107, (2007) 4 SERVLR 595, (2007) 2 CURLR 818

Author: S.B. Sinha

Bench: S.B. Sinha, Markandey Katju

CASE NO.:

Appeal (civil) 2208 of 2007

PETITIONER:

I.G. (Karmik) & Ors

RESPONDENT:

Prahalad Mani Tripathi

DATE OF JUDGMENT: 27/04/2007

BENCH:

S.B. Sinha & Markandey Katju

JUDGMENT:

J U D G M E N T CIVIL APPEAL NO. 2208 OF 2007 (Arising out of SLP (C) No. 15618 of 2003) S.B. SINHA, J.

Leave granted.

Respondent's father Shri Narmadeshwar Mani Tripathi was a constable. He was in Uttar Pradesh Police Service. He died in harness on 2.1.1986. Grant of appointment to a dependant of an employee who died in harness is governed by statutory rules, in terms whereof the appellant filed an application for his appointment. He disclosed his academic qualification therein. He was considered for appointment as a Constable. He was not found eligible therefor having not satisfied the physical standard stipulated under the rules. He was appointed as a Peon. He accepted the said appointment without any demur whatsoever. He, however filed an application before the Uttar Pradesh Services Tribunal, Lucknow praying for his absorption in the post of Constable (M) with consequential benefits from the date of his initial appointment. By reason of a Judgment and Order dated 24.7.2000, the Tribunal arrived at a finding that although, ordinarily, rule of estoppel apply in a case of this nature, having regard to the representations made by him before the authorities in the instant case, the same should not be applied. It directed the appellant to appoint him in Class III

posts with a further direction that the services rendered by him in the post of ordinary Peon be counted towards his pensionary benefits in the class III posts.

A Writ Petition was filed before the High Court questioning the correctness of said order. By reason of the impugned judgment dated 27.11.2002, the High Court declined to interfere therewith despite observing;

"A word of caution, is put on record that the right to claim appointment under the dying in harness rules on compassionate ground can be neither used as a device to seek employment nor it is a new mode of recruitment in Government service nor can be treated as a channel of promotion to higher post. The impugned order has been passed on the basis of facts of the present case."

Learned counsel appearing on behalf of the appellant would submit that the Order of the Tribunal and consequently that of the High Court suffers from a manifest error in so far as they failed to take into consideration;

(i) Respondent having accepted the post of a Peon, was estopped from claiming a higher post after a period of five years.

(ii) The rules provided for appointment only to a post for which the candidate possessed the academic and other qualifications. The learned counsel appearing on behalf of the respondent, on the other hand, would submit that in the facts and circumstances of this case, this Court should not exercise its discretionary jurisdiction under Article 136 of the Constitution of India as not only a prayer was made by the respondent for his appointment to a post which was commensurate with the academic qualifications he possessed, and the Superintendent of Police recommended therefor, but having regard to his alleged deficiencies in physical fitness only, the Police Headquarters directed his appointment only as a peon.

An employee of a State enjoys a status. Recruitment of employees of the State is governed by the rules framed under a statute or the proviso appended to Article 309 of the Constitution of India. In the matter of appointment, the State is obligated to give effect to the constitutional scheme of equality as adumbrated under Articles 14 and 16 of the Constitution of India. All appointments, therefore, must conform to the said constitutional scheme. This Court, however, while laying emphasis on the said proposition carved out an exception in favour of the children or other relatives of the officer who dies or who becomes incapacitated while rendering services in the police department. See *Yogender Pal Singh and Others v. Union of India and Others* [A.I.R. 1987 SC 1015].

Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the family by reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.

In National Institute of Technology & Ors. v. Niraj Kumar Singh [2007 (2) SCALE 525], this Court has stated the law in the following terms:-

"16. All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder."

In State of Rajasthan v. Umrao Singh [(1994) 6 SCC 560], this Court has categorically stated that once the right is consummated, any further or second consideration for higher post on the ground of compassion would not arise.

Again in State of Haryana and Another v. Ankur Gupta [(2003) 7 SCC 704], this Court held;

"6. As was observed in State of Haryana v. Rani Devi it need not be pointed out that the claim of the person concerned for appointment on compassionate ground is based on the premise that he was dependent 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 case it was held that the 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 LIC of India v. Asha Ramchandra Ambekar it was pointed out that the 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. It was noted in Umesh Kumar Nagpal v. State of Haryana that as a rule, in public service appointments 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 the 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."

See also Food Corporation of India & Anr. v Ram Kesh Yadav & Another [JT 2007 (4) SC 1].

Respondent, thus, could be offered an appointment only to the post for which he was suitable.

Furthermore, Appellant accepted the said post without any demur whatsoever. He, therefore, upon obtaining appointment in a lower post could not have been permitted to turn round and contend that he was entitled for a higher post although not eligible therefor. A person cannot be appointed unless he fulfils the eligibility criteria. Physical fitness being an essential eligibility criteria, the Superintendent of Police could not have made any recommendation in violation of the rules. Nothing has been shown before us that even the petitioner came within the purview of any provisions containing grant of relaxation of such qualification. Whenever, a person invokes such a provision, it would be for him to show that the authority is vested with such a power.

The pre-requisite for making such a appointment by granting relaxation has been laid down by this Court in Indian Drugs & Pharmaceuticals Ltd. v. Devki Devi and Others [(2006) 5 SCC 523]. See also Kendriya Vidyalaya Sangathan and Others v. Sajal Kumar Roy and Others [(2006) 8 SCC 671].

For the reasons aforementioned, the impugned judgment cannot be sustained. It is set aside accordingly. The Appeal is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs.