

HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION No. 719 OF 2014

ORDER:

This writ petition has been filed seeking declaring the *“action of the respondents in not permitting the petitioners to attend and participate in the personal interview held on 03.01.2013 at 1.30 PM for post of Temporary Employee/Artisan under dependent of deceased employee quota in the 1st respondent organization in pursuance of the Employment Notification No.Hy/01/2013 as arbitrary illegal unfair unjust and violative of Articles 14 and 19(1)(g) of the Constitution of India in the interest of justice declare the exclusion of the married daughters from the definition of the term dependent of the deceased in the scheme formulated for appointment into the Respondent Company on compassionate grounds as arbitrary discriminatory illegal and violative of Article 14 of the Constitution of India and declare the exclusion of the married daughters from the definition of the term “dependent” of the deceased in the scheme formulated for appointment into the Respondent Company on compassionate grounds as arbitrary, discriminatory, illegal and violative of Article 14 of the constitution of India.”*

2. Sri Goda Siva, learned senior counsel appearing for petitioners would submit that petitioner No.1 and Petitioner No.2 have passed SSC examination in the month of March, 1998 and March 1993 respectively. Subsequently petitioners underwent vocational Training from August 2006 to July 2008 and August 2007 to July 2009 respectively and were issued National Trade Certificate by the National Council for Vocation Training and also received apprenticeship training in the 1st Respondent organization, petitioner No.1 is also working in respondent No.1 office as Computer Operator on the temporary basis.

3. Learned Senior Counsel would submit that Respondent No.1 issued Employment Notification No.HY/01/2013, dated 10-10-2013 inviting applications from eligible candidates for the post of temporary employee (Artisan) under dependant of deceased employee quota. In the said notification, the minimum education qualifications prescribed for the said post are SSC with National Trade Certificate from the recognized Industrial Coaching Centre and in the said notification it is also mentioned that the selection process will be in two stages namely i) written test and ii) Trade Test and personal Interview for successful candidates in the written test. In pursuance, of the above said employment notification,

petitioners have applied for the post of temporary employee (Artisan) under the "dependant of deceased employee quota" and Hall Tickets were issued to appear for the written test to be held on 10.11.2013. Accordingly, petitioners appeared for the written test and were successful and qualified for the personal interview and call letters were issued for interview scheduled to be held on 03.01.2014. Accordingly, when petitioners reached the respondent office to appear for the personal interview, but were not interviewed on the ground that petitioners were not eligible under the dependants of deceased employee quota.

4. Learned Senior Counsel would submits that petitioners are the daughters of the deceased employees of the respondent No.1-organisation and their father's were working as Artisan Grade-III in Production with Stape Nos.1829089 and 885960 and died on 06.03.1987 and 13.12.2008 respectively and submits that petitioner No.1 has no brothers and she is dependent daughter to her family and petitioner No.2 is having one brother but he is physically challenged and mentally retarded. Thus, both the petitioners come under the dependant quota, as their respective father's died while in service. However, the respondent authorities are stating that

married daughters are not eligible under dependent quota. Aggrieved by the same, this writ petition is filed.

5. Learned Senior Counsel would submits that petitioners have also filed WPMP No.788 of 2014 along with main writ petition, seeking to *"direct the respondents not to fill up two posts of temporary employee Artisan under the dependent of deceased employee quota in pursuance of Employment Notification HY/01/2013 issued by the respondents pending disposal of the writ petition"* and this Court on 09.01.2014, has passed interim order, reads as under:

"There shall be interim direction as prayed for."

6. Learned Senior Counsel would further submits that petitioners' father had worked in respondent's office and died while in service and their daughter's cannot be denied for employment under dependent quota purely on the ground that the petitioners are married daughter and pray this Court to direct the respondents to appoint the petitioners as Artisan under dependant of deceased employee quota in the respondent No.1 organization in pursuance of the employment notification No.Hy/01/2013.

7. Sri Ch.Samson Babu, Learned standing counsel for BHEL appearing for respondent submits that respondent No.2 filed counter-affidavit on behalf of respondents and denied all the allegations made by the petitioners and submits that petitioners have submitted their application under the Dependents of deceased employees quota form available through on-line system for which Acknowledgment Nos.D-830180 and D-830091 has been generated. As per the recruitment policy of respondent organization, the Spouse/Sons/Un-Married daughter are considered as dependents of deceased employee. In the column No.22 of the Application Form, petitioners being daughters of deceased employees of respondent organization have declared themselves as un-married in the Marital Status and fraudulently appeared for Written examination conducted on 10.11.2013 and cleared the written exam, subsequently personal interview call letters were sent to them to attend the interview on 03.01.2014, however respondent No.1 organization came to know through that the petitioners have got married and to the notification and hence petitioners were not allowed for interview held on 03.01.2014.

