

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 15TH DAY OF OCTOBER, 2020

PRESENT

THE HON'BLE MRS.JUSTICE B.V.NAGARATHNA

AND

THE HON'BLE MR.JUSTICE N.S.SANJAY GOWDA

W.A.No.8/2020 (S - RES)

BETWEEN:

Sri. Kiran P, Son of Late Prakash,
Aged about 26 years,
No.386, 25th "B" Main,
II sector, H S R Layout,
Bengaluru - 560 102.

... Appellant

(By Sri. G.S. Kannur, Senior Counsel for Sri. Vasanth
Kumar H.T, Advocate)

AND:

The Commissioner,
Bengaluru Development Authority,
T Chowdaiah Road, Kumara Park West,
Bengaluru - 560 020.

... Respondent

(By Sri. K. Krishna, Advocate)

This appeal is filed under Section 4 of the
Karnataka High Court Act praying to set aside the order
dated 27.11.2019 in W.P. No.27454/2019 (S - RES)

passed by the learned Single Judge and allow Writ Petition No.27454/2019.

This appeal coming on for Preliminary hearing this day, SANJAY GOWDA, J., delivered the following:

JUDGMENT

Though the appeal is listed for preliminary hearing, with the consent of learned counsel for both sides, it is heard finally.

2. Facts giving rise to filing of the writ petition and passing of the impugned order are as follows:

Sri Prakash, father of the writ petitioner/Sri Kiran – appellant herein while working as Second Division Clerk in Bengaluru Development Authority (for short, hereinafter referred to as 'BDA') was dismissed from service on 24.02.2003. The said Prakash raised an industrial dispute which was referred to the Labour Court. The Labour Court, on consideration of the materials produced before it, accepted the reference and

proceeded to set aside the order of dismissal dated 24.02.2003 and directed the BDA to reinstate Prakash into service to his original post within one month from the date the award became enforceable. The Labour Court also awarded full backwages from the date of dismissal till reinstatement and also granted continuity of service with all other consequently benefits.

3. The said award of the Labour Court was passed on 04.09.2013. However, Prakash was unable to reap the benefits granted to him under the award as he passed away on 18.03.2014.

4. The BDA, however, accepted the award of the Labour Court and did not challenge the same. The award in favour of Prakash was notified by the State after the death of Prakash on 20.10.2014.

5. The appellant/writ petitioner immediately after the death of his father - Prakash submitted a representation

on 19.07.2014 seeking for an appointment on compassionate grounds. Since the said request was not considered, he was constrained to file W.P.No.38608/2017.

6. The said writ petition was contested by the BDA by filing a detailed statement of objections. The said writ petition had been basically filed seeking for a mandamus to consider the representation of the appellant dated 19.07.2014. This Court, however, taking note of the objections filed by the BDA, by which the BDA sought to deny the very entitlement of the appellant, came to the conclusion that it was necessary to consider the objections put forth by the BDA on merits before issuing a direction to consider the case of the appellant.

7. The relevant observation of this Court in this regard can be found at paragraph 3 of the order, which reads as under:

"3. The respondent has filed the objection statement. In the normal circumstances, since the application had not been considered by the respondent, it would have been sufficient for this Court to direct consideration of the application in accordance with law leaving open all aspects. However, through the objection statement, since certain contentions seeking to decline the very consideration of the application is put forth, that aspect of the matter requires to be taken note herein and thereafter a conclusion is required to be reached."

8. Thus, in the said writ petition, the stand taken by the BDA was scrutinized by this Court and this Court, on consideration of the contentions advanced, proceeded to hold as follows at paragraphs 5 & 6:

"5. Insofar as the contention that the nature of the award as passed by the Labour Court would not be justified, the same would not arise for consideration at this stage, since the award dated 4-9-2013 has attained finality and the monetary benefits as ordered thereunder has already been paid to the family members in implementation of the award. Insofar as the aspect to consider

whether death was in harness, though the award was notified only on 20-10-2014, the award has been passed on 04-09-2013 whereunder, reinstatement was ordered. If that be the position, as on 18-03-2014, the father of the petitioner will be deemed to have been in employment as the dismissal order had been set aside as on such date. Therefore, insofar as considering the death as during harness, it is to be made and in that regard the application would merit consideration.

