State Of Manipur vs Md. Rajaodin on 28 August, 2003

Equivalent citations: AIR 2003 SUPREME COURT 3794, 2003 (7) SCC 511, 2003 AIR SCW 4339, 2003 LAB. I. C. 3148, 2004 (3) MADLW 56, 2003 (6) SCALE 796, 2003 (8) ACE 7, 2004 (1) SERVLJ 247 SC, 2004 (1) ALL WC 143, 2004 (1) CALLJ 22, 2003 (5) SLT 246, (2003) 9 JT 493 (SC), (2003) 8 JT 57 (SC), (2004) 1 SERVLJ 247, (2003) 12 ALLINDCAS 133 (SC), 2003 (9) SRJ 312, (2003) 11 INDLD 358, (2003) 6 ALL WC 4865, 2003 SCC (L&S) 1070, (2003) 103 FJR 834, (2003) 11 INDLD 469, (2003) 3 CURLR 963, (2003) 11 ALLINDCAS 524 (ALL), 2003 ALL CJ 2 1966, (2003) 99 FACLR 337, (2003) 4 LAB LN 40, (2003) 4 SCT 242, (2003) 6 SERVLR 696, (2003) 6 SUPREME 256, (2003) 4 JLJR 88, (2005) 2 GAU LT 11, (2003) 4 PAT LJR 119, (2004) 1 ESC 1

Author: Arijit Pasayat

Bench: Doraiswamy Raju, Arijit Pasayat

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           CASE NO.:
Appeal (civil)  6797 of 2003

PETITIONER:
STATE OF MANIPUR

RESPONDENT:
MD. RAJAODIN

DATE OF JUDGMENT: 28/08/2003

BENCH:
DORAISWAMY RAJU & ARIJIT PASAYAT

JUDGMENT:
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JUDGMENT 2003 Supp(3) SCR 107 The Judgment of the Court was delivered by ARIJIT PASAYAT, J. Leave granted.

Respondent was found to be entitled for appointment under the die-in-hamess scheme, by a learned Single Judge of the Guwahati High Court at Imphal Bench, whose view was endorsed by the Division Bench. The State of Manipur is in appeal.

There is practically no controversy so far as the factual aspects are concerned and, therefore, need to be noted in brief.

Respondent's father died in harness on 19.7.1980. A writ petition (W.P. (C) No. 1202/2001) was filed in the year 2001 by the respondent who pleaded that he was initially offered Grade-IV post by order dated 15.12.1999; but no appointment was made. The writ application was filed for direction to the concerned authorities for giving appointment under the die-in-harness scheme. The State resisted the claim on the ground that not only was the claim belated but also in view of the ben imposed on appointments, the question of making any appointment did not arise. Further the letter issued was inconsequential as there was a clear stipulation in the scheme itself about concurrence of Government in the Department of Personnel and Administrative Reforms (Personnel Division).

Learned Single Judge of the High Court found that after having issued the letter in 1999, the belated approach by the respondent cannot be a ground for denying appointment under die-in-harness scheme and direction was given to the State to forthwith appoint the respondent. Appeal by the State before the Division Bench suffered dismissal.

In support of the appeal, learned counsel for the appellant-State submitted that the respondent's father died on 19.7.1980. The respondent applied for a post on 25.7.1997. The scheme itself provides the time period within which an application has to be filed. The letter dated 15.12.1999 does not confer any right on the respondent as the scheme itself provided that the appointment will be made by the appointing authority concerned after clearance from Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division). Admittedly, when no approval has been given by the concerned department, the mere issuance of letter does not confer any right particularly when the stipulation is contained in the scheme itself, and there was a ban operating in respect of appointments.

In response, learned counsel for the respondent submitted that within the time period stipulated an application was filed in the year 1981, but there was no response. Finding on other alternative the respondent who was a minor at the time of his father's death applied afresh and State cannot take plea that the benefit canot be extended.

The Government of Manipur, Department of Personnel and Administrative Reforms (Personnel Division) issued Office Memorandum dated 2nd of May, 1984. Said office Memorandum deals with appointment of son/daughter/real brother/real sister/wife/husband of Government servants who died in harness leaving his/her family in indignant circumstances.

Admittedly, the respondent's father died before the Office Memorandum came into operation. In the memorandum a time period is stipulated. Since the scheme itself was not in operation when the respondent's father died, the time stipulation as provided in the scheme would not be strictly applicable to the case of the respondent and any one seeking for relief thereunder has to at least move within the time stipulated commencing from the date of the order. Nevertheless, keeping in view at any rate the object for which such appointments which are also compassionate appointments are made the minimum requirement is that the resquest for appointment should be made as expeditiously as the circumstances warrant. It could not be brought to our notice whether there was any scheme in operation prior to the scheme of 1984 referred to above. As the appointments of such nature envisaged under the said scheme are made to tide over immediate

difficulties, there is an inbuilt requirement of urgency in making the application. Though it was contended that the respondent was a minor at the time of his father's death, it is to be noted that he was of 10 years of age in 1980 when his father died. Even if a responsible period after he attained majority is taken, certainly the application on 25.7.1997 seeking appointment was highly belated.

As was observed in the State of Haryana and Ors. v. Rani Devi & Anr., JT [1996] SCC 6 646, 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 Articles 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 Ramchhandra 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 could 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 consideation 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 the father is no ground, unless the scheme itself envisage specifically otherwise, to state that as and when such minor bcomes a major he can be appointed without any time consciousness or limit. The above view was re-iterated 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 geneal 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. None of these considerations can operate when the application is made after a long period of time. In that case also the delay was 17 years.

When case of the respondent is considered in the panorama of aforesaid legal principles, the inevitable conclusion is that he was not entitled for appointment. Even after 1984 scheme came into force, the application was filed after a long lapse of time. He, therefore, had no right much less a legal right to ask for an appointment. Learned Single Judge of the High Court was not justified in directing the appellant to give appointment. It is also on record that there was a ban on direct recruitment under Die-in- harness scheme as is evidenced by Office Memorandum dated 24th July, 2001. The scheme itself provided for a clearance from the Government in the Department of Personnel and Administrative Reforms (Personnel Division).

We, therefore, set aside the orders of the Learned Single Judge and the Division Bench. The appeal is allowed. However, this Judgment shall not stand on the way of the appellant at its discretion giving effect to the orders dated 15th December, 1999 at and from a future point of time, if permissible, in accordance with law. Costs are made easy.