8. Learned counsel for the respondents would further submit that as per respondent organization recruitment policy, both the

petitioners do not come under dependents quota and only Spouse/Son/unmarried daughters are eligible for the said posts and further draws attention to the cause title of the writ affidavit, wherein petitioner No.1 deposed that she is the wife of Sri M.Santhosh and respondent No.2 is the wife of Sri V.Sridhar Varma, however while filing the said employment application form at column No.22, petitioners have declared themselves as un-married and also signed the declaration at the bottom of the application form that *"I hereby declare that all statements as mentioned in this application are true, complete and correct to the best of my knowledge and belief. I under that in the event of any particulars or information given above being found false or incorrect, or if at any stage it is found that I do not possess the prescribed qualification for the post, my candidature will be rejected ab-initio and will not have any right claim to the post and the same is signed"*. Learned standing counsel further submits draws attention of the BHEL recruitment policy rules which reads as:

6.2 Dependents of deceased employees

General guidelines to be followed for direct employment on compassionate grounds are as under :

"1. Employee dying due to accident "during the course of" and "arising out of employment" –

In such eventualities, existing practice of consideration on case to case basis for sanction of vacancy (USW/Artisan or Clerk) will continue keeping in view that none of the children or the spouse of such employees is already employed in Govt. / Semi Govt. /Autonomous Body/ PSU/ Organizations listed on Stock Exchange. Such appointment will, however, be subject to assessment of suitability.

2. In other cases of death

i) In other cases, whenever Units are sanctioned vacancies of USW/ SSW/Artisans and Clerk, up to 25% vacancies may be earmarked for being filled-up from dependents of deceased employees (Spouse/ son/unmarried daughter) subject to their meeting the job specifications and consideration for suitability. If number of vacancies sanctioned are so low that it is difficult to adopt above criteria for reserving vacancies, decision in this regard may be taken by the Unit Incharge. In addition this consideration is available provided none of the children or the spouse of such employees is already employed in Govt./ Semi Govt./ Autonomous Body/ PSU/ Organizations listed on Stock Exchange”

9. Learned standing counsel further relied upon the judgment of this Division Bench in **The State of Maharashtra and Others Vs.Ms.Madhuri Maruti Vidhate¹**, passed on 30.09.2022, wherein para Nos.5 to 9 which are extracted hereunder:

“5. While considering the issue involved in the present appeal, the law laid down by this Court on compassionate ground on the

¹ 2022 LiveLAW (SC) 820

death of the deceased employee are required to be referred to and considered. In the recent decision, this Court in the case of Director of Treasuries in Karnataka and Anr. Vs. V. Somyashree, 2021 SCC Online SC 704, had occasion to consider the principle governing the grant of appointment on compassionate ground. After referring to the decision of this Court in N.C. Santhosh Vs. State of Karnataka, (2020) 7 SCC 617, this Court has summarised the principle governing the grant of appointment on compassionate ground as under:-

- (i) that the compassionate appointment is an exception to the general rule;*
- (ii) (ii) that no aspirant has a right to compassionate appointment;*
- (iii) the appointment to any public post in the service of the State has to be made on the basis of the principle in accordance with Articles 14 and 16 of the Constitution of India;*
- (iv) appointment on compassionate ground can be made only on fulfilling the norms laid down by the State's policy and/or satisfaction of the eligibility criteria as per the policy;*
- (v) the norms prevailing on the date of the consideration of the application should be the basis for consideration of claim for compassionate appointment. 12. Rule 7 of the Rules stipulates*

6. As per the law laid down by this Court in catena of decisions on the appointment on compassionate ground, for all the government vacancies equal opportunity should be provided to all aspirants as mandated under Articles 14 and 16 of the

Constitution. However, appointment on compassionate ground offered to a dependent of a deceased employee is an exception to the said norms. The compassionate ground is a concession and not a right. 6.1 In the case of State of Himachal Pradesh and Anr. Vs. Shashi Kumar reported in (2019) 3 SCC 653, this Court had an occasion to consider the object and purpose of appointment on compassionate ground and considered the decision of this Court in the case of Govind Prakash Verma Vs. LIC, reported in (2005) 10 SCC 289, in paras 21 and 26, it is observed and held as under:-

“21. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289, has been considered subsequently in several decisions. But, before we advert to those decisions, it is necessary to note that the nature of compassionate appointment had been considered by this Court in Umesh Kumar Nagpal v. State of Haryana [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138]. The principles which have been laid down in Umesh Kumar Nagpal [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138] have been subsequently followed in a consistent line of precedents in this Court. These principles are encapsulated in the following extract: (Umesh Kumar Nagpal case [Umesh Kumar Nagpal v. State of Haryana, (1994) 4 SCC 138], SCC pp. 139-40, para 2) “2. ... As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved

out in the interests of justice and to meet certain contingencies. One such exception is in favour of the dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thusto 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. What is further, 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 that 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 nonmanual 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. No other posts are expected or required to be given by the public authorities for the purpose. It must be remembered in this connection that as against the destitute family

of the deceased there are millions of other families which are equally, if not more destitute. The exception to the rule made in favour of the family of the deceased employee is in consideration of the services rendered by him and the legitimate expectations, and the change in the status and affairs, of the family engendered by the erstwhile employment which are suddenly upturned."

