

SUPREME COURT OF INDIA

L.Shreejith

Vs.

Deputy Director (Education) Kerala

C.A.No.4848 of 2012

(T.S.Thakur and Gyan Sudha Misra,JJ.)

03.07.2012

JUDGMENT

T.S.Thakur,J.

1. Leave granted.

2. These appeals arise out of similar but different orders passed by the High Court of Kerala at Ernakulam whereby the High Court has allowed the claim for compassionate appointment made by the respondents and directed the institutions concerned to appoint them to posts against which they are otherwise eligible for appointment. The factual backdrop in which the writ petitions came to be filed by the respondents and eventually allowed is different in each case but the underlying principle on which the said petitions have been allowed and the provisions on the basis whereof the same have been allowed being common, we propose to dispose of these appeals by this common judgment.

3. In Civil Appeal arising out of Special Leave Petition (C) No.7556 of 2008 father of respondent No.5 who was working as a 'Peon' in a school known as SHGSHS, Kadakkodu, died-in-harness on 14th October, 2000. Respondent No.5 was a minor aged about 16 years at that time. He attained majority on 21st April, 2002. His mother all the same applied for a compassionate appointment under the prevalent Compassionate Employment Scheme to the Deputy Director (Education) who informed her that respondent No.5 could apply to the management for an appointment as and when he attained majority. The petitioner accordingly applied for appointment as a Sanskrit Teacher on 7th February, 2005. It is not in dispute that he had the requisite qualification for appointment against the said post.

4. The post of a Lower Grade Sanskrit Teacher fell vacant in the school on 1st June, 2005, but respondent No.5 was informed that his claim will be considered in the next arising vacancy of a non-teaching staff in the school. Even though a representation made to the District Educational Officer resulted in a direction to the Manager of the institution to

consider the claim of respondent No.5 yet an appointment order was issued by the Manager in favor of the appellant herein in preference to the claim made by the former.

5. Aggrieved by the denial of an appointment in his favour, respondent No.5 filed W.P. (C) No.21503/2006 in the High Court of Kerala at Ernakulam. During the pendency of the said petition a vacancy of a 'Peon' arose in the school, which was offered to him by the Manager. The High Court disposed of the writ petition permitting respondent No.5 to accept the offer made to him by the Manager and to file a separate petition for redressal of his grievance if he continued to feel aggrieved. His appointment as 'Peon' thus remained without prejudice to the respondent-petitioner's claim against the post of Junior Sanskrit Teacher in the school.

6. Pursuant to the liberty reserved in his favour, respondent No.5 filed W.P. (C) No.16399/2007 in the High Court praying for a certiorari quashing the appointment of the appellant herein and a mandamus directing the Manager to appoint respondent No.5-writ petitioner in his place as a full time Junior Sanskrit Teacher. A single Bench of the High Court allowed the said petition by an order dated 10th December, 2007 quashing the appointment of the appellant herein and directing the Manager to appoint respondent No.5 in his place effective from 1st August, 2006. The above order passed by the High Court was then assailed by the appellant herein in Writ Appeal No.149 of 2008 which appeal has been dismissed by the High Court in terms of the order under challenge before us.

7. Appearing for the appellant, Mr. C.S. Rajan, learned senior counsel, contended that appointments on compassionate basis are made only to give succour to a family in financial distress on account of the untimely death of an earning member. Such appointments cannot, therefore, be made where the family concerned has managed to survive for several years before the claim for appointment is made by someone who was eligible for such appointment. He contended that the claim for appointment in the instant case had been made nearly five years after the demise of the father of respondent No.5 which was liable to be rejected on the ground of being highly belated. The High Court was, argued Mr. Rajan, not justified in setting aside the appointment of the appellant who had worked as a teacher and had been regularly appointed, which appointment was approved even by the Competent Authority in the Department of Education.

8. On behalf of respondent No.5 it was per contra argued that appointments on compassionate basis were regulated by statutory rules framed under the Kerala Education Act and the Government Orders which were made applicable to such appointments. An application filed within the period of limitation under the prescribed rules could not, contended the learned counsel, be rejected on the ground of delay especially when the intervening period was not

shown to have resulted in any material change in the economic status of the family who continued to suffer in penury as on the date of demise of the bread-winner of the family.

9. Appointments on compassionate basis are recognized as a permissible mode of induction into service under the Kerala Education Rules framed under the Kerala Education Act. Rule 9A appearing in Chapter XXIVA and Rule 51B appearing in Chapter XIVA of the said Rules are relevant in this regard. While Rule 9A deals with employment of dependants of the non-teaching staff of an aided school dying-in-harness, Rule 51B deals with employment of dependants of an aided school teacher dying-in-harness. The said rules are as under:-

“9A: The manager shall give employment to a dependant of the nonteaching staff of an aided school dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall, mutatis mutandis, apply in the matter of such appointment.” (Emphasis supplied)

“51B: The Manager shall give employment to a dependant of an aided school teacher dying in harness. Government orders relating to employment assistance to the dependents of Government servants dying in harness shall mutatis mutandis, apply in the matter of such appointments.”

10. It is evident from a plain reading of the above that appointments under the statutory rules are further regulated by the terms of government orders issued on the subject. Government order dated 24th May, 1999 is in this regard relevant, for it stipulates the conditions of eligibility including the family income and the category of appointments that can be made under the compassionate scheme. Qualification for the post, age limit for making appointments and time for filing applications for compassionate appointments are matters regulated by the said order. Para 19 of the Government order stipulates the period of limitation for preferring applications and may be extracted:

“19. The time limit for preferring applications under the scheme will be 2 years from the date of death of govt. Servants. In the case of minor, the period will be within 3 years after attaining majority.”

11. A conjoint reading of the Statutory Rules and para 19 of the Government Order extracted above would show that the compassionate appointment scheme itself permits applications to be made within two years from the date of death of the government servant. In the case of minors the permissible period for making applications is three years from the date the minor attains majority. It is not in dispute that the application for appointment as a Lower Grade Sanskrit Teacher was made by the respondent on 7th February, 2005 i.e. within three years of his attaining majority. Such being the position under the terms of the scheme, the validity or

wisdom whereof is not under challenge before us, it is manifest that the scheme not only permitted making of an application but when read in conjunction with Rule 9A entitled respondent No.5 to seek such an appointment subject to his fulfilling other requirements stipulated in the scheme. It is nobody's case that respondent No.5 did not satisfy other conditions stipulated in the Government Order nor was his request for appointment as Junior Grade Sanskrit Teacher rejected on any such ground. That being so, the High Court was justified in holding that the prayer for appointment made to respondent No.5 should have been allowed.

12. It is true that the appellant had worked for nearly five years after his appointment against the vacancy but it is equally true that he could not legally oppose or grudge the claim made by respondent No.5 in the light of the provisions of the scheme and the statutory rules on the subject. That was particularly so when the appointment of the appellant itself was not made on the basis of any fair or competitive selection process or any other transparent method aimed at evaluating the comparative merit of all those qualified interested in taking the job. The appointment of the appellant, it was fairly conceded by Mr. Rajan, had been made entirely at the discretion of the Manager of the institution, and was not preceded by any public notice or advertisement inviting candidates from the open market to apply for appointment against the available vacancy. Be that as it may, we are not so much concerned with the validity of the appointment of the appellant in these proceedings as we are with the entitlement of respondent No.5 to seek an appointment in terms of the Statutory Rules and the prevalent scheme. We, therefore, see no reason to interfere with the view taken by the High Court. The appeal filed by the appellant must consequently fail.

13. In Civil Appeal arising out of Special Leave Petition (C) No.4954 of 2009, father of respondent No.1 had been working as the 'Headmaster' of East Valliyai, U.P. School, who died in harness on 27th April, 1995. Respondent No.1 was a minor at that time who attained majority only on 8th May, 1995 and has got married since then. On 21st July, 2007, the appellant-petitioner No.2 was appointed as a 'Peon' in the East Valliyai, U.P. School. It was thereafter on 10th September, 2007 that respondent No.1 claimed a compassionate appointment. Assistant Educational Officer directed the Manager to consider the said application by an order dated 24th April, 2008. The Manager, however, rejected the claim on the ground that the prayer for appointment was made belatedly. The District Educational Officer upheld the rejection in terms of his order dated 24th June, 2008. The matter was then brought up before the High Court of Kerala at Ernakulam in W.P.(C) No.16815/2008 in which the writ petitioner, respondent No.1 before us, challenged the rejection of her claim for appointment on compassionate basis. By an order dated 20th October, 2008, a single Bench of the High Court allowed the said petition and directed the Manager of the institution to appoint the writ petitioner against the vacancy of 'Peon' that had arisen on 30th June, 2008.

Aggrieved by the said order, the Manager of the school filed Writ Appeal No.2211 of 2008 before a Division Bench of the High Court which appeal was dismissed by the High Court in terms of its order dated 13th January, 2009 impugned in this appeal.

14. Appearing for the appellant it was contended by Mr. Rajan that the application filed by respondent No.1 was belated inasmuch as the same was filed 12 years after her attaining majority. He submitted that during the intervening period respondent No.1 had got married which clearly showed that the family was not in penury to call for any sympathy towards it. The High Court had according to Mr. Rajan, fallen in error in holding that delay in the filing of the application was only technical in nature as the vacancy against which the prayer for compassionate appointment had been made had occurred after about 13 years of the demise of the father of respondent No.1.

15. There is considerable merit in the contention urged by Mr. Rajan. It is not in dispute that respondent No.1 had attained majority on the 8th of May, 1995 whereas the application for compassionate appointment was made on 10th September, 2007. This application was, on the face of it, beyond the period stipulated in the scheme for making such a claim. The High Court appears to have confused an application required to be filed within the period stipulated for the purpose with the availability of a vacancy against which such an application could be considered by the Manager. These were two distinctly different matters. What was important was the making of an application for appointment on compassionate basis within the period stipulated for the purpose. Whether or not a vacancy is available had nothing to do with the making of the application itself. An application could and indeed ought to have been made by respondent No.1 within the time stipulated, regardless whether there was a vacancy already available or likely to become available in the near or distant future. Respondent No.1 having failed to do that, could not claim a compassionate appointment especially when there was nothing on record to suggest that the family was in penury notwithstanding the lapse of a considerable period since the demise of the breadwinner; during which period respondent No.1 had got married and settled down in life and supports a family. The High Court was in that view clearly in error in issuing a mandamus to the Manager to appoint the respondent on compassionate basis which order calls for interference and is hereby reversed.

16. In Civil Appeal arising out of Special Leave Petition (C) No.33421 of 2009 father of respondent No.4 was working as a 'Peon' who died while in service on 9th September, 1988. Respondent No.4 applied to the Manager of the institution for a compassionate appointment on 2nd May, 1990. The Manager intimated to respondent No.4 by a letter dated 4th June, 1990 that as and when a vacancy occurs, he would be considered for appointment.

Respondent No.4 applied again in the prescribed format against a vacancy on 25th May, 2002.

17. On 5th June, 2002 the appellant herein was appointed as a teacher against the available vacancy of a Hindi Teacher. The request made by respondent No.4 was shortly thereafter rejected by the Manager by order dated 17th June, 2002. The Assistant Educational Officer, however, accepted the claim made by respondent No.4 and declined approval to the appointment of the appellant by its order dated 23rd September, 2002. The Assistant Educational Officer held that respondent No.4 was qualified for appointment against the post of Hindi Teacher and the Manager ought to have considered his prayer and appointed him. He accordingly directed the Manager to appoint respondent No.4 against the available vacancy.

18. Aggrieved by the said order the appellant preferred Writ Petition No.7413 of 2007 before the High Court which was dismissed by a single Bench by its order dated 25th September, 2009. Writ Appeal No.2186 of 2009 preferred against the said order was also dismissed by the Division Bench of the High Court in terms of its order dated 6th October, 2009.

19. Mr. Rajan, learned senior counsel, argued that the first application submitted by respondent No.4 for compassionate appointment on 2nd May, 1990 was no doubt within the time prescribed but the same was not in proper format. It was, argued the learned counsel, essential that the application should be not only within the time stipulated for the purpose but also in the prescribed format. Inasmuch as that was not so in the instant case the application must be deemed to be non est.

