

STATE OF MANIPUR

v.

MD. RAJAODIN

AUGUST 28, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.]

Service Law:

Compassionate appointment—Dependent of government servants—Appointment under die-in-harness scheme—Deceased employee leaving behind 10 year old son—Scheme coming into operation four years later stipulating time period for filing application—Application seeking appointment moved 17 years after employee's death—Subsequent issuance of letter offering a post but no appointment made—High Court directing appointment to be made—On appeal, held: Such appointments being compassionate appointments made to tide over the immediate difficulties, the request of appointment should be made as expeditiously the circumstances warrant—Also direct recruitment banned under the Scheme, thus the letter offering a post does not confer any right to seek appointment—Hence order of Single Judge and Division Bench of High Court set aside.

Respondent's father died in harness. After lapse of 17 years respondent applied for a post. Two years later, respondent was offered Grade-IV post but he was not appointed. Respondent filed a writ petition. Single Judge of High Court held that after having issued the letter respondent cannot be denied appointment under the die-in-harness scheme on the ground of belated approach and directed the appellant-State to forthwith appoint the respondent but no appointment was made. He then filed writ application. Division Bench upheld the order of the Single Judge of High Court. Hence the present appeal.

Appellant-State contended that the respondent applied for a post after 17 years of his father's death; that the scheme provides the time period within which an application has to be filed; and that it also provides that the appointment will be made by the appointing authority after clearance from the Government department and as no approval has been given by the department, the letter offering the post to the

A respondent does not confer any right on him.

B Respondent contended that application was filed within the time period stipulated but there was no response; and that as the respondent was a minor at the time of his father's death he applied afresh later and so the State cannot take the plea that the benefit cannot be extended to him.

Allowing the appeal, the Court

C HELD: The respondent's father died before the Office Memorandum of 1984 dealing with die-in-harness scheme 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 would not be strictly applicable to the instant case. Any one seeking relief thereunder has to at least move within the time

D stipulated commencing from the date of the order. Nevertheless, keeping in view the object for which such compassionate appointments are made the minimum requirement is that the request for appointment should be made as expeditiously as the circumstances warrant. It could not be brought to the notice of this Court as to whether there was any

E scheme in operation prior to the 1984 scheme. Even after the 1984 scheme came into force, the application was filed after a long lapse of time. As the appointments under the die-in-harness 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

F respondent was 10 years old when his father died and even if a reasonable period, after he attained majority, is allowed, certainly the application after 17 years seeking appointment was highly belated. Therefore, he has no right much less a legal right to ask for an appointment. It is also on record that there was a ban on direct recruitment under die-in-harness scheme as the scheme provided for

G a clearance from the Government department. Hence, the order of Single Judge as upheld by the Division Bench of the High Court is set aside. However, this judgment shall not stand in the way of the appellant at its discretion giving effect to the orders contained in its letter dated 15.12.1999 at and from a future point of time, if permissible,

H in accordance with law. [110-G-H, 111-A-C, 113-D-F]

State of Haryana and Ors. v. Rani Devi & Anr., JT [1996] 6 SCC 646; *Life Insurance Corporation of India v. Asha Ramchandra Ambekar (Mrs.) and Anr.*, [1994] 2 SCC 718; *Umesh Kumar Nagpal v. State of Haryana and Ors.*, [1994] 4 SCC 138; *Smt. Sushma Gosain and Ors. v. Union of India and Ors.*, [1989] 4 SCC 468; *Phoolwati (Smt.) v. Union of India and Ors.*, [1991] Supp. 2 SCC 689; *Union of India and Ors. v. Bhagwan Singh*, [1995] 6 SCC 476; *Director of Education (Secondary) and Anr. v. Pushpendra Kumar and Ors.* [1998] 5 SCC 192 and *State of U.P. and Ors. v. Paras Nath*, [1998] 2 SCC 412, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6797 of 2003.

From the Judgment and Order dated 15.3.2002 of the Gauhati High Court in W.A. No. 50 of 2002.

Khwairakpam Nobin Singh for the Appellant.

S.K. Bhattacharya and L.K. Paonam for the Respondent.

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-harness 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 ban imposed on appointments, the question of making any appointment did not arise.

A 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).

B 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.

C 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.

E 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 cannot be extended.

F 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.

G 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

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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 Ramchandrar 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 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 consideration the financial condition of the family of the deceased.
- B
- C 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
- D 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 becomes a major he can be appointed without any time consciousness or limit. The above view was
- E 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
- F 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
- G 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 general provisions it cannot substitute
- H 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. A

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. B C

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). D E

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. F

N.J.

Appeal allowed.