

Tribunal Application
Present
The Hon'ble Justice Pranab Kumar Chattopadhyay
And
The Hon'ble Justice Md. Abdul Ghani

Judgment on 08.09.2010

W.P.S.T.391 of 2010.
Sunil Kundal
-Vs-
State of W.B.& Ors

Points:

COMPASSIONATE APPOINTMENT: Family of the deceased employee received terminal benefits and the family pension- Compassionate appointment whether can be denied- **Service Law**

Facts:

The father of the petitioner died-in-harness on 14th February, 2005 and immediately after the death of the father of the said petitioner, an application was submitted by the mother of the petitioner for providing employment to the petitioner on compassionate ground under the died-in-harness category. As no decision was taken by the competent authority with regard to the aforesaid prayer for providing employment on compassionate ground, petitioner herein filed an application before the learned Tribunal which was, however, rejected by the impugned judgment and order observing that the family of the deceased employee received terminal benefits and the family pension has been sanctioned to the widow of the said employee.

Held:

The compassionate appointment cannot be refused to the petitioner only on the ground of payment of terminal benefits and the family pension which are admissible under the rules. Para 12

Since a considerable time has already passed, we direct the respondent no.2 to issue appropriate order considering the claim of the petitioner for compassionate appointment to a suitable vacant post without any further delay but positively within a period of six weeks from the date of communication of this order. Para 18

Cases cited:

Govind Prakash Verma Vs. Life Insurance Corporation of India and Ors., (2005) 10 S.C.C. 289; *Balbir Kaur and Anr. Vs. Steel Authority of India and Ors.*, (2000) 6 S.C.C. 493

Mr. P. B. Mahato.
...For the Petitioner.

Mr. Subrata Mukhopadhyay,
Ms. Chhabi Chakraborty.
...For the State.

The Court:

This application has been filed assailing the judgment and order dated 16th June, 2010 passed by the learned West Bengal Administrative Tribunal in case number O.A.340 of 2010 whereby and where under the said learned Tribunal rejected the claim of the petitioner for employment on compassionate ground.

2. From the records, we find that the father of the petitioner died-in-harness on 14th February, 2005 and immediately after the death of the father of the said petitioner, an application was submitted by the mother of the petitioner for providing employment to the petitioner on compassionate ground under the died-in-harness category which according to the petitioner was forwarded by the B.M.O.H., Gopiballavpur on 12th September, 2005 under Memo. No.421.

3. Since no step was taken for a considerable period, further application was submitted by the mother of the petitioner in this regard which was again forwarded by the said B.M.O.H., Gopiballavpur under Memo. No.41 dated 8th January, 2008.

4. As no decision was taken by the competent authority with regard to the aforesaid prayer for providing employment on compassionate ground, petitioner herein filed an application before the learned Tribunal which was, however, rejected by the impugned judgment and order dated 16th June, 2010.

5. While rejecting the prayer of the petitioner, learned Tribunal took into account that the family of the deceased employee received terminal benefits and the family pension has been sanctioned to the widow of the said employee.

6. Therefore, according to the learned Tribunal, the condition of the said family cannot be held to be penurious. The learned Tribunal further held that the application was also barred by limitation.

7. With regard to the finding of the learned Tribunal on the point of limitation, we are not at all satisfied since the claim of the petitioner for employment on compassionate ground has not yet been finally considered and decided by the respondent authorities. The respondent authorities never rejected the claim of the petitioner for employment on compassionate ground.

8. The learned Tribunal, however, held against the petitioner upon considering the facts that the family of the deceased employee received terminal benefits to the tune of Rs.2,46,414/- and furthermore, family pension has also been sanctioned to the mother of the petitioner.

9. The learned Advocate representing the petitioner submits that the claim for compassionate appointment cannot be rejected in view of payment of the terminal benefits as well as the family pension only. The learned Advocate referred to and relied on the decision of the Supreme Court in the case of **Govind Prakash Verma Vs. Life Insurance Corporation of India and Ors.**, reported in (2005) 10 S.C.C. 289 in support of his aforesaid argument wherein 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.”

10. The learned Advocate of the petitioner also relied upon another decision of the Supreme Court in the case of **Balbir Kaur and Anr. Vs. Steel Authority of India and Ors.**, reported in (2000) 6 S.C.C. 493, Hon'ble Supreme Court also specifically observed:

“ 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.”

11. In the case of **Balbir Kaur and Anr. (Supra)**, Supreme Court has specifically held that the monetary benefit cannot be the replacement of the bread earner although the same can undoubtedly bring some solace to the situation.

12. Following the judgment of the Supreme Court in the case of **Govind Prakash Verma (Supra)**, we also hold in this case that the compassionate appointment cannot be refused to the petitioner only on the ground of payment of terminal benefits and the family pension which are admissible under the rules.

13. In the present case, the father of the petitioner died-in-harness on 14th February, 2005 and the application submitted by the mother of the petitioner for providing employment to the said petitioner on compassionate ground was forwarded by the B.M.O.H., Gopiballavpur to the C.M.O.H., Paschim Midnapore on September 12, 2005 under Memo.No.421.

14. The learned Advocate of the State-respondents does not dispute the aforesaid claim of the petitioner regarding submission of the application by his mother claiming employment on compassionate ground before September, 2005 and the learned Advocate of the State-respondents further submits that the relevant records forwarded under Memo No. 421 dated September 12, 2005 are not available now.

15. Therefore, we find that there was no delay on the part of the petitioner in the matter of claiming appointment on compassionate ground. The authorities concerned unfortunately took considerable time to consider the claim of the petitioner and as a matter of fact, the aforesaid claim of the petitioner has not yet been decided by the competent authority.

16. It is true that the father of the petitioner died-in-harness in the year 2005 but no document has been produced before us on behalf of the respondents wherefrom it can be said that the financial condition of the family of the deceased employee has subsequently improved and not penurious now.

17. For the aforementioned reasons, we are unable to approve the decision of the learned Tribunal and, therefore, we set aside the impugned judgment and order dated 16th June, 2010 passed by the learned Tribunal in the application being O.A.340 of 2010.

18. Since a considerable time has already passed, we direct the respondent no.2 to issue appropriate order considering the claim of the petitioner for compassionate appointment to a suitable vacant post without any further delay but positively within a period of six weeks from the date of communication of this order upon taking note of our observations and findings as recorded hereinbefore.

19. This application thus stands allowed.

20. There will be no order as to costs.

21. 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.)

(Md. Abdul Ghani, J.)