

KENDRIYA VIDYALAYA SANGATHAN AND ORS.

v.

SHRI DHARMENDRA SHARMA

SEPTEMBER 14, 2007

[DR. ARIJIT PASAYAT AND LOKESHWAR SINGH PANTA, JJ.]

Service Law:

Compassionate appointment—Appointment against quota reserved for compassionate appointment denied to respondent on ground of policy decision—Correctness of—Held: A policy decision not to make appointment in Group 'D' posts taken by the appellant-organisation was not challenged by the respondent—Courts below did not refer to the policy decision before arriving at the findings—Hence, direction of Central Administrative Tribunal to appellant-organisation to appoint the respondent on compassionate ground against quota reserved for such posts, as affirmed by the High Court, cannot be maintained—However, if the appellant at any point of time, adopt any compassionate appointment scheme and intends to make appointment in Group 'D' posts, the case of the respondent shall be duly considered—Directions issued.

Father of the respondent was employed in Kendriya Vidyalaya Sangathan and died in harness on 17.9.1999. An application filed by the respondent for appointment on compassionate ground was rejected by the authorities. Aggrieved, the respondent filed a petition before the Central Administrative Tribunal, which was allowed by it directing the appellant to appoint the respondent on compassionate ground. Despite the directions, prayer of the respondent was rejected by the appellant vide its order dated 18.9.2001. The order was challenged by the respondent before the CAT by filing another petition. The Tribunal, while granting relief to the respondent, directed that respondent's name should be kept on panel for appointment on compassionate ground and his case should be considered as and when vacancy arises. Appellant challenged the order by filing a writ petition before the High Court, which was allowed by the High Court. Hence the present appeal.

Appellant-Organisation contended that a policy decision had been taken

A not to make appointment of Group 'D' post.

Partly allowing the appeal, the Court

HELD: 1.1. The Tribunal and the High Court did not refer to the policy decision at all. [Para 6] [1010-A]

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1.2. Since the policy decision was not challenged, it was incumbent upon the Tribunal and the High Court to examine the applicability of the policy decision. No direction could have been given to Kendriya Vidyalaya Sangathan to act contrary to its policy decision. Therefore, the decision by CAT as affirmed by the High Court cannot be maintained. However, it is made clear if at any point of time KVS wants to adopt any compassionate appointments scheme and intends to make appointments in Group D posts, the case of the respondent shall be duly considered. It is clarified further that no opinion has been expressed as to the eligibility or otherwise of the respondent. That is for KVS to decide. [Paras 6 and 7] [1010-A-C]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4265 of 2007.

From the Judgment and Order dated 16.03.2005 of the High Court of Rajasthan at Jaipur Bench in D.B. (C) Writ Petition No. 988 of 2003.

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S. Rajappa and Jayaraman for the Appellants.

Manoj Swarup, Lalita Kohli A.K. Tripathi and Manoj Swarup & Co., for the Respondents.

The Judgment of the Court was delivered by

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DR. ARIJIT PASAYAT, J. 1. Leave granted.

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2. Challenge in this appeal is to the order passed by a Division Bench of the Rajasthan High Court, Jaipur Bench, dismissing the writ petition filed by the appellants. Challenge before the High Court was to the order dated 26.11.2002 passed by the Central Administrative Tribunal, Jaipur (in short 'CAT') in OA 35/2002.

3. Background facts in a nutshell are as follows:

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Father of the respondent was employed in Kendriya Vidyalaya Sangathan (in short 'KVS') and died in harness on 17.9.1999. Respondent filed an

application for appointment on compassionate ground. The same was rejected by the appellants. The respondent filed OA/2000 before the CAT which was allowed and the Union of India and others were directed to consider the request of the respondent for appointment on compassionate ground against 5% of the 53 Group-D vacancies available. Despite these directions, the prayer of the respondent was declined by order dated 18.9.2001. The order was challenged before the CAT by filing OA 35/2002 which was decided on 26.11.2002. Said order was the subject matter of challenge before the High Court.

4. Reference was made before the CAT to the decision of the Government in notification dated 6.12.1976 which prohibited employment of contract labour for sweeping, cleaning, dusting and watching of buildings in or occupied by establishments in respect of the Central Government. CAT rejected the plea primarily on the ground that after earlier decision of the CAT, the appellant did not have any right to reject the application of the applicant for appointment on compassionate ground on the ground that work of cleaning of school building or maintenance of garden had been given to private agencies. The Tribunal, while granting relief to the respondent, directed that respondent's name should be kept on panel for appointment on compassionate ground and his case should be considered as and when vacancy arises. This view found acceptance of the High Court. It was of the view that it is a department which would create vacancy and department alone would take work from an employee and not the contractor who may employ a person of his choice. Accordingly, the writ petition was dismissed.

5. Learned counsel for the appellants submitted that a policy decision had been taken not to make appointment of Group 'D' post. It was submitted that the so called 5% reservation from posts of Group 'D' related to the Central Government only and it did not apply to the appellants who had their own operative regulations and norms. By the said policy decision, KVS decided to privatize certain services of the schools as watch and ward duties of schools, cleaning of school buildings, toilets, class rooms including dusting of desks etc., proper maintenance of gardens, lawns and compound which were being carried out by the Chowkidars, Safai Karamcharis and Malis respectively. In a sense, the KVS abolished the direct recruitment of Group 'D' employees. The office memorandum dated 10.12.1999 related to privatization of certain services in schools of KVS.

6. There is no dispute that such a policy decision had been taken. What

A was contended by learned counsel for the respondent is that certain categories of Group 'D' posts were not covered by the policy decision. The Tribunal and the High Court did not refer to the policy decision at all. On the contrary, the High Court noted that contractor could employ person of his choice and not somebody who may be an applicant under compassionate appointment. That is really of no relevance. Since the policy decision was not challenged, it was B incumbent upon the Tribunal and the High Court to examine the applicability of the policy decision. No direction could have been given to KVS to act contrary to its policy decision.

C 7. Therefore, the decision by CAT as affirmed by the High Court cannot be maintained. However, it is made clear if at any point of time KVS wants to adopt any compassionate appointments scheme and intends to make appointments in Group D posts, the case of the respondent shall be duly considered. We make it clear that we have not expressed any opinion as to the eligibility or otherwise of the respondent. That is for KVS to decide.

D 8. The High Court's order is set aside and the appeal is allowed to the aforesaid extent with no order as to costs.

S.K.S.

Appeal partly allowed.