

THE RAJASTHAN STATE ROAD
TRANSPORT CORPORATION AND OTHERS

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v.

REVAT SINGH

(Civil Appeal No.2061 of 2015)

FEBRUARY 20, 2015

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[DIPAK MISRA AND PRAFULLA C. PANT, JJ.]

Service law – Compassionate appointment – Grant of, when candidate ineligible for the post – On facts, father employed as driver with the appellant-State Road Transport Corporation, died in harness – Son-respondent sought compassionate appointment on the post of driver but his application was rejected since he did not qualify for the post – However, the High Court directed the appellant to consider his case against the post of driver on compassionate ground – Held: Court and tribunals do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof – Thus, order passed by the High Court is set aside as the respondent was not qualified for the post.

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I.G.[Karmik] and others vs. Prahalad Mani Tripathi 2007 (5) SCR 978 : (2007) 6 SCC 162; Steel Authority of India Limited v. Madhusudan Das 2008 (14) SCR 824 : (2008) 15 SCC 560; State of Gujarat v. Arvindkumar T. Tiwari 2012 (7) SCR 1072: (2012) 9 SCC 545 – referred to.

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Case Law Reference

2007 (5) SCR 978 **Referred to.** **Para 8**

2008 (14) SCR 824 **Referred to.** **Para 9**

2012 (7) SCR 1072 **Referred to.** **Para 9**

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A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2061 of 2015

From the Judgment and Order dated 01.05.2014 of the High Court of Judicature for Rajasthan at Jodhpur in D. B. Civil Special Appeal (W) No. 428 of 2014

B S. K. Bhattacharya, Niraj Bobby Paonam for the Appellants.

Varinder