

STATE OF RAJASTHAN

A

v

SHRI UMRAO SINGH

SEPTEMBER 29, 1994

[M.N. VENKATACHALIAH, CJ AND S. MOHAN, J.]

B

*Service Law—Rajasthan Recruitment of Dependents of the Government Servants (Dying while in service) Rules, 1975 : Rule 5.*

*Compassionate appointment—Claim for higher post subsequent to appointment—Held once a post is accepted, right to be considered is consummated—No further or second consideration for higher post would arise—Direction by High Court to consider claim for higher post held not justified.*

C

*Practice & Procedure : Appeal against High Court—Delay in filing Appeal occasioned due to administrative exigencies—Held properly explained and condoned.*

D

The respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch). Therefore, the respondent was appointed as lower Division respondent Clerk on compassionate ground. After having accepted the said appointment, he sought appointment as Sub-Inspector but that was denied. He filed a writ petition in the High Court and a single Judge of the High Court directed consideration of his candidature for appointment to the post Sub-Inspector in accordance with the proviso to Rule 5 of Rajasthan Recruitment of Departments of the Government Servants (Dying while in Service) Rules, 1975. The appellant-State preferred a special appeal before the Division Bench which was dismissed on the ground of delay. In appeal to this Court it was contended on behalf of the appellant-State that (i) the failure to condone the delay by Division Bench has resulted in grave injustice; (ii) the respondent having accepted the appointment as a clerk cannot lay a further claim to a higher post of Sub- Inspector.

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Allowing the appeal, this Court

HELD : 1. The failure to condone to delay which had been caused on

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A account of administrative exigencies has resulted in injustice because the judgment of the Single Judge constitutes a bad precedent. Therefore, the delay is condoned. [70-C-D]

B 2. The respondent accepted the appointment as L.D.C. Therefore, his right to be considered for the appointment on compassionate ground was consummated. Once the right has consummated any further or second consideration for a higher post on the ground of compassion would not arise. Otherwise, it would be a case of 'endless compassion'. [70-E-F]

C 3. Eligibility to be appointed as Sub-Inspector or Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility, the Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of the Rajasthan Recruitment of Dependents of the Government Servants (Dying while in Service) Rules, 1975 which has no application to the facts of this case. Though the direction was only to consider the case of Respondent yet the High Court D was not legally justified in directing a further consideration of the candidature of the respondent for the post of Sub-Inspector. [70-F, 71-C]

*State of Haryana v. Naresh Kumar Bali JT [1994] 4 SC 184; relied on.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6492/94.

E From the Judgment and order dated 20.9.93 of the Rajasthan High Court in D.B.S.A. 481/1993.

Aruneshwar Gupta for the Appellant.

F Sushil Kumar Jain for the Respondent.

The following Judgment of the Court was delivered by

MOHAN, J. Leave granted.

G The facts lie in a narrow compass.

The respondent's father died while he was serving as a Sub-Inspector, C.I.D. (Special Branch) in the year 1988. The respondent applied to the appellant for appointment on compassionate ground. He was appointed as Lower Division Clerk on 14.12.1989 on compassionate ground.

H After having accepted the appointment as L.D.C., he sought appointment

as Sub-Inspector. That was denied. Aggrieved by the denial, he preferred S.B.C.W.P. No. 3875 of 1992. By judgment dated 6.8.1992, the learned Single Judge of the High Court of Rajasthan directed consideration of his candidature for appointment to the post of Sub-Inspector in accordance with the proviso to Rule 5 of Rajasthan Recruitment of Dependents of the Government Servants (Dying while in Service) Rules, 1975 (hereinafter referred to as 'the Rules'). The consideration was directed to be effected within six months from the date of the judgment. Assailing the correctness of this judgment, Special Appeal No. 481 of 1993 was filed by the appellant. That was dismissed on the ground of delay of 112 days. Thus, the present civil appeal.