6. Further, the fact which cannot be in dispute is also that the application was filed on 17-06-2014 after the death of father of the petitioner on 18-03-2014. If that be the position, at this point it cannot be said that the application was filed belatedly nor can the financial position of the family at this point be the basis for decision. In that circumstance, the application filed by the petitioner seeking compassionate appointment in any event would require consideration by the competent authority keeping in view as to whether such application would have merited consideration, as on the date of death if all other conditions that are required for satisfactory consideration of such application are met by the petitioner. Hence, to that

extent, I am of the opinion, a direction is required to be issued to the respondent to take note of the application filed by the petitioner dated 19-07-2014, keep in view the regulations towards consideration of compassionate appointment and if the petitioner satisfies the conditions thereto, the consideration in that regard be made."

9. It is, therefore, clear that the stand of the BDA that the appellant was not entitled for appointment on compassionate grounds because his father had died before the award became enforceable and it could not therefore be directed to consider the case of the appellant on the assumption that Prakash was in service as on the date of his death was specifically considered and refuted by this Court. In fact, this Court recorded a clear finding that the father of the appellant was deemed to have been in employment by virtue of the dismissal order being set aside and therefore, the application of the appellant merited consideration.

10. It may be pertinent to state here that during the pendency of that writ petition itself, the BDA has proceeded to settle the benefits in favour of the family of Prakash and yet the BDA did not raise any contention in the said writ petition that the appellant was not entitled for being considered to be appointed on compassionate ground because his family had received the terminal benefits.

11. The BDA, despite the order passed in W.P.No.38608/2017 regarding the entitlement of the appellant for appointment on compassionate ground, proceeded to consider his representation and rejected the same by citing the following grounds:

"1. Late Shri Prakash was not in service at the time of his demise, Since he was dismissed from Service.

2. Though, Family pension etc., were released to the legal heirs of late Prakash, it is because of the stand taken by the Labour court. This cannot be construed as the fact

that late Shri Prakash was taken to service after his dismissal.

3. The officiating period of Shri Late Prakash was not declared as satisfactorily, since, he has not passed the required department examinations.”

12. From the reasoning given by the BDA, it is clear that despite a specific order by this Court that Prakash was deemed to have been in service, by virtue of the order of dismissal being set aside, the BDA has once again sought to put forth the plea that Prakash was not in service as on the date of his death and therefore, the appellant could not be considered for appointment on compassionate grounds.

13. This Court, having noticed that the BDA was trying to put forth the plea that the appellant was not entitled to be considered for appointment on compassionate grounds because his father had died prior to the award being enforced, specifically examined that aspect of the matter and gave a categorical finding that Prakash was

deemed to have been in service by virtue of the order of dismissal having been set aside by the Labour Court and the notification of the award after his death had no bearing on the issue of appointment of the appellant on compassionate grounds.

14. The appellant, being aggrieved by the stand taken by the BDA, proceeded to challenge the said rejection by filing a writ petition, in which the impugned order has been passed.

15. The learned Single Judge by the impugned order did not really venture to consider the validity of the reasoning given by the BDA. The learned Single Judge, however, came to the conclusion that the rejection of the BDA could not be found fault with, since the family of the appellant had received a sum of Rs.33,63,465/- as terminal benefits and the receipt of this had obviated any hardship that the family had been put into.

16. The learned Single Judge rested his conclusion on the reason that an entitlement for an appointment on compassionate grounds would arise only if there was hardship and distress in the family of the deceased and since, in the instant case, the family had received large sums of money as terminal benefits, there was no distress to the family of the appellant entitling the appellant for being appointed on compassionate grounds.

17. The learned Single Judge also placed reliance on the judgment of the Apex Court in the case of ***Haryana State Electricity Board Vs. Hakim Singh - (1997) 8 SCC 85*** in which the objective of giving appointment on compassionate grounds to an employee who dies in harness had been enunciated by the Apex Court.

18. Being aggrieved by the said order of the learned Single Judge, the present appeal has been filed.

19. Sri.G.S.Kannur, learned Senior counsel appearing for the appellant contended that the BDA could not have

proceeded to reject the claim of the appellant on the ground that the father of the appellant was not in service in light of the judgment rendered in the earlier round of litigation in W.P.No.38608/2017. He also contended that once the dismissal order had been set-aside, the deceased employee is deemed to have been in service, more so, when the Labour Court had also granted continuity of service to the deceased Prakash. He submitted that since the employee was deemed to be in service, his death on 18.03.2014 would have to be taken as the death of an employee which had occurred while he was in service.