20. We regret our inability to accept that submission. The Manager of the school had on receipt of the application from respondent No.4 not only acknowledged the request for appointment but also recognized that respondent No.4 possessed the requisite qualification for appointment as a Hindi Teacher. The request was not, however, granted as no vacancy in the cadre was available in the school at that time. What is noteworthy is that the Manager did not reject the application on the ground that the same was not in the prescribed format or that the application was deficient in disclosing information that was essential for consideration of the prayer for a compassionate appointment. If the authority concerned before whom the application was moved and who was supposed to consider the request, did not find the format of the application to be a disabling factor for a proper consideration thereof, it could not be set up as a ground for rejection of the prayer, by the beneficiary of the appointment made in derogation of the rights of respondent No.4. At any rate, what was important was the substance of the application and not the form. If the application in substance conveyed the request for a compassionate appointment and provided the information which the Manager

required for considering the request, the very fact that the information was not in a given format would not have been a good reason to turn down the request. We need to remind ourselves that the scheme is meant to be a beneficial scheme aimed at helping those in need of assistance on account of an untimely demise in the family. Inasmuch as the Assistant Educational Officer and even the High Court found respondent No.4 to be eligible for appointment and directed the Manager to make such an appointment, they committed no error to warrant our interference under Article 136 of the Constitution. The Civil Appeal is, therefore, liable to be dismissed.

21. In Civil Appeals arising out of Special Leave Petition (C) Nos.31908 of 2010 and 6607-08 of 2011, the mother of respondent No.1 was working as a 'Teacher' who died-in-harness on 4th September, 1979. Respondent No.1 attained majority on 6th December, 1991 and passed her SSLC examination in the year 1993 and Teacher Training Course in the year 2003. Respondent No.1 then applied for a compassionate appointment as a teacher on 9th September, 2005 which request was turned down by the Manager in terms of his letter dated 12th June, 2006. The Manager pointed out that respondent No.1 was a married woman and thus a member of another family. The Manager also pointed out that the father of respondent No.1 being a Naval Officer the family income at the time of demise of her mother was beyond the limit prescribed under the scheme. He also pointed out that the application for appointment was belated having been made nearly 24 years after the demise of her mother.

22. Aggrieved by the said order, respondent No. 1 appears to have approached the District Educational Officer, who allowed the claim made by the said respondent in terms of his order dated 22nd October, 2007. A revision was then filed by the Manager against the said order before the Government which was dismissed by order dated 27th June, 2009. Challenging the said order, the Manager filed Writ Petition (C) No.21384 of 2009 before the High Court which was dismissed by a single Bench of the High Court by order dated 12th November, 2009. Writ Appeal No. 2791 of 2009 preferred against the said order having failed, the Manager of the institution has preferred the present appeal. The very same order has been assailed by the appellant in Special Leave Petition (C) Nos.6607-6608 of 2011.

23. It was contended by learned counsel for the appellants that the High Court was in error in dismissing the writ petition filed by the Manager of the institution disregarding the fact that the prayer for appointment on compassionate basis had been made 14 years after respondent No.1 had attained majority. During the intervening period the respondent not only got married and settled down with her husband in another family but did not in principle qualify for compassionate appointment being the member of the family of her husband. It was also

contended that the orders passed by the District Educational Officer and that passed by the Government dismissing the revision petition were unsustainable and ought to be reversed.

24. There is, in our view, considerable merit in the contentions urged on behalf of the petitioners. The application filed by respondent No.1 was indeed belated having been filed 14 years after the respondent attained majority. No explanation, much less a worthwhile one is forthcoming, for this kind of inordinate and unexplained delay. Delay assumes greater significance keeping in view the fact that respondent No.1 has got married and has now settled with her husband comprising a separate family. The appointment of the said respondent may not in that view lead to any financial help for the other members of the family left behind by the deceased. While it is true that marriage by itself does not in view of the language employed in the scheme, disqualify the person concerned from seeking a compassionate appointment, the fact remains that delay of more than 14 years could itself prove fatal to the prayer for a compassionate appointment. The orders passed by the Educational Officer and the Government and those by the High Court in Writ Petition and in Writ Appeal are therefore unsustainable and, hence liable to be set aside.

