

W. B. State Electricity Board and Others

Vs

Samir K. Sarkar

Civil Appeal No. 5343 of 1999

(G. B. Pattanaik, U. C. Banerjee JJ)

17.09.1999

JUDGMENT

PATTANAIAK J.:-

1. Leave granted.

2. The West Bengal State Electricity Board has come in appeal against the judgment of the Division Bench of the Calcutta High Court dated 30-6-1998 in MAT No. 4271 of 1997 whereunder the High Court had directed the appellants to consider the case of the private respondent for appointment on compassionate grounds. The father of the said respondent, Samir Kumar Sarkar was an employee under the State Electricity Board and he died on 29-11-1996 at the age of 56 years 10 months and 15 days, which was within two years from the scheduled date of his retirement on superannuation. When the respondent applied for an employment on compassionate grounds, the Board rejected his prayer on the ground that under the rules in question dealing with compassionate appointments, no appointment can be given if the employee dies within two years from the scheduled date of retirement or superannuation. The respondent, therefore, filed a writ petition and the learned Single Judge, in view of the rules, dismissed the same. The respondent went in appeal in the High Court. The Division Bench of the High Court came to the conclusion that the provision disentitling appointment on compassionate grounds if the employee died within two years from the date of superannuation only in respect of clauses (iii), (iv) and (v) and not in case of clauses (I) and (ii) is discriminatory and violative of Article 14. Therefore, the High Court quashed that part of the order and directed consideration of the case of the respondent for compassionate appointment. It is not in dispute that the death of the father of the respondent was on account of illness and it was within two years from the date of superannuation.

3. Mr. V. R. Reddy, learned Senior Counsel appearing for the appellants contended that the concept of compassionate appointment is itself a discretionary one. There is no statutory rule governing such appointments, conferring an enforceable right on the LRs of the deceased employee. The idea to give such compassionate appointment is that the children of the employee who dies in harness may not be destitute on the road and can have a decent living. To achieve that objective, several guidelines/criteria are fixed. The reason why the embargo in question does not apply to clause (I) and (ii) the death having occurred due to an accident arising out of and in course of employment and total disablement due to an accident arising out of and in course of employment and, therefore, there is a reasonable basis for the classification in question and the High Court was not justified in coming to the conclusion that such classification is discriminatory. In order to appreciate the contention raised by Mr. V. R. Reddy, learned Senior Counsel for the appellants the relevant officer order is quoted hereinbelow in extenso:

"The Board is pleased to make provision for consideration for employment of a dependent of that deceased employee in the following circumstances and subject to conditions as mentioned hereunder:

(i) in case of death of an employee due to accident arising out of and in course of employment;

(ii) employees rendered totally disabled due to an accident arising out of and in course of employment;

(iii) employees dying in harness;

(iv) employees declared lunatic by appropriate authority.

No employment would, however, be considered in the following circumstances:

(a) Where the death under (iii) above or the incident under (iv) or the declaration under (v) above takes place in the preceding two years from the scheduled date of retirement on superannuation of the concerned employees.

(b) Where a dependent of the deceased, affected employee is already in employment of the Board irrespective of the date of securing such employment."

4. An analysis of the different clauses providing for compassionate appointment in case of death of the employee would indicate that clauses (i) and (ii) deal with death arising out of and in course of employment or total disablement arising out of and in course of employment or total disablement arising out of and in course of employment whereas clauses (iii) and (iv) have no relationship with the employment in question. In that view of the matter, we find sufficient force in the contention of MR. V.R. Reddy, learned Senior Counsel appearing for the appellant that there is a reasonable classification and consequently the embargo that no employment would be considered when the criteria under clauses (iii), (iv) and (v) are satisfied, if such criteria happens to be within two years from the scheduled date of retirement on superannuation, cannot be held to be discriminatory. The High Court, therefore, was totally in error to hold that the embargo is violative of Article 14 of the Constitution. We, accordingly, set aside said conclusion of the High Court and hold that the embargo contained in clause (a) is valid. On the admitted position that the death of the father of the respondent occurred on 29-11-1996 which is within two years preceding the date of superannuation, the respondent will not be entitled to a compassionate appointment under the office order dated 15-3-1993 which deals with the criteria for such appointment. We, therefore, set aside the impugned judgment of the Calcutta High Court and allow the appeal. But as there is no appearance on behalf of the respondent, there will be no order as to costs.