Two alternate contentions are on behalf of the appellant State :

- (i) The Division Bench of the High Court erred in dismissing the appeal merely on the ground of delay. Such a delay was occasioned due to the administrative exigencies which have been properly explained. The failure to condone the delay has resulted in grave injustice.
- (ii) On merits, the appellant has a good case. This Court in *State of Haryana v. Naresh Kumar Bali*, JT 1994 (4) SC 184 under more or less identical circumstances set-aside the direction on the High Court for consideration of the candidature of compassionate ground when on such compassionate ground, the candidate had been appointed as a clerk. The ratio of the Judgment will clearly apply to this case. Once the respondent accepted the appointment as a clerk which appointment came to be made on compassionate ground, he cannot lay a further claim for appointment as Sub-Inspector. It cannot be a case of compassion for all time. The learned Single Judge has erred in giving direction that the case of respondent must be considered within six month from the date of judgment under proviso 5 of the Rules.

In opposition to this, learned counsel for the respondent would urged that because appellant State had not properly explained the delay of 112 days, the Court thought it fit to dismiss the appeal. The Division Bench had exercised the jurisdiction vested in it property.

On merits, is urged that the appellant has no case whatsoever. As a

- A matter of fact, the very ruling on which reliance is sought to be placed by the appellant, supports the respondent. This Court pointed out that only a direction should be issued by the High Court for consideration and not a direction to appoint. That is precisely what has been done by the learned Single Judge. It is open to the State to consider as per the direction and come to a conclusion one way or other. Instead it had resorted to a belated appeal. It should not be encouraged.

This is a case in which the special appeal to the Division Bench against the judgment of the Single Judge was delayed by 112 days. We find that the delay had been caused on account of administrative exigencies.

- C The failure to condone the delay has resulted in injustice as rightly urged on behalf of the appellant State because the judgment of the learned Single Judge constitutes a bad precedent. Therefore, we condone the delay. We proceed to decide the matter on the merits instead of remitting it to the Division Bench. The need to do so would be evident from the following.

- D Admittedly the respondent's father died in harness while working as Sub-Inspector, C.I.D. (Special Branch) on 16.3.1988. The respondent filed an application on 8.4.1988 for his appointment on compassionate ground as Sub-Inspector or L.D.C. according to the availability of vacancy. On a consideration of his plea, he was appointed to the post of L.D.C. by order dated 14.12.1989. He accepted the appointment as L.D.C. Therefore, the right to be considered for the appointment on compassionate ground was consummated. No further consideration on compassionate ground would ever arise. Otherwise, it would be a case of 'endless compassion'.
- F Eligibility to be appointed as Sub-Inspector of Police is one thing, the process of selection is yet another thing. Merely because of the so-called eligibility the learned Single Judge of the High Court was persuaded to the view that direction be issued under proviso to Rule 5 of Rules which has no application to the facts of this case.

- G Since both the sides relied on *Naresh Kumar Bali's* case (supra), we will now refer to the same. We had indicated our mind in that very ruling in paragraph 15 of the said judgment. It reads as under :

- H "Though the respondent claimed that he had applied for the

post of a teacher the Subordinate Service Selection Board had not chosen him for the post of a Teacher because he did not have the requisite qualification. In fact, the respondent did not object to his appointment as a Clerk and his claim for consideration for the post of Teacher was one year after his appointment. *Thus, the appointment on compassionate ground as per the scheme had been completed.*" (emphasis supplied)

Therefore, once the right has consummated as we indicated earlier, any further or second consideration for a higher post on the ground of compassion would not arise.

It is true that in the decision cited, the direction by the High Court was a positive direction to make the appointment but here the direction was to consider the case. Nevertheless, we find that the High Court was not legally justified in directing a further consideration of the candidature of the respondent for the post of Sub-Inspector. The Civil Appeal will stand allowed and in reversal of the orders of the courts below respondent's writ petition is dismissed. There shall be no order as to costs.

T.N.A.

Appeal allowed: