

Constitutional Writ

**Present: The Hon'ble Mr. Justice Pranab Kumar Chattopadhyay
and
The Hon'ble Mr. Justice Kishore Kumar Prasad**

Judgment On 16.3.2010

W.P.S.T.116 of 2010

POINTS:

Compassionate appointment ----Director Of Health Service, if can overturn his predecessor's order ----Terminal benefits, if a ground for refusing compassionate appointment---Service Law

FACTS:

The petitioner herein claimed appointment on compassionate ground due to the sudden death of his uncle who died-in-harness on 13th June, 1993. The Director of Health Services, West Bengal examined the claim of the petitioner for appointment on compassionate ground and passed an order upholding the claim of the petitioner for appointment on compassionate ground on 30TH April 1999. As the Petitioner was not given any employment he moved the tribunal and the tribunal remanded the matter to the Director of Health Service. The new Director of Health Service had rejected the prayer of the Petitioner. The Petitioner again moved the Administrative Tribunal as the same was rejected.

HELD:

We are of the opinion that the claim of the Petitioner cannot be rejected on the ground that the family of the deceased employee received some amount towards the terminal benefits especially when it has not been established that the family of the deceased employee earns sufficient income to maintain themselves.

PARAS---8&9

The petitioner herein cannot suffer prejudice on account of the laches and/or lapses on the part of the respondent authorities especially when the Director of Health Services, West Bengal as far back as on 30th April, 1999, specifically opined in favour of the petitioner to offer an employment according to his qualification on compassionate ground.

PARA---17

For the aforesaid reasons, the Judgment and Order passed by the Learned Tribunal cannot be sustained and the same are, therefore, set aside. Since a considerable time has already lapsed, we direct the Director of Health Services, West Bengal to offer employment to the Petitioner in terms of the earlier order passed by the Director of Health Services, West Bengal on 30th April, 1999, without any further delay.

PARA---18

CASES CITED:

Govind Prakash Verma Vs. Life Insurance Corporation of India & Ors (2005) 10 SCC 289

Balbir Kaur & Anr. Vs. Steel Authority of India & Ors., (2000) 6 SCC 493,

For the Petitioner

Mr. Rameswar Bhattacharyya,
Mr. Tanmay Chowdhury.

For the State

Ms. Jayeeta Chakraborti,
Mr. R. Pattanayak.

THE COURT:

1.This writ petition has been filed assailing the judgment and order dated 19th November, 2009 passed by the learned West Bengal Administrative Tribunal in case number O.A.388 of 2005 whereby and whereunder the said learned Tribunal dismissed the application filed by the petitioner herein on merits.

2.The petitioner herein claimed appointment on compassionate ground due to the sudden death of his uncle who died-in-harness on 13th June, 1993. The petitioner herein has specifically claimed that he was brought up by his uncle, the deceased employee from the childhood and he was the adopted son of his uncle. It is the specific case of the petitioner that he was solely dependent on the earnings of his uncle. After the sudden death of his uncle, the petitioner claimed appointment on compassionate ground.

3.The Director of Health Services, West Bengal examined the claim of the petitioner for appointment on compassionate ground and passed an order upholding the claim of the petitioner for appointment on compassionate ground. The relevant portion of the said order passed by the Director of Health Services, West Bengal on 30th April, 1999 is set out hereunder;

“ I have gone through the relevant records and papers carefully. It is clearly stated in the Order of Labour Deptt. Vide no.276(100)-Emp/10-4/88 dated 16.4.88 that following points are to be examined before considering appointment on compassionate ground.

i) Whether the family of the deceased employee is in immediate need of assistance.

ii) Whether the petitioner was solely dependant on the earnings of the deceased employee.

In the instant case the applicant is a near relative to the deceased employee and was dependant on the income of him.

In view of the above, I am of the opinion to offer the applicant an employment according to his qualification on compassionate ground. All concerned be informed accordingly.”

4.In spite of the aforesaid order, since no step was taken for employment of the petitioner on

compassionate ground, another application was filed before the learned Tribunal which was disposed of by the order dated 30th June, 2004 whereby and whereunder the learned Tribunal directed the Director of Health Services, West Bengal to consider the application filed before the said Tribunal as a representation of the petitioner and dispose of the same within a period of two months from the date of communication of the said order. The relevant portion of the said order passed by the learned Tribunal in the previous application being O.A.356 of 2004 on 30th June, 2004 is set out hereunder;

“.....Heard the Ld. Lawyer for the Applicant. Ld. Lawyer for the Applicant has submitted that Director of Health services vide his letter no.HPA/L-A/36/98/219-P dated 04.05.99 intimated the Applicant that the Applicant is eligible for employment on compassionate ground and since then no further intimation has been received from the authorities regarding actual offer of appointment on compassionate ground. In view of the inordinate delay caused in making any offer to the Applicant, the Applicant has filed a fresh application for relief.

On perusal of materials on record and order of Director of Health Services, we find that this is a fit case to be sent to the authorities for speedy disposal within a stipulated period.