26. The judgment of a Bench of two Judges in Mumtaz Yunus Mulani v. State of Maharashtra [(2008) 11 SCC 384] has adopted the principle that appointment on compassionate grounds is not a source of recruitment, but a means to enable the family of the deceased to get over a sudden financial crisis. The financial position of the family would need to be evaluated on the basis of the provisions contained in the scheme. The decision in Govind Prakash Verma [Govind Prakash Verma v. LIC, (2005) 10 SCC 289 : 2005 SCC (L&S) 590] has been duly considered, but the Court observed that it did not appear that the earlier binding precedents of this Court have been taken note of in that case."

7. Thus, as per the law laid down by this Court in the aforesaid decisions, compassionate appointment is an exception to the general rule of appointment in the public services and is in favour of the dependents of a deceased dying in harness and leaving his family in penury and without any means of livelihood, and in such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden

crisis. The object is not to give such family a post much less a post held by the deceased.

7.1 Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand, to appoint the respondent now on compassionate ground shall be contrary to the object and purpose of appointment on compassionate ground. The respondent cannot be said to be dependent on the deceased employee, i.e., her mother. Even otherwise, she shall not be entitled to appointment on compassionate ground after a number of years from the death of the deceased employee.

8. Under the circumstances and in the facts and circumstances of the case narrated hereinabove, the Tribunal as well as the High Court have committed serious error in directing the appellants to appoint the respondent on compassionate ground. The judgment and order passed by the Tribunal confirmed by the High Court directing the appellants to consider the case of the respondent for appointment on compassionate ground after a number of years is unsustainable. 9. In view of the above and for the reasons stated above, the order passed by the Maharashtra Administrative Tribunal in O.A. No. 860 of 2015 and the impugned judgment and order passed by the High Court dismissing the writ petition and confirming the order passed by the Tribunal are hereby quashed and set aside. Present appeal is accordingly allowed. No costs."

10. Learned standing counsel would further submits petitioners have falsely provided information that they are un-married at the time of filing of application and appeared in the examination and as per the rules of the organization, it is clear that petitioners are not

eligible for under employment under Dependent Quota and pray this Court to dismiss the Writ Petition.

11. During the course of argument, both the learned counsel stated that petitioners were married on 08.12.2004 and 14.12.2006 respectively.

FINDING & CONCLUSION:

12. On perusal of the application form submitted by the petitioners it is evident that the petitioners have falsely reported that they are un-married. The petitioner filed the attestation form on 04.10.2013 and 25.09.2013 respectively, much after the petitioners were married i.e., on 08.12.2004 and 14.12.2006, and the notification i.e., Employment Notice No.HY/01/2013 was issued on 01.09.2013, which clearly shows that the petitioners have intentionally tried to hide specific information that they were married on 08.12.2004 and 14.12.2006. Column No.22 of the attestation form clearly asked the particular detail i.e., "Marital Status", wherein both the petitioners have stated unmarried which is factually incorrect.

Position of law:

13. In **Union of India and others Vs.M.Bhaskaran²**, the Hon'ble Apex Court held that when an appointment is procured by a workman on the basis of a bogus and forged causal labourer service card, it would amount to misrepresentation and fraud on the employer. Therefore, it would create no equity in favour of the workman or any estoppels against the employer and for such misconduct.

In **R.Radhakrishnan Vs. Director General of Police³** and others, the Hon'ble Apex Court held that candidate knew and understood the implications of the omission in his statement to disclose vital information and therefore the Hon'ble Apex Court declined to exercise its equitable jurisdiction of such a candidate who had suppressed such material facts.

14. In the instant case, the petitioners are well aware that they were married at the time of submitting online application form before respondent authorities and the petitioner No.1 father died on 06.03.1987 and the notification was issued on in the year 2013, hence the petitioner No.1 seeking employment after 26 years of her

² AIR (1996) SC 686

³ (2008) 1 SCC 660

father's death. Petitioner No.2 father died on 13.12.2008 and her marriage was solemnized on 14.12.2006 much before death of her father.

15. In **The State of Maharashtra and Others Vs.Ms.Madhuri Maruti Vidhate (Cited supra)**, the Hon'ble Apex Court observed that married daughter can't be held to be dependent of mother for the purpose of compassionate appointment - The whole object of granting compassionate employment is, thus, to enable the family to tide over the sudden crises and the fact that petitioners are seeking employment after the demise of their father after 26 years and 5 years respectively.

16. In view of above facts and circumstances of the case and relying on the judicial pronouncement passed by the Hon'ble Apex Court, this Court is of the opinion that respondent authorities has rightly denied the Artisan post to the petitioners under dependent of deceased employee quota in 1st respondent organization and there are no reasons warranting interference of this Court, hence, Writ Petition fails.

17. Accordingly, the Writ Petition No.719 of 2014 is dismissed. As a sequel, miscellaneous petitions pending if any, shall stand closed. There shall be no order as to costs.

JUSTICE N.V. SHRAVAN KUMAR

Date: 27-03-2024
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Note: L.R.Copy to be marked.