25. That leaves us with Civil Appeal arising out of Special Leave Petition (C) No.4467 of 2010. In this case also the High Court had upon consideration of the facts of the case and the provisions of the scheme directed appointment of respondent No.7 as a 'Full-time Menial' against the first vacancy that became available in the school concerned. Father of respondent No.7, it appears, was a 'Full-time Menial' who passed away on 19th July, 2000. Since respondent No.7 was a minor at that time, his mother sent an application addressed to the Manager of the school stating that she was agreeable to the grant of the job to her son-respondent No.7 in view of the death of her husband. The said letter was returned to the mother of respondent No.7 with a postal endorsement 'unclaimed'. In October 2002 respondent No.7 submitted an application in the prescribed format to the District Educational Officer who returned it to the said respondent to be given to the Manager of the school for consideration. Without considering the said application respondent No.1 appointed appellant No.1 as a 'Full-time Menial' on 11th April, 2003. On 2nd June, 2003, appellant No.3 was also appointed against the vacancy of a 'Full-time Menial'. Similarly, appellant No.2 was appointed as 'Full-time Menial' on 1st February, 2005 when appellant No.1 was upgraded from the post of a 'Full-time Menial', to that of a 'Peon'. The prayer made by respondent No.7 was eventually rejected by the District Educational Officer on the ground that it was belated and was not in terms of the Government Order. Similar claim made by Mrs. Rajeswari was also rejected by the District Educational Officer. Both of them filed separate writ petitions which were disposed of by the High Court remanding the matter to the District Educational Officer for a fresh hearing. Upon remand the District Educational Officer upheld the claim made by respondent No.7 and Mrs. Rajeswari. Aggrieved by the said order,

petitioner preferred revision petition before the Government which was dismissed. Appellants No.1 2 and respondent No.1 then filed writ petitions in which it was submitted that respondent No.7 and Mrs. Rajeswari were gainfully employed. A Single Bench of the High Court allowed the said petitions holding that respondent No.7 and Mrs. Rajeswari were both disentitled to claim compassionate appointment. In the meantime on 15th December, 2007 appellant No.4 was appointed as 'Full-time Menial'. Writ Appeal No.780 of 2008 filed by Mrs. Rajeswari against the judgment of the single Bench was dismissed by the High Court. By a separate order dated 11th December, 2009, the High Court allowed the appeal filed by respondent No.7, reversed the judgment of the Single Bench in so far as the said respondent was concerned.

26. The material facts are not in dispute. That an application was filed by the mother of respondent No.7 which was returned with an endorsement "unclaimed" is admitted. In para 2 of the writ petition filed by the appellants it was stated as under:

"The 4th respondent's father Sri. CV Kesavan was a full time menial at CA High School, Purvamba from 4.6.1962. On the verge of his retirement namely on 19.7.2000, Sri Kesavan died. Accordingly, the wife of Sri. Kesavan, namely Smt. KM Chandrika submitted an application on a plain paper on 22.7.2000 before the 1st petitioner seeking appointment under Rule 9A, Chapter XIV KER"

27. The fact that an application was submitted to the District Educational Officer is also beyond dispute keeping in view the endorsement made by District Educational Officer, Pala hat, dated 8th October, 2002, a copy whereof has been placed at page 81 of the S.L.P. As a matter of fact the need for making of such application to the District Educational Officer appears to have arisen on account of refusal of the Manager to receive the application addressed to him. Such being the case, the rejection of the application by the District Educational Officer that the same was belated was wholly unjustified and was rightly set aside by the High Court in the earlier proceedings before it. Upon remand the District Educational Officer correctly found respondent No.7 to be eligible for an appointment having made an application in time which was erroneously set aside by the learned single Bench on the ground that the application had been filed beyond the period of limitation. The error was, however, corrected by the Division Bench by holding that the refusal of the Manager in accepting the application filed for appointment of respondent No.7 was only a strategy of the Manager to ward off the claim made before him. The Division Bench also correctly held that if the application was found to be defective for any reason the Manager should have, instead of rejecting the same summarily given an opportunity to respondent No.7 to correct the

mistake by filing a proper application in accordance with rules. The High Court observed:

