

WEST BENGAL STATE ELECTRICITY BOARD AND ORS.

v.

SAMIR K. SARKAR

SEPTEMBER 17, 1999

[G.B. PATTANAİK AND UMESH C. BANERJEE, JJ.]

Service Law:

Appointment on compassionate grounds—West Bengal State Electricity Board Office order 15.3.1993—Providing for grounds on which appointment can be claimed, but putting embargo on appointment in certain cases if ground arose within two years from scheduled date of superannuation of the employee—Held, embargo is valid—Office order cannot be said to be discriminatory—Constitution of India—Article 14.

The respondent, on the death of his father, who was an employee under the appellant - Electricity Board, applied for appointment on compassionate ground. The Board rejected the application on the ground that since the employee died within two years of his scheduled date of superannuation, the respondent was not entitled to appointment. The Board relied on an office order dated 15.3.1993 regarding appointment on compassionate grounds. The said office order provided for consideration for employment of dependant of (i) employees whose death was caused due to accident arising out of and in the course of employment, (ii) employees rendered totally disabled due to an accident arising out of and in the course of employment; (iii) employees dying in harness; (iv) employees reported missing and (v) employees declared lunatic. It was further provided in Clause (a) that where the death under clause (iii) or incident under clause (iv) or declaration under clause (v) took place within two years from scheduled date of superannuation, any case for employment would not be considered. The writ petition filed by the respondent was dismissed by Single Judge of the High Court. But the Division Bench held that disentitling appointment on compassionate ground only in respect of clauses (iii) to (v) and not in case of clauses (i) and (ii) was discriminatory and violative of Article 14 of the Constitution, and directed consideration of the case of respondent for appointment. Aggrieved, the Board filed the present appeal.

Allowing the appeal, the Court

A HELD : 1. The embargo contained in clause (a) of West Bengal State Electricity Board Office Order dated 15.3.1993 is valid. The High Court erred in holding that the embargo was violative of Article 14 of the Constitution. [678-F]

B 1.2. Clauses (i), (ii) of the Office Order deal with death arising out of and in the course of employment or total disablement arising out of and in the course of employment whereas clauses (iii) and (iv) have no relationship with the employment. In that view of the matter, there is a reasonable classification and consequently the embargo that no employment would be considered when criteria under clauses (iii), (iv) and (v) are satisfied, if such criteria happen to be within two years from the scheduled date of retirement on superannuation, cannot be held to be discriminatory. [678-E]

C 1.3. Admittedly, the death of the father of the respondent occurred within two years preceding the date of superannuation, and, therefore, the respondent will not be entitled to compassionate appointment under the office order dated 15th March, 1993. [678-D]

D CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5343 of 1999.

E From the Judgment and Order dated 30.6.98 of the Calcutta High Court in M.A.T. No. 4271 of 1997.

V.R. Reddy, H.K. Puri, S.K. Puri, Rajesh Srivastava and Ujjwal Banerjee for the Appellants.

The Judgment of the Court was delivered by

F PATTANAIK, J. Leave granted.

G The West Bengal State Electricity Board has come in appeal against the judgment of the Division Bench of the Calcutta High Court dated 30th June 1998 in M.A.T. No. 4271 of 1997 whereunder the High Court has directed the appellants to consider the case of the private respondent for appointment on compassionate grounds. The father of the said respondent, Samir Kumar Sarkar was an employee under the State Electricity Board and he died on 29th November 1996 at the age of 56 years 10 months and 15 days, which was within two years from the scheduled date of his retirement on superannuation. When the respondent applied for an employment on compassionate ground, H the Board rejected his prayer on the ground that under the Rules in question

dealing with compassionate appointments, no appointment can be given if the employee dies within two years from the scheduled date of retirement on superannuation. The respondent, therefore, filed a writ petition and the learned Single Judge, in view of the Rules, dismissed the same. The respondent went in appeal in the High Court. The Division Bench of the High Court came to the conclusion that provision disentitling appointment on compassionate ground if the employee dies within two years from the date of superannuation only in respect of clauses (iii), (iv) and (v) and not in case of clauses (i) and (ii) is discriminatory and violative of Article 14. Therefore, the High Court quashed that part of the order and directed consideration of the case of respondent for compassionate appointment. It is not disputed that the death of the father of the respondent was on account of illness and it was within two years from the date of superannuation.

Mr. V.R. Reddy, learned senior counsel appearing for the appellants contended that the concept of compassionate appointment is itself a discretionary one. There is no statutory rule governing such appointments, conferring an enforceable right on the LRs of the deceased employee. The idea to give such compassionate appointment is that the children of the employee who dies in harness may not be destitute on the road and can have a decent living. To achieve that objective, several guidelines/criteria are fixed. The reason why the embargo in question does not apply to clauses (i) and (ii) but applies to clauses (iii), (iv) and (v) is for an avowed purpose inasmuch as in clause (i) and (ii), the death having occurred due to accident arising out of and in course of employment and total disablement due to accident in course of employment whereas under clauses (iii), (iv) and (v), the death is not in any way connected with the employment and, therefore, there is a reasonable basis for the classification in question and the High Court was not justified in coming to the conclusion that such classification is discriminatory. In order to appreciate the contention raised by Mr. V.R. Reddy, learned senior counsel for the appellants, the relevant office order is quoted herein below in extenso:

“The Board is pleased to make provision for consideration for employment of a dependent of deceased employee in the following circumstances and subject to condition as mentioned hereunder:

- (i) In case of death of an employee due to accident arising out of and in course of employment;
- (ii) Employees rendered totally disabled due to an accident arising out of and in course of employment;

- A (iii) Employees dying in harness;
- (iv) Employees reported missing subject to observance of formalities as prescribed by the Board;
- (v) Employees declared lunatic by appropriate authority.

B No employment would however, be considered in the following circumstances:

- C (a) Where the death under (iii) above or the incident under (iv) or the declaration under (v) above takes place in the proceeding two years from the scheduled date of retirement on superannuation of the concerned employees.
- (b) Where a dependent of the deceased, affected employee is already in employment of the Board irrespective of the date of securing such employment.”

D An analysis of the different clauses providing for compassionate appointment in case of death of the employee would indicate that clauses (i), (ii) deal with death arising out of and in course of employment or total disablement arising out of and in course of employment whereas clauses (iii) and (iv) have no relationship with the employment in question. In that view of the matter, we find sufficient force in contention of Mr. V.R. Reddy, learned senior counsel appearing for the appellants that there is a reasonable classification and consequently the embargo that no employment would be considered when criteria under clauses (iii), (iv) and (v) are satisfied, if such criteria happens to be within two years from the scheduled date of retirement on superannuation, cannot be held to be discriminatory. The High Court, therefore, was totally in error to hold that the embargo is violative of Article 14 of the Constitution. We, accordingly, set aside the said conclusion of the High Court and hold that the embargo contained in clause (a) is valid. On the admitted position that the death of the father of the respondent occurred on 29th November 1996 which is within two years preceding the date of superannuation, the respondent will not be entitled to a compassionate appointment under the office order dated 15th March 1993 which deals with the criteria for such appointment. We, therefore, set aside the impugned judgment of the Calcutta High Court and allow this appeal. But as there is no appearance on behalf of the respondent, there will be no order as to costs.