

State Of U.P

v.

Pankaj Kumar Vishnoi

(Supreme Court Of India)

HON'BLE MR. JUSTICE DIPAK MISRA HON'BLE MR. JUSTICE VIKRAMAJIT SEN

Civil Appeal No. 2366-2367 Of 2011 With Civil Appeal No. 2406 Of 2011 | 25-07-2013

Dipak Misra, J.

1. Regard being had to the commonality of controversy of the appeals were heard together and are disposed of by a common order. For the sake of convenience, the facts from Civil Appeal Nos. 2366-2367 of 2011 are adumbrated herein.

2. The gravamen of grievance that has been assertively amplified and pronouncedly stressed by the appellants, State of Uttar Pradesh and its functionaries, in these appeals by special leave is that the Division Bench of High Court of judicature at Allahabad by orders dated 12.12.2006 and dated 27.08.2009 passed in Special Appeal No. 1602 of 2006 and in Review Application No. 172835/2007 respectively has reversed the verdict of the learned Single Judge and further declined to review the same as a consequence of which erroneous directions have been issued pertaining to compassionate appointment in a higher post in violation of the norms and procedure.

3. The facts which are imperative to be stated are that the father of the respondent, a Head Constable in the Department of Police breathed his last on 22.04.2002 in harness. The respondent, being a dependant on his deceased father, moved an application for grant of compassionate appointment before the Superintendent of Police, Rampur on 20.12.2002. After consideration of the application a decision was taken at the U.P. Police Headquarters to offer him an appointment on the compassionate basis on the post of Constable and in accordance with such decision a letter of appointment dated 9.5.2003 was issued by the Superintendent of Police and, Rampur and he was required to join on 11.5.2003. Instead of joining, the respondent preferred Civil Misc. Writ Petition No. 23703 of 2003 for issue of writ of a Mandamus to the competent authority to extend him the benefit of compassionate appointment on the post of Sub-Inspector (Civil Police) as he was eligible for the said post. Be it noted, during the pendency of the writ petition the respondent in pursuance of the order dated 9.5.2003 joined on the post of Constable on 28.6.29003. Eventually, on 16.3.2004 the writ petition was dismissed as withdrawn.

4. As the facts are further uncurtained, a physical test examination was conducted from 27.6.2005 to 29.6.2005 for the post of Sub-Inspector (Civil Police) and the petitioner participated in the said physical examination but could not become successful as a result of which his candidature for the post of Sub-Inspector was rejected. It is worth noting in that physical test 460 candidates appeared out of which 263 candidates fulfilled the minimum physical requirements and accordingly they were selected.

5. Calling in question his non-selection and non-appointment he preferred Writ Petition No. 63596 of 2006 with a prayer for grant of compassionate appointment on the post of Sub-Inspector (Civil Police) without subjecting him to appear in any physical test examination and interview. Learned Single Judge vide order dated 23.11.2006 dismissed the Writ petition on two counts, namely, the second writ petition for issuance of grant of compassionate appointment was not maintainable as the earlier writ petition was dismissed being withdrawn without any liberty to refile another petition and secondly, the prayer for offering the post of Sub- Inspector (Civil Police) without subjecting him to undergo the physical efficiency test was absolutely misconceived.

6. The aforesaid order passed by learned Single Judge was assailed in Special Appeal No. 1602 of 2006 and the Division Bench came to hold that the first dismissal was not an impediment for entertaining the second writ petition; and that the respondent who was physically examined in the year 2002 and with passage of time one may become unfit or more fit. Being of this view it proceeded to direct as follows :-

“As such the writ petition is allowed. The writ petitioner appellate will be granted compassionate appointment in the post found suitable after he is subjected to a physical test once again now such a test will be conducted within a period of two months from the date hereof and either appointment offered forthwith or a reasoned order passed as to exactly why and in what manner and when the writ petitioner was found physically unfit. No order as to costs ”

7. The aforesaid order was sought to be reviewed but the application for review did not meet with any success. Hence, the present appeal.

8. Mr. R. Dash, learned senior counsel for the appellant has submitted that once the respondent had failed in the physical test and did not qualify for the post of Sub-Inspector, the High Court could not have directed for holding another test. He has invited our attention to Sub-Rule 8 (2) of the Rules and submitted that even though the person is considered eligible for appointment in place of an employee dying in harness yet the minimum standard of working and efficiency is required to be considered. To buttress the facet of efficiency and minimum standard he has placed reliance upon the order/ letter-circular issued by the Inspector General of Police. He has also drawn inspiration from the pronouncement in *I. G. Karmik and Ors. v. Prahlad Mani Tripathi* [(2007) 6 SCC 162]. That apart, learned senior counsel would submit that there is no vested right for getting compassionate appointment and, therefore, the respondent cannot put forth a claim that he should be considered for a particular post because of his educational qualification.