“In this case, the appellant’s application was defective, but we are not inclined to hold that the appellant did not raise any claim in time. It was raised by the widow of the employee, who died in harness, on the fourth day of his death. An application or a representation from the widow, cannot be said to be relevant, going by the relevant GO, because, as per the GO, the widow gets the first preference for employment under the dying-in-harness scheme and only with her consent, somebody else’s claim can be considered. That is the reason, why she submitted in Ext. P3 that she was agreeing to give employment to the appellant and also made a request for the same. So, definitely, if was a claim, in terms of the Government Order, governing appointment under the dying-in- harness scheme, but, it was defective, in as much it was not submitted in the prescribed format. As held by this Court in Baijukumar’s case mentioned above, it is the duty of the Manager to alert the claimant, regarding the existence of a vacancy in his School and ask him to apply in the prescribed format. He has also got a duty to ask the claimant to cure the defects, if any, in the application submitted by him.”

28. Learned counsel argued that there was no obligation on the part of the Manager of the school to go in search of the legal heirs left behind by an employee who had died in harness. It was submitted, if an employee of the school died in harness and his legal representatives required any assistance in the form of compassionate appointment it is for them to approach the school in that regard by making an application in the manner prescribed. If the legal heirs did not do so, the Manager could reasonably assume that they were not in need of any assistance for otherwise they would ask for the same. There is merit in that contention. We do not see any obligation on the part of the institution or the Manager to go in search of the legal heirs of deceased employees or educate them about the right seeks an appointment under the scheme. If a person is eligible for a benefit under the scheme he can and indeed should on his own approach the institution and seek such an appointment. The view expressed by the *High Court in Baiju Kumar v. D.E.O., Trivandrum*¹ to which a reference has been made in the judgment, appears to be unreasonable albeit in favour of the legal heirs of the employee. Having said that, we have no manner of doubt that in case an application is made by legal heirs of a deceased employee claiming the benefit of the scheme for compassionate appointment, the deficiencies and defects, if any, in the said application ought to be pointed out to the concerned to enable him to remove the same within a reasonable time. But if the defects are not removed within the time granted, an adverse inference could be drawn against the person in default. On the contrary, where an application is filed, entertained and eventually declined for a reason other than the form in which the same ought to have been filed, the rejection cannot be supported before the higher authority or in the

Court on the ground that application was non-est as the same was not in the prescribed form. The application for appointment filed on behalf of the respondent could not therefore have been rejected on the ground that the same was not in the prescribed form.

29. It was next argued by learned counsel for the appellant that out of the four appointments made by the institution the one appointed last will have to make way for the appointment of respondent No.7. Mr.Giri , learned counsel appearing for respondent No.7 did not have any quarrel with that proposition, so long as the appointment so made is related back to the date when the first vacancy had become available in the school, those appointed subsequently being adjusted against the subsequent vacancies. It was also fairly conceded by Mr. Giri that since respondent No.7 has not been allowed to work, despite the order passed by the High Court, the salary for the period the appellant had worked could be paid to him including the petitioner who may have to be ousted to make room for the appointment of respondent No.7. The appointment of respondent No.7 shall in that view be effective from the date he is actually appointed by the Manager of the institution. The appeal filed by the petitioners shall accordingly stand dismissed with the above clarification.

30. In the result;

“(i) Civil Appeal arising out of Special Leave Petition (C) No.7566 of 2008 is dismissed.

(ii) Civil Appeal arising out of Special Leave Petition (C) No.4954 of 2009 is however allowed, the judgment and order passed by the High Court in W.P. (C) No.16815 of 2008 and in Writ Appeal No. 2211 of 2008 set aside.

(iii) Civil Appeal arising out of Special Leave Petition (C) No.33421 of 2009 is dismissed.

(iv) Civil Appeals arising out of Special Leave Petition (C) Nos.31908 of 2010 and 6607-08 of 2011 are allowed, the judgment and orders passed by the High Court in W.P. No.21384 of 2009 and in Writ Appeal No.2791 of 2009 are set aside. The order passed by the Government in revision and that passed by the District Educational Officer dated 22nd October, 2007 shall stand quashed. Prayer for compassionate appointment made by respondent No.1 is consequently rejected.

(v) Civil Appeal arising out of Special Leave Petition (C) No.4467 of 2010 is dismissed.”

31. The parties are left to bear their own costs in all the appeals.

Judgment Referred

I(2003) 3 KLT 0240