

Calcutta High Court

Bimal Kumar Gayen And Anr. vs The State And Ors. on 26 September, 1994

Equivalent citations: (1995) 1 CALLT 23 HC

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Bench: S K Sen

JUDGMENT Shyamal Kumar Sen, J.

1. It is the case of the petitioners that the petitioner No. 1 is the eldest son and petitioner No. 2 is the widow of the deceased Santosh Kumar Gayen who died in harness on 23.2.1984. At that time the said Santosh Kumar Gayen, since deceased, was working as a Head teacher, Dera Rajkrishna Prathamik Vidyalaya under Pichaboni Circle under the District School Board (P.E.) Midnapore. The said Santosh Kumar Gayen, deceased, left behind him his wife, Smt. Sakuntala Gayen being the petitioner No. 2 and four unmarried daughters and three minor sons including petitioner No. 1 Bimal Kumar Gayen as his legal heirs. The Petitioner No. 2, widow of the aforesaid Santosh Kumar Gayen applied to the concerned authority i.e. the then District School Board, Midnapore for her appointment in her deceased husband's place on 23.4.1984 through the Sub-Inspector of Schools, Pichaboni Circle, Midnapore. The Petitioner No. 1 who is the eldest son of deceased Santosh Kumar Gayen was at that time a student of Class-VIII and was a minor. Petitioner No. 1 passed the School Final Examination (Madhyamik) in the year 1987 and passed the Higher Secondary Examination (12th class) in the year 1990. In the year 1990, the petitioner No. 1 attained majority. No decision was taken on the application of petitioner No. 2 i.e. the widow of the deceased and as such, the petitioner No. 1 after having attained the majority, made an application for appointment in place of his deceased father. District Primary School Council, Midnapore duly sent the proposal on the basis of the Circular dated 14.9.77 to the Director of School Education (Primary), West Bengal, respondent No. 2. The Director of School Education (Primary), West Bengal however instead of taking any decision on his own, referred the matter to the Education Department, Government of West Bengal. Assistant Secretary, Education Department, Government of West Bengal by his memo No. 98-Edn(P) dated 10.2.92 intimated to the Director of School Education, West Bengal, (Primary Unit) that the Government regrets its inability to accede to the proposal for appointment of Shri Bimal Kumar Gayen, son of Late Santosh Kumar Gayen, ex-teacher. It has been submitted by the learned Advocate for respondent, Mr. Asoke Kumar Maity that in view of the Circular No. 457-EDN-(P)/4A/ 50/83 dated 12.10.87 that the application for appointment in respect of died in harness cases should be considered within two years from the date of the death of the deceased, the Assistant Secretary, Education Department intimated the Director of School Education, West Bengal, (Primary Unit) that the proposal for appointment of Shri Bimal Kumar Gayen could not be considered by the Government. It appears that the Director of School Education, W.B. (Primary Unit) however did not take any decision after receipt of such decision from the Assistant Secretary, Education Department, Government of West Bengal.

2. Be that as it may, the said intimation of the Assistant Secretary also does not record any reason for non-compliance of the proposal. That apart, the Director of School Education (Primary Unit) should have given his independent opinion and should not be dictated by other officers of Government.

3. In that view of the matter, at this stage it does not appear that the Director of School Education, (Primary Unit) has taken any decision himself and on the other hand he has kept the matter pending so long.

4. The first application of the widow of the deceased, petitioner No. 2 was submitted in 1984 but the same has not been disposed of. It has been submitted by the learned Advocate for the appearing respondent that the deceased widow, Smt. Sakuntala Gayen was not eligible for such appointment because she has not passed the School Final Examination (Madhyamik). But, it appears that this point has also not been communicated to the widow of the deceased and that application has also been kept pending. In the mean time, the petitioner No. 1, Bimal Kumar Gayen, son of the deceased Santosh Kumar Gayen passed the Madhyamik examination.

5. In that view of the matter, in my view, it cannot be said that the petitioner No. 2, Smt. Sakuntala Gayen's application should be rejected on that consideration alone.

6. Learned Advocate for the petitioners has relied upon a judgment and decision reported in Indian Factories and Labour Reports, 1991 Vol. 62 page 491 being C.M.W.P. No. 14078 of 1989 between Nand Lal Kushwaha v. State of U.P. and Ors. passed by M.L. Bhat, J. of Allahabad High Court on 10.10.90. The aforesaid decision also relates to a case of appointment on compassionate ground. In that case also the petitioner's father died in harness. At the time of death of petitioner's father, the petitioner had not attained the minimum age required for being appointed to the post. He applied for such post after four years on attaining the required age. It was held by the Allahabad High Court in that case that the petitioner is entitled to be appointed in the Institution in question. Allahabad High Court while disposing of the said decision took into consideration the Supreme Court judgment in Civil Appeal No. 3642 of 1989 between Smt, Sushma Gosain and Ors. v. Union of India and Ors. passed by K. Jagannatha Shetty and M. N. Venkatachaliah, JJ. on 25.8.89. It was held in that case that the respondent No. 3 was obliged to appoint the petitioner against a post of peon and if the post of peon is not available, the respondents, are bound to create a post so that the petitioner is absorbed. The Government order of 1981 has a laudable object inasmuch as it tries to mitigate the distressed condition of the family members of the deceased who have suffered due to untimely death of their bread earner. The Supreme Court has laid down the principle in what manner the Government should behave while appointing a dependent of the employee who has died in harness while serving the Government. In view of the principle laid down by the Supreme Court, it is not necessary to keep the matter pending and prolonging the agony of the petitioner unnecessarily. The petitioner is entitled to reap the benefit of the Government Order of 1981. It further appears that the Supreme Court has observed in the aforesaid case that all claims for 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 appointment should therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

7. I respectfully agree with the view taken by the Allahabad High Court in the aforesaid case. In that view of the matter, the petitioners should succeed in this writ petition.

8. In the case of Smt. Sushma Gosain and Ors. v. Union of India and Ors. the applicant's husband who was working as Storekeeper in the Department of Director General Border Road, died in 1982. The applicant soon thereafter sought appointment as LDC on compassionate grounds. She passed trade test but she was not appointed and she was being told that her case was under consideration. Her application was rejected in 1985 when ban on appointment of ladies was imposed.

9. It was held that denial of her appointment was patently arbitrary and accordingly the same was set aside.

10. We may in this context set out hereinbelow the observation and finding of the Supreme Court in Smt. Sushma Gosain and Ors. v. Union of India (supra) in paragraph 9 of the said judgment at page 1977 of the said report as follows :-

"9. We consider that it must be stated unequivocally that in all claims for 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 appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

11. Considering the facts and circumstances of the case, in my view, the petitioner should succeed in this application.

12. There will be an order directing the Director of School Education (Primary Unit) West Bengal to appoint the petitioner No. 1 Bimal Kumar Gayen in place of his deceased father as teacher who died in harness in connection with the applications made by the petitioner No. 1 along with the application for consent of his widow mother being the petitioner No. 2 in Continuation of the application dated 23.4.84 made by the widow wife of the deceased without giving any effect to the decision/order dated 10.2.1992 vide Memo No. 98-Edn (P). Such appointment should be given preferably by 1st December, 1994. In, the event there is no vacancy, a supernumerary post should be created for absorption of petitioner No. 1 since the matter is pending sine a 1984.

13. The writ petition is accordingly disposed of without any order as to costs.

14. Let xerox copies of this order be given to the learned Advocates for the parties, upon compliance of usual formalities.