9. Mr. Shamit Mukherjee, learned senior counsel, per contra, contended that there was no command in the Rules for holding a test at the time of appointment on compassionate basis and hence, the applicant is to be extended the benefit of appointment on relaxation of the Rules. It is urged by him that the physical test was conducted on the basis of an order passed by the Inspector General of Police which cannot be placed reliance upon in the absence of any stipulation in the Rules 8 (2) itself. The

next plank of submission of Mr. Mukherjee is that number of people have been given liberty to undergo the physical test for the second time but the respondent has been deprived of the said benefit.

10. Before we proceed to appreciate the entitlement of the respondent for a particular post on compassionate basis, we think it necessary to refer to certain pronouncements in the field pertaining to compassionate appointment itself. In *Umesh Kumar Nagpal v. State of Haryana* [(1994) 4 SCC 138] while dealing with the concept of compassionate appointment the Court has observed that the whole object of granting compassionate employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. Mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied that but for the provision of employment, the family will not be able to meet the crisis then a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence, they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency. The provision of employment in such lowest posts by making an exception to the rule is justifiable and valid since it is not discriminatory. The favourable treatment given to such dependant of the deceased employee in such posts has a rational nexus with the object sought to be achieved viz. relief against destitution.

11. In *SAIL v. Madhusudan Das* [(2008) 15 SCC 560] this Court reiterating the principle has stated thus:-

“15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread winner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right.”

12. In *General Manager, State Bank of India and Others v. Anju Jain* [(2008) 8 SCC 475] it has been clearly stated that appointment on compassionate ground is never considered to be a right of a person. In fact, such appointment is violative of rule of equality enshrined and guaranteed under Article 14 of the Constitution. As per the settled law, when any appointment is to be made in Government or semi-government or in public office, cases of all eligible candidates are to be considered alike. The State or its instrumentality making any appointment to public office, cannot ignore the mandate of Article 14 of the Constitution. At the same time, however, in certain circumstances, appointment on compassionate ground of dependants of the deceased employee is considered inevitable so that the family of the deceased employee may not starve. The primary object of such scheme is to save the bereaved family from sudden financial crisis occurring due to death of the sole bread winner. It is an exception to the general rule of equality and not another independent and parallel source of employment.

13. In *Union of India and Another v. Shashank Goswami and Another* [(2012) 11 SCC 307] it has been observed that the claim for appointment on compassionate grounds is based on the premise that the applicant was dependant on the deceased employee. Strictly, such a claim cannot be upheld on the touchstone of Article 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, and, therefore, appointment on compassionate grounds cannot be claimed as a matter of right.

14. In *State Bank of India and Another v. Raj kumar* [(2010) 11 SCC 661] it has been ruled that the dependants of employees, who die in harness, do not have any special claim or right to employment, except by way of the concession that may be extended by the employer under the rules or by a separate scheme, to enable the family of the deceased to get over the sudden financial crisis. The claim for compassionate appointment is, therefore, traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme.

15. Regard being had to the aforesaid enunciation of law in the field we shall proceed to scrutinize the Rule position and the claim that had been put forth by the respondent and accepted by the High Court. The Rule dealing with compassionate appointment in the State of U.P. at the relevant time was Recruitment of Dependants of Government Servants Dying in Harness Rules, 1974 (for short the '1974 Rules'). Rule 5 of the said Rules reads as under:-

“In case, a government servant dies in harness after the commencement of these rules and the spouse of the deceased government servant is not already employed under the Central Government or a State Government or a corporation owned or controlled by the Central Government or a State Government, one member of his family who is not already employed under the Central Government or a State Government or a Corporation owned or controlled by the Central government or a State Government making an application for the purposes, be given a suitable employment in government service on a post except the post which is within the purview of the Uttar Pradesh Public Service Commission, in relaxation of the normal recruitment rules if such person-

i) fulfils the educational qualifications prescribed for the post.

ii) is otherwise qualified for government service; and

iii) makes the application for employment within five years from the date of the death of the government servant.”

16. The aforesaid Rule stipulates that a candidate would be given a suitable employment in government service on a post except the post which comes within the purview or U.P. Public Service Commission in relaxation of normal recruitment subject to certain conditions as enumerated in the said Rule. Rule 8 of the 1974 Rules lays the postulates pertaining to relaxation of age and other requirements which are as follows:-

“1) The candidate seeking appointment under these rules must not be less than 18 years at the time of appointment.

2) The procedural requirement for selection, such as written test or interview by a selection committee or any other authority, shall be dispensed with, but it shall be open to the appointing authority to interview the candidate in order to satisfy itself that the candidate will be able to maintain the minimum standards of work and efficiency expected to the post.”

