

MUMTAZ YUNUS MULANI

v.

STATE OF MAHARASHTRA & ORS.

(Civil Appeal No. 2002 of 2008)

MARCH 14, 2008

(S.B. SINHA AND V.S. SIRPURKAR, JJ.)

Service Law:

Appointment on compassionate ground – Husband of applicant died while in service of a charitable and aided educational institution – Applicant receiving retrial benefits of her husband and family pension – Meanwhile another person appointed in place of deceased – Appointment declined to applicant in view of Scheme – HELD: Right to get appointment on compassionate ground would depend upon the Scheme operating in the field – On facts, High Court has recorded a finding that in view of the Scheme operative at relevant point of time applicant did not fulfill the criteria – No case made out to exercise discretionary jurisdiction under Article 136 of the Constitution – Constitution of India, 1950 – Article 136 – Government of Maharashtra Order dated 31.12.2002.

The husband of the appellant died on 6.9.1996 while in service of the respondent, an aided educational institution. Since the application of the appellant for compassionate appointment was declined by the institution, she filed a writ petition which was dismissed by the High Court.

In the instant appeal filed by the wife of the deceased employee, it was contended for the respondent-institution that the appellant had received the retrial benefits upon death of her husband and she was also receiving the family pension. It was further submitted that upon death of appellant's husband another person had been

A appointed in his place and it was not possible to remove him from the service to accommodate the appellant.

Dismissing the appeal, the Court

B HELD: 1.1 Appointment on compassionate ground can only be granted to tide over the sudden crisis of the family of the deceased. The right to get appointment on compassionate ground would depend upon the scheme operating in the field. It may be true that in a given case, appointment on compassionate ground cannot be denied only because the dependents of the deceased had been receiving some amount by way of family pension. However, it is now a well settled principle of law that appointment on compassionate ground is not a source of recruitment. The reason for making such a benevolent scheme is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis. [para 8-10] [245-F, 246-A, B, C]

E *Punjab National Bank v. Ashwini Kumar Taneja* (2004) 7 SCC 265; *Smt. Sushma Gosain & Ors. v. Union of India & Ors.* (1989 (4) SCC 468; *State of J & K & Ors. v. Sajad Ahmed Mir* (2006) 5 SCC 766; *Umesh Kumar Nagpal v. State of Haryana & Ors.* (1994) 4 SCC 138; *National Institute of Technology & Ors. v. Niraj Kumar Singh* 2007 (2) SCALE 525; and *I.G. (Karmik) & Ors. v. Prahalad Mani Tripathi* (2007) 6 SCC 162 – relied on.

F *General Manager (D&PB) & Ors. v. Kunti Tiwary & Anr.* [(2004) 7 SCC 271; *Govind Prakash Varma v. Life Insurance Corporation of India & Ors.* [(2005) 10 SCC 289 – referred to.

G 1.2 In the instant case, the respondent is a charitable institution. It is run on Government aid. It cannot afford to appoint persons in a post which has not been sanctioned. It has not been denied or disputed that one person has already been appointed in place of the deceased husband

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of the appellant. Besides, since appellant's husband died as far back as on 16.9.1996 and the vacancy was filled up in the year 1997, appellant's case could not have been considered on the basis of the policy decision contained in the Government Order dated 31st December 2002. The High Court also in its judgment noticed that the scheme which was operative at the relevant point of time was that appointment on compassionate ground should not be given if the monthly income exceeds Rs.5,00/-. Evidently, the appellant did not fulfill the said criteria. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged about 16 years. Therefore, they have become major. Keeping in view the fact situation obtaining in the case, no case has been made out for exercising discretionary jurisdiction under Article 136 of the Constitution of India. [para 9,15-17] [245-G, H; 246-A; 249-G; 250-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2002 of 2008.

From the final Judgment and Order dated 19.08.2006 of the High Court of Judicature at Bombay in Writ Petition No. 7369 of 1999.

Makarand D. Adkar and Vishwajit Singh for the Appellant.

Sudhanshu S. Choudhari, Naresh Kumar and V.N. Raghupathy for the Respondents.

The Judgment of the Court was delivered by

S.B. SINHA, J. 1. Leave granted.

2. Whether compassionate appointment of the appellant is warranted in the facts and circumstances of this case is the question involved herein.

3. Appellant is the widow of one Yunus Dastagir Mulani. He was a Peon working in the respondent, a vocational institution. It is a public charitable trust. Appellant's husband expired on 6.9.1996. She filed an application for appointment on

A compassionate ground. As no response thereto was received, she made representations.

B 4. Second Respondent, however, declined to give any appointment on compassionate ground to the appellant. She filed a writ petition before the High Court. By reason of the impugned judgment the said petition has been dismissed.