In the light of these observations, we dispose of this application within a direction upon the Respondent no.2 i.e. Director of Health Services to treat the application as a representation of the Applicant and dispose it of within a period of two months from the date of communication of this order and inform the Applicant regarding his position in the list of exempted category within a period of one month thereafter.”

5.Pursuant to the aforesaid order passed by the learned Tribunal, Director of Health Services, West Bengal passed another order on 18th January, 2005 rejecting the prayer of the petitioner for appointment on compassionate ground.

6. Challenging the subsequent order passed by the Director of Health Services, West Bengal on 18th January, 2005, an application being O.A.388 of 2005 was filed before the learned West Bengal Administrative Tribunal which was finally disposed of by the impugned judgment and order dated 19th November, 2009 whereby and whereunder the said learned Tribunal rejected the claim of the petitioner for appointment on compassionate ground.

7. There is no dispute that the Director of Health Services, West Bengal on 30th April, 1999 specifically expressed an opinion for offering employment to the petitioner according to his qualification on compassionate ground. The aforesaid order was subsequently upset by the subsequent incumbent in the office of the Director of Health Services, West Bengal.

8. We fail to understand how a successor-in-office can upset the specific order passed earlier by the predecessor-in-office unless a fraud or misrepresentation is established. In the present case, it has never been alleged that the petitioner herein made any misrepresentation or practiced fraud on the earlier occasion.

9. Therefore, the Director of Health Services, West Bengal on 18th January, 2005 had no authority and/or jurisdiction to upset the earlier decision of his predecessor-in-office. The

subsequent order of the Director of Health Services, West Bengal cannot be sustained in the eye of law as the findings and directions of the Director of Health Services, West Bengal recorded in the earlier order dated 30th April, 1999 cannot be upset by the successor-in-office especially when no allegation of misrepresentation or fraud has been alleged against the petitioner.

10. For the aforementioned reasons, the subsequent order passed by the Director of Health Services dated 18th January, 2005 is liable to be quashed and the same is accordingly quashed.

11. The learned Tribunal while considering the aforesaid order passed by the Director of Health Services, West Bengal also held that the claim of the petitioner for compassionate appointment should be denied on account of the payment of terminal benefits.

12. In the case of **Govind Prakash Verma Vs. Life Insurance Corporation of India & Ors.**, reported in (2005) 10 SCC 289, the Hon'ble Supreme Court held:

“ 6. The Scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.”

13. In the case of **Balbir Kaur & Anr. Vs. Steel Authority of India & Ors.**, reported in (2000) 6 SCC 493, the Hon'ble Supreme Court specifically observed:

“ 13. But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the breadearner can only be absorbed by some lumpsum amount is made available with a compassionate appointment, the griefstricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but that would undoubtedly bring some solace to the situation.”

14. In the present case, a sum of Rs.69,459/- was received by the family of the deceased employee. According to the learned Advocate of the petitioner, major portion of the terminal benefits received by the family of the deceased employee was spent to clear up the outstanding loan which was taken for the purpose of the treatment of the deceased employee.

15. Following the aforesaid decisions of the Supreme Court in the case of **Balbir Kaur and Anr. (supra)** and **Gobind Prakash Verma (supra)**, we are of the opinion that the claim of the petitioner cannot be rejected on the ground that the family of the deceased employee received some amount towards the terminal benefits especially when it has not been established that the family of the deceased employee earns sufficient income to maintain themselves.

16. The learned Tribunal was also influenced by the long lapse of the period of 16 years 5 months after the death of the concerned employee ignoring the fact that the petitioner herein was not responsible for the aforesaid delay and the Director of Health Services, West Bengal in spite of expressing specific opinion in favour of the petitioner, failed and neglected to provide employment to the said petitioner.

17.The petitioner herein cannot suffer prejudice on account of the laches and/or lapses on the part of the respondent authorities especially when the Director of Health Services, West Bengal as far back as on 30th April, 1999 specifically opined in favour of the petitioner to offer an employment according to his qualification on compassionate ground.

18.For the aforesaid reasons, the judgment and order passed by the learned Tribunal cannot be sustained and the same are, therefore, set aside. Since a considerable time has already lapsed, we direct the Director of Health Services, West Bengal to offer employment to the petitioner in terms of the earlier order passed by the Director of Health Services, West Bengal on 30th April, 1999 without any further delay but positively within a period of four weeks from the date of communication of this order.

19.This writ petition thus stands allowed.

20.The learned Advocate of the petitioner is directed to communicate the gist of this order together with a copy of the order passed earlier by the Director of Health Services, West Bengal on 30th April, 1999 to the present Director of Health Services, West Bengal immediately for taking necessary steps in terms of this order.

21.In the facts of the present case, there will be, however, no order as to costs. Xerox plain copy of this order countersigned by the Assistant Registrar (Court) be given to the appearing parties on usual undertaking.

(Pranab Kumar Chattopadhyay, J.)
(Kishore Kumar Prasad, J.)