

Before Tejinder Singh Dhindsa, J.

DEEPAK—Petitioner

versus

STATE OF HARYANA AND OTHERS—Respondents

CWP No. 20553 of 2010

February 6, 2013

Constitution of India, 1950 - Art. 226 & 227 - Compassionate appointment - A Right or a Concession - Petitioner's father died in harness when he was a minor - His mother nominated him to be considered for appointment on compassionate basis - Request rejected on delay of 4 years - Litigation concluded in favour of the petitioner - Petitioner appointed on the post of peon i.e. Class IV post on which he duly joined duty and is working - Subsequently he raised claim to be appointed to a Class III post, as per the policy - Claim was rejected - An appointment granted on compassionate basis is a concession and not a right - Petitioner, admittedly, had applied for consideration for being appointed to a Class IV post - Such appointment having been granted and accepted by the petitioner without any reservation - Objective of the scheme/policy governing compassionate appointment stood achieved - Subsequent claim would be in the nature of endless compassion - Same is not permissible.

Held, that in matters relating to public appointment, the State is obligated to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India. All appointments, therefore, have to be effected in terms of an open invitation of applications and consideration thereof in the light of valid selection criteria strictly in order of merit. Compassionate appointment is an exception to such proposition. An appointment granted on compassionate basis is a concession and not a right. The petitioner, admittedly, had applied for consideration for being appointed to a Class-IV post on a compassionate basis. Similar was the request submitted by his mother earlier in point of time. The petitioner having been given appointment to the post of Peon i.e. Class IV post on compassionate basis he accepted the same unconditionally in the light of

Annexure R-5/T appended along with the written statement filed on behalf of the State. Such appointment having been granted to the petitioner and the same having been accepted, the objective of the scheme/policy governing compassionate appointments stood achieved. The claim as raised in the present writ petition would be in the nature of asking for endless compassion. The same is not permissible.

(Para 9)

Held further, that the facts of the present case are otherwise. Upon the death of the father of the present petitioner, his mother had submitted a claim for consideration of the case of her son, namely, Deepak on a Class-IV post. Thereafter, upon attaining the age of majority and after the decision of this Court in Civil Writ Petition No. 1516 of 2002, the petitioner himself had also submitted a request for being considered for appointment to a Class-IV post on compassionate ground. Such appointment has been given to him in terms of issuance of appointment letter dated 12.6.2009 on the post of Peon. The petitioner has accepted such appointment without any reservation. It would not be open for him now to seek appointment to a Class-III post on compassionate basis.

(Para 11)

Hemen Aggarwal, Advocate, *for the petitioner*.

Harish Rathee, Senior Deputy Advocate General, Haryana.

TEJINDER SINGH DHINDSA, J.

(1) The petitioner who had been appointed on the post of Peon i.e. Class-IV employee on 12.6.2009 on compassionate basis, has filed the instant writ petition impugning the order dated 19.7.2010, Annexure P6, whereby his claim to be appointed on a Class-III post instead, has been rejected.

(2) Briefly noticed, the father of the petitioner who was working on the post of Sub Inspector with the Haryana State Transport Department, died on 26.3.1997 in harness. At that point of time, the petitioner was a minor, his date of birth being 20.11.1982 and, accordingly, his mother submitted a request on 11.4.1997 to the respondent-Department nominating her son i.e. the present petitioner to be considered for appointment on a compassionate basis. As soon as the petitioner attained the age of majority,

his mother re-iterated such request. On 5.10.2001, the application submitted by the mother of the petitioner seeking consideration of the claim of her son i.e. the present petitioner for appointment on compassionate basis was rejected on the basis that the same had been received four years after the death of the employee. Such rejection was challenged by the petitioner in terms of filing Civil Writ Petition No.1516 of 2002 in this Court. Such petition was allowed vide judgment dated 11.2.2005 and directions were issued to consider the claim of the petitioner for appointment under the ex-gratia scheme, dated 8.5.1995, or under any other latest scheme as may be applicable. The judgment dated 11.2.2005 passed by the learned Single Judge in Civil Writ Petition No.1516 of 2002 stands affirmed upto the Hon'ble Apex Court.

(3) In purported compliance of directions passed by this Court, the case of the petitioner was considered and he had been given appointment on 12.6.2009 on the post of Pcon i.e. Class-IV post on which he had duly joined and is working. Apparently, the petitioner thereafter raised a claim that in the light of the policy dated 8.5.1995, Annexure P7, he was, in fact, entitled to be appointed to a post "one step lower" than that held by his deceased father and as such, since his father was holding the post of Sub Inspector in the respondent-Department on the date of his death, he be appointed to a Class-III post. Such claim stands rejected in the light of the impugned order dated 19.7.2010, Annexure P6.