17. Thus, Rule 8 (2) confers discretion on the appointing authority to interview the candidate in order to satisfy himself that the candidate will be able to maintain the minimum standard of work and efficiency expected of the post. What has been dispensed with is the written test or interview by a selection committee but not the maintenance of minimum stand of efficiency required for the post. It is apt to note that for the said reason the Inspector General issue an order /letter, circular. It is seemly to reproduce the same :-

“The appointing authority has been authorised in this regard that for recruitment of the dependants of deceased during service period of government servant under Rule 8 Sub-rule 2 of Service Rules 1974 that it should be decided on the basis of interview by the Authorised Authority that the candidate is whether competent to discharge his duties as per norms of the service or not. Apart from this according to the Service Rule clause A for selection under these rules, the concerned candidate should be necessarily competent and healthy for this post.

There are so many other works related to the physical fitness for Asst. Sub-Inspector Civil Police/Platoon Commander as arresting of the criminal, handling of the various kinds of arms etc. In these circumstances, it is necessary that candidate selected for this post should carry physical competency and fitness. Under the above provision of the Service Rules vested arrangements keeping in view the circumstances of the work of Asstt. Sub- Inspector and Platoon Commander, the officer will be nominated by the Inspector General of Police Uttar Pradesh for consideration of appointment selection for the post of Asstt. Sub-Inspector and Platoon Commander, wherein a officer of the rank by Dy. Inspector General of Police will be for selection.”

18. The said order/letter-circular has a Chart that provides the guidelines for evaluation of physical endurance. It is as follows: -

Sl No.	Item	Standard for male	Standard forFemale
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1	Cricket ball throw	50 Meter	20 Meter
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2	Long Jump	13 Feet	8 Feet
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Chinning up 5 times

Running and walk 5 km 30 minutes  
Running 200 meters in 40 seconds

Sitting and stand up (1) 40 in 2 minutes 30 seconds (b) 50 sitting in 60 seconds

Shuttle race (25x4 mtr) Within 29 seconds

Skipping 60 times within a minute

19. Mr. Mukherjee has submitted that such an order could not have been passed by the appointing authority as it is contrary to the Rules. The aforesaid submission leaves us unimpressed inasmuch as it is for the appointing authority to see that minimum standard of working and efficiency expected of the post is maintained. In I.G. Karmik and others (supra) this Court while dealing with the employment in the Department of Police has expressed thus:-

“Public employment is considered to be a wealth. It in terms of the constitutional scheme cannot be given on descent. When such an exception has been carved out by this Court, the same must be strictly complied with. Appointment on compassionate ground is given only for meeting the immediate hardship which is faced by the reason of the death of the bread earner. When an appointment is made on compassionate ground, it should be kept confined only to the purpose it seeks to achieve, the idea being not to provide for endless compassion.”

20. We have no iota of doubt that the order/letter-circular issued by the Inspector General is in consonance with the Rule 8(2). It does not travel beyond the rule but it acts in furtherance of the rule and there is justification for the same.

21. It is accepted position that the respondent appeared in the test and could not qualify. Once he did not qualify in the physical test, the High Court could not have asked the department to give him an opportunity to hold another test to extend him the benefit of compassionate appointment on the post of Sub-Inspector solely on the ground that there has been efflux of time. The respondent after being disqualified in the physical test could not have claimed as a matter of right and demand for an appointment in respect of a particular post and the High Court could not have granted further opportunity after the crisis was over.

22. In our considered opinion, the order passed by the Division Bench is wholly unsustainable and is hereby set aside. We may, however, hasten to add that it is open to the respondent to compete in the normal course if eligible for the post of Sub-Inspector for promotion in accordance with rules prescribed for promotion.

23. At this juncture, we have been apprised at the Bar that following the decision of the Division Bench which has been set aside in this appeal, in subsequent writ petitions and appeals the High Court has directed the Department to hold a second physical test and to keep the results in a sealed cover. As we have already opined that the second physical test could not have been directed to be held for the purpose of extending the benefit of compassionate appointment, the sealed covers need not be opened.

Needless to say, the candidates therein are also entitled to compete for promotion in accordance with the rules.

24. We will be failing in our duty if we do not take note of an apprehension that has been expressed by Mr. Mukherjee, learned counsel for the appellant that for the purpose of promotion certain relaxations are given and the appellants should not be deprived of the same merely because they had not qualified in the physical test undertaken by them. Mr. R. Dash, learned senior counsel appearing for the state very fairly stated that they will be given relaxation if they are entitled to the same and the State shall not hold anything against them on the foundation that they had not passed the physical test on the first occasion.

25. All the appeals are disposed of in above terms leaving the parties to bear their respective costs.