20. He also put forth the contention that the learned Single Judge could not have ignored the reasoning put forth by the BDA in the endorsement impugned in the writ petition and he could not have proceeded to dismiss the writ petition on the grounds which were not even set out in the endorsement. He submitted that the reasoning of the learned Single Judge regarding the receipt of

monetary benefits were not germane to the issue on hand. He submitted that the receipt of terminal benefits is not a largesse granted to an employee and it is in effect, the result of the benefits that an employee has earned over a long period of service rendered to his employer. He submitted that the payment of terminal benefits has absolutely no relation to the need to provide an appointment on compassionate ground.

21. Sri. K. Krishna, learned counsel for the BDA, on the other hand, contended that the order of the learned Single Judge cannot be found fault with since it was based on equitable considerations. He also put forth the contention that the appellant could not be considered for appointment on compassionate grounds, having regard to the huge sum of money that the family had received as terminal benefits.

22. We have considered the submissions of learned Senior counsel appearing for the appellant as well as the

learned counsel for the BDA and also perused entire material on record.

23. As noticed above, this Court, on the earlier occasion in W.P.No.38608/2017 having taken into consideration that the BDA was trying to raise a plea to hold that the appellant was disentitled for being considered for appointment on compassionate grounds, examined the said contention in detail and recorded a categorical finding that the deceased employee was deemed to have been in service on the date of his death and as a consequence, the BDA was bound to consider the case of the appellant for appointment on compassionate grounds. In other words, this Court virtually preempted the move of the BDA to non suit the appellant and passed an order having regard to the fact that the claim was for an appointment on compassionate basis and this Court did not want the appellant to suffer the travails of an endless litigation.

24. As far as argument regarding the award of the Labour Court becoming enforceable only on its publication is concerned, it is to be noticed that every award passed by the Labour Court is required to be published in the manner prescribed within a period of thirty days from the date of its receipt by the appropriate Government under Section 17 of the Act.

25. Section 17A of the Act deals with the commencement of the award. It stipulates that an award becomes enforceable on the expiry of thirty days from the date of its publication under Section 17 of the Act. The said Section is, however, subject to a proviso that the Government can decide not to notify the award if it is of the opinion that it is inexpedient on public grounds affecting national economy or social justice. Thus, on a conjoint reading of Section 17 and Section 17A of the Act, it is clear that the requirement of publication of an award and for commencement of the award are only to ensure that the appropriate Government can examine

the award and decide whether it in any way affects the national economy or social justice, by the notification of the award. In our view, this discretion available to the Government cannot enure to the benefit of the employer. The employer is bound by the award that has been passed by the Labour Court on a reference by the State Government.

26. The intent behind these provisions is clear and it is that since the State Government referred the dispute, the statute prescribes that pursuant to the award passed by the Labour Court, the award passed would have to be examined and scrutinized by the Government to see whether Government's interests are affected. According to us, the provisions do not in any way create a right in favour of the employer so as to stall or keep the award in abeyance. It is, therefore, clear that the employer does not get any benefit from the delay in notification of the award.

27. In the instant case, the fact remains that the State did not notify the award and it therefore did not exercise the option available to it to prevent the notification of the award, obviously because the interests of the State were not affected by it.

28. In this case, though on notification of the award, the terms of the award became enforceable, on the passing of the award, the order of dismissal was set aside and since the workman was granted continuity of service, the relationship of employer and employee stood restored from the date of dismissal itself. Thus, the appellant's father would be deemed to have been in service on the date of the award itself, especially when the award was in fact notified by the Government. The argument of the BDA regarding notification of the award is, therefore, devoid of merit and the same is rejected.

29. In our view, the order passed in W.P.No.38608/2017 laid at rest the contention advanced

by the BDA that the appellant was not entitled for being appointed on compassionate grounds because his father was not in service cannot be accepted. The BDA having accepted both the award of the Labour Court as well as the order of the Learned Single Judge in the earlier writ petition, cannot thereafter be permitted to put forth the very same reason it had put forth earlier to reject the claim of the appellant. In our view, the entire approach of the BDA in considering the matter is arbitrary and irrational. Once the order of dismissal was set aside and Prakash was directed to be reinstated with full back wages and also continuity of service, in law, Prakash is deemed to have been in service till he passed away. The notification of an award is essentially a ministerial act to allow for its enforcement and the delay in notifying the award would have no bearing to fact that the relationship on employer and employee stood restored under the Award.