C 5. Mr. Makarand D. Adkar, learned counsel appearing on behalf of the appellant, would submit that the reason for depriving the appellant of the right to be appointed on compassionate ground, being payment of family pension, the impugned judgment cannot be sustained. It was contended that the appellant has a large family to maintain which includes her two grown up children. The family pension received by her being only Rs.1,100/- per month, the respondent should be directed to offer appointment on compassionate ground to her even at that stage.

D 6. Learned counsel appearing on behalf of the respondents, on the other hand, would contend that immediately upon the death of the appellant's husband, the respondents supported the case of the appellant in assisting her to get the retrial benefits of her husband. However, in the year 1997, another person being Mr. Arun Uttereshwar having been appointed, it is not possible to dismiss him from service so as to accommodate the appellant.

E 7. Appellant's husband was appointed in a Class IV post. The school is an aided institution. The State, although instructed the respondent to appoint the appellant on compassionate ground, it appears, such an instruction had been issued in view of the scheme for appointment on compassionate ground as contained in the Government Order dated 31st December, 2002. The said resolution, inter alia, reads as under :

F "1) Regarding giving appointment on compassionate principle, the above scheme will be applicable to all teachers and employees other than teachers of

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private, primary, secondary and higher middle as well as training schools for teachers. A

2) Rules relating to absorption of relatives of employees deceased or retired because of medical reason, are given in the enclosed Annexure "A". B

3) Information about application to be made for service by the concerned relatives of employees and documents to be submitted along with it will be as mentioned in Annexure "B".

4) If the decision is taken prior to implementation of this scheme in respect of giving/refusing to give appointment on compassionate principle, those cases should not be taken into consideration for review. However, those employees who are deceased or those employees who are prematurely retired because of incurable illness after 1 January, 2001, in case if persons from such family have applied for appointment on compassionate principle, and if in case their application has been turned down, such relatives can submit their application again afresh in this scheme." C
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7. The fact that the appellant has been receiving family pension is not in dispute. It has furthermore been averred in the counter affidavit that she has income from the immoveable properties in regard whereto, there is no denial or dispute. F

8. Appointment on compassionate ground can only be granted to tide over the sudden crisis of the family of the deceased. The right to get appointment on compassionate ground would depend upon the scheme operating in the field. [See *Umesh Kumar Nagpal v. State of Haryana & Ors.* [(1994) 4 SCC 138]; and *National Institute of Technology & Ors. v. Niraj Kumar Singh* [2007 (2) SCALE 525] G

9. The High Court in its judgment had noticed that the scheme which was operative at the relevant point of time was H

- A that appointment on compassionate ground should not be given if the monthly income exceeds Rs.5,00/- . Evidently, the appellant did not fulfill the said criteria. It may be true that in a given case, appointment on compassionate ground cannot be denied only because the dependent of the deceased had been receiving some amount by way of family pension.
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10. However, it is now a well settled principle of law that appointment on compassionate ground is not a source of recruitment. The reason for making such a benevolent scheme by the State or the Public Sector Undertaking is to see that the dependents of the deceased are not deprived of the means of livelihood. It only enables the family of the deceased to get over the sudden financial crisis. {see *I.G. (Karmik) & Ors. v. Prahalad Mani Tripathi* [(2007) 6 SCC 162]}.

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11. In *General Manager (D&PB) & Ors. v. Kunti Tiwary & Anr.* [(2004) 7 SCC 271], this Court laid down the law as under :

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“8. This recommendation of the Indian Banks’ Association was accepted in the Scheme which was finally formulated on 1-1-1998 where the same criteria for determining the financial condition of the family was laid down. It may be noted that the express language for appointment on compassionate grounds reads as follows :

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“Appointments in the public services are made strictly on the basis of open invitation of applications and merit. However, exceptions are made in favour of dependants of employees dying in harness and leaving their family in penury and without any means of livelihood.”

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12. However, we may notice that in *Punjab National Bank v. Ashwini Kumar Taneja* [(2004) 7 SCC 265], this Court relying on the decision of *Smt. Sushma Gosain & Ors. v. Union of India & Ors.* [(1989) (4) SCC 468] held :

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“9. One other thing which needs to be considered is whether the retiral benefits are to be taken into

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consideration while dealing with prayer for compassionate appointment. The High Court was of the view that the same was not to be taken into consideration. The view is contrary to what has been held recently in *G.M. (D&PB) v. Kunti Tiwary*. It was categorically held that the amounts have to be taken into consideration. In the instant case, there was a scheme called "Scheme for Employment of the Dependants of the Employees Who Die While in the Service of the Bank — Service on Compassionate Grounds" (in short "the Scheme") operating in Appellant 1 Bank which categorically provides as follows:

"Financial condition of the family

The dependants of an employee dying in harness may be considered for compassionate appointment provided the family is without sufficient means of livelihood, specifically keeping in view the following:

- (a) Family pension.
- (b) Gratuity amount received.
- (c) Employee's/Employer's contribution to PF.
- (d) Any compensation paid by the Bank or its Welfare Fund.
- (e) Proceeds of LIC policy and other investments of the deceased employee.
- (f) income of family from other sources.
- (g) Employment of other family members.
- (h) Size of the family and liabilities, if any, etc.