(4) Learned counsel for the petitioner has vehemently argued that the judgment dated 11.2.2005 passed by the learned Single Judge in Civil Writ Petition No.1516 of 2002 has since attained finality. Under such judgment, directions had been issued to the respondents to consider the claim of the petitioner for compassionate appointment in the light of the policy/ instructions dated 8.5.1995. Learned counsel would refer to the policy dated 8.5.1995, Annexure P7 on the subject Employment to the dependents of the deceased Government employees under the ex-gratia scheme and would make a pointed reference to Clause (i), which reads in the following terms:

"(i) Ex-gratia employment shall be confined to Class-III and Class-IV posts only, irrespective of the status of the deceased employee. Further, the compassionate employment being offered

shall be at least one step lower than that of the deceased employee except in cases where the deceased employee was working in at the lowest level in the government."

(5) Learned counsel for the petitioner would further submit that the policy decision dated 8.5.1995 was further clarified in terms of issuance of memo dated 31.8.1995 wherein it had been clarified that "one step lower" employment is interpreted as "one pay-scale below" that of the deceased employee. As such, the argument raised by the learned counsel is that the respondent-Department has not strictly adhered to the directions issued by this Court vide judgment dated 11.2.2005 and the impugned order rejecting the claim of the petitioner to be appointed on a compassionate basis to a Class III post is in violation of the policy decision dated 8.5.1995. In support of his submissions, learned counsel has placed reliance upon a Division Bench judgment of this Court in *Vipan Kumar versus State of Haryana (1)*.

(6) Upon notice of motion having been issued, a written statement of respondent No.3 on behalf of respondents No.1 and 2 has been filed. The categorical stand taken on behalf of the State is that earlier in point of time, the mother of the petitioner had submitted an application for consideration of the claim of her son on a Class IV post and even after the decision of this Court in Civil Writ Petition No.1516 of 2002, the petitioner had again submitted an application dated 4.6.2009, Annexure R4, to be considered for appointment to the post of Peon i.e. Class IV. Accordingly, it has been averred in the written statement that the request of the petitioner for appointment to the post of Peon has been considered and he has been appointed on such post which he had accepted.

(7) Learned counsel for the State would argue that the petitioner having never submitted a request for being appointed to a Class III post, could not have been granted such benefit.

(8) Having heard learned counsel for the parties and having perused the pleadings on record, the short question that arises for consideration in the present writ petition is as to whether it was open for the respondent-

authorities to have granted appointment to the petitioner to a post even lower than the one for which the petitioner could have been considered in the light of the policy/instructions dated 8.5.1995?

(9) In matters relating to public appointment, the State is obligated to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India. All appointments, therefore, have to be effected in terms of an open invitation of applications and consideration thereof in the light of a valid selection criteria strictly in order of merit. Compassionate appointment is an exception to such proposition. An appointment granted on compassionate basis is a concession and not a right. The petitioner, admittedly, had applied for consideration for being appointed to a Class-IV post on a compassionate basis. Similar was the request submitted by his mother earlier in point of time. The petitioner having been given appointment to the post of Peon i.e. Class IV post on compassionate basis he accepted the same unconditionally in the light of Annexure R-5/T appended along with the written statement filed on behalf of the State. Such appointment having been granted to the petitioner and the same having been accepted, the objective of the scheme/policy governing compassionate appointments stood achieved. The claim as raised in the present writ petition would be in the nature of asking for endless compassion. The same is not permissible.

(10) The observations of the Hon'ble Supreme Court in the case of *State of Rajasthan versus Shri Umrao Singh (2)*, in somewhat similar circumstances would be relevant and read in the following terms:

"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'. 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.

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:

"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."

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."

(11) The facts of the decision in Vipin Kumar's case (*supra*) relied upon by the petitioner are clearly distinguishable. In that case, the father of the petitioner i.e. Vipin Kumar, while working on the post of Junior Engineer, had died in harness. The petitioner's mother therein had applied for compassionate appointment in the light of the Government instructions/policy dated 8.5.1995. The petitioner therein, namely, Vipin Kumar had earlier filed Civil Writ Petition No. 15181 of 1995 in this Court seeking directions to consider and appoint him as Taxation Inspector in the Excise and Taxation Department or on any other Class III post in the Irrigation Department commensurate with his qualifications. Such petition had been disposed of by this Court on 22.1.1997 in terms of directing the State to consider the claim of the petitioner for compassionate appointment. Accordingly, Vipin Kumar had been offered the post of Clerk. The petitioner did not accept the same and again approached this Court seeking directions to be considered for appointment on a post carrying one scale below the pay-scale in which his father was drawing salary at the time of his death. It is against such factual backdrop that the claim of Vipin Kumar had been allowed in the light of the Government policy dated 8.5.1995. The facts of the present case are otherwise. Upon the death of the father of the present petitioner, his mother had submitted a claim for consideration of the case of her son, namely, Deepak on a Class-IV post. Thereafter, upon attaining the age of majority and after the decision of this Court in Civil Writ Petition No. 1516 of 2002, the petitioner himself had also submitted a request for being considered for appointment to a Class-IV post on compassionate ground. Such appointment has been given to him in terms of issuance of appointment letter dated 12.6.2009 on the post of Peon. The petitioner has accepted such appointment without any reservation. It would not be open for him now to seek appointment to a Class-III post on compassionate basis.

(12) For the reasons recorded above, I find no merit in the writ petition and the same is, accordingly, dismissed.