30. The reasoning of the learned Single Judge that the appellant's family had received a huge sum of money as terminal benefits and therefore, they were not in distress cannot be accepted. It is to be stated here that Prakash had been dismissed from service and the Labour Court, after enquiry, found that the domestic enquiry was illegal and it therefore awarded full backwages. The family of the appellant thus by virtue of an award of the Labour Court was recipient of money which was due to them due to an illegal act committed by the BDA and this receipt of money awarded to them as a consequence of an illegal act could not be used against them for refusing any rights that they possessed for appointment on compassionate ground.

31. It is to be noticed here that had Prakash not been dismissed from service, he would have continued in service and since he would have thereby died while in service, the entitlement of the appellant could not be denied.

32. The learned Single Judge while dismissing the writ petition has relied upon the judgments of the Apex Court in the case of ***Haryana State Electricity Board Vs. Hakim Singh - (1997) 8 SCC 85*** and ***State of Himachala Pradesh Vs. Shashikumar - (2019) 3 SCC 653***.

33. The Apex Court, in the case of ***State of Himachala Pradesh Vs. Shashikumar*** referred to supra, has stated as follows at paragraph 18 of the judgment.

"The terms on which such applications would be considered are subject to the policy which is framed by the State and must fulfil the terms of the policy. In that sense, it is a well-settled principle of law that there is no right to compassionate appointment. But, where there is a policy, a dependent member of the family of a deceased employee is entitled to apply for compassionate appointment and to seek consideration of the application in accordance with the terms and conditions which are prescribed by the State."

(underlining by us)

34. As could be seen from the said observation, though there is no right to seek for compassionate appointment

by the dependants of a deceased employee, however, whenever the employer frames a policy for compassionate appointment, the dependent member of a family would have a right to apply for and seek for compassionate appointment.

35. Admittedly, in the instant case, the BDA does not dispute that it does not have a policy for compassionate appointment and it is not the case of the BDA that their policy disentitles a dependant of a deceased employee if monetary benefits are received by the family of the deceased. So long as the BDA has a policy with regard to compassionate appointment and has rules in this regard, the right of the dependants of a deceased to seek for compassionate appointment under the policy and rules cannot be negated by the BDA on the premise that the family of the deceased were recipients of certain financial benefits on account of the death of an employee.

36. We would like to reiterate that the receipt of any terminal benefits cannot and should not be the yardstick to disentitle a dependent member of the family to seek for appointment on compassionate grounds and so long as there is a policy in force regarding compassionate appointment in force, the case of the dependants would have to be considered in accordance with the Rules notwithstanding the receipt of any financial benefit that the family of the deceased had received from the employer.

37. It is to be borne in mind that the employer while framing a policy for providing appointment on compassionate ground, would be conscious of the fact that the dependants of a deceased would receive financial benefits and the employer had framed a policy only because it would be well aware that mere receipt of financial benefits would not by itself ameliorate the condition of the family of the deceased and the family of the deceased would be able to tide over the crisis only if

one of the dependants was provided employment. It is precisely for this reason that the policy for providing compassionate appointment does not disentitle a dependant from seeking for compassionate appointment merely because the family is recipient of certain financial benefits due to the death of the employee.

38. At the cost of repetition, it is to be stated here that it was not the case of the BDA that their policy did not disentitle a dependant of a deceased to seek for compassionate appointment if the family had received financial benefits and hence it is not open for the BDA to contend that the petitioner was disentitled on that ground, which the BDA, as a matter of fact did not put forth as a reason for denying the consideration of the case of the appellant.

39. We are, therefore, not inclined to accept the reasoning of the learned Single Judge and we are, therefore, of the view that the learned Single Judge

erred in dismissing the writ petition solely on the ground that the appellant's family had received a huge sum of money as terminal benefits.

40. In the result, the appeal is allowed. The impugned order is set aside.

41. The respondent/BDA is directed to issue an order of appointment on compassionate ground to the appellant, if there is no other legal impediment in doing so. The said exercise shall be carried out within a period of four weeks from the date of receipt of a certified copy of this judgment.

Parties to bear their respective costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

PKS