It is most respectfully submitted that the Board of Directors of the petitioner Bank had approved the abovesaid Scheme, which was based upon the guidelines circulated by Indian Banks' Association to all the public sector banks which in turn are based

A upon the law laid down by this Hon'ble Court in the
 case of *Umesh Kumar Nagpal v. State of Haryana*.
 The Scheme after approval was circulated vide PDCL
 6/97 read with PDCL 11/99 dated 17-4-1999."

B 13. The question came up for consideration yet again in
 Govind Prakash Varma v. Life Insurance Corporation of India
 & Ors. [(2005) 10 SCC 289], wherein it was held :

C "6. In our view, it was wholly irrelevant for the departmental
 authorities and the learned Single Judge to take into
 consideration the amount which was being paid as family
 pension to the widow of the deceased (which amount,
 according to the appellant, has now been reduced to half)
 and other amounts paid on account of terminal benefits
 under the Rules. The scheme of compassionate
 appointment is over and above whatever is admissible to
 the legal representatives of the deceased employee as
 benefits of service which one gets on the death of the
 employee. Therefore, compassionate appointment cannot
 be refused on the ground that any member of the family
 received the amounts admissible under the Rules. So far
 as the question of gainful employment of the elder brother
 is concerned, we find that it had been given out that he
 has been engaged in cultivation. We hardly find that it
 could be considered as gainful employment if the family
 owns a piece of land and one of the members of the family
 cultivates the field. This statement is said to have been
 contradicted when it is said that the elder brother had
 stated that he works as a painter. This would not necessarily
 be a contradiction much less leading to the inference drawn
 that he was gainfully employed somewhere as a painter.
 He might be working in his field and might casually be
 getting work as painter also. Nothing has been indicated
 in the enquiry report as to where he was employed as a
 regular painter. The other aspects, on which the officer
 was required to make enquiries, have been conveniently
 omitted and not a whisper is found in the report submitted

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by the officer. In the above circumstances, in our view, the orders passed by the High Court are not sustainable. The respondents have wrongly refused compassionate appointment to the appellant. The inference of gainful employment of the elder brother could not be acted upon. The terminal benefits received by the widow and the family pension could not be taken into account.”

It, however, does not appear that therein the earlier binding precedent of this Court had been taken notice of.

14. Yet again in *State of J & K & Ors. v. Sajad Ahmed Mir* [(2006) 5 SCC 766], the law was laid down in the following terms :

“11. We may also observe that when the Division Bench of the High Court was considering the case of the applicant holding that he had sought “compassion”, the Bench ought to have considered the larger issue as well and it is that such an appointment is an exception to the general rule. Normally, an employment in the Government or other public sectors should be open to all eligible candidates who can come forward to apply and compete with each other. It is in consonance with Article 14 of the Constitution. On the basis of competitive merits, an appointment should be made to public office. This general rule should not be departed from except where compelling circumstances demand, such as, death of the sole breadwinner and likelihood of the family suffering because of the setback. Once it is proved that in spite of the death of the breadwinner, the family survived and substantial period is over, there is no necessity to say “goodbye” to the normal rule of appointment and to show favour to one at the cost of the interests of several others ignoring the mandate of Article 14 of the Constitution.”

15. In this case, the respondent is a charitable institution. It is run on Government aid. It cannot afford to appoint persons in a post which has not been sanctioned. It has not been denied or disputed that one Arun Uttareshwar has already been

- A appointed in place of the deceased husband of the appellant. It does not matter as to whether the said appointment has been approved by the State or not inasmuch as if it had not been done, on the basis of the policy decision contained in its resolution dated 31st December 2002 the same cannot be
- B considered to be of much significance, particularly, in view of the fact that the appellant's husband died as far back as on 16.9.1996 and the vacancy had been filled up in the year 1997.

16. Furthermore, about 12 years have passed. Appellant's son is aged about 20 years and daughter is aged about 16

C years. Therefore, they have become major. Appellant herself would be aged about 38 years now. She cannot be given any appointment at this age.

17. Keeping in view the fact situation obtaining in this case,

D we are of the opinion that no case has been made out for exercising our discretionary jurisdiction under Article 136 of the Constitution of India. This appeal, therefore, is dismissed. No costs.

R.P.

Appeal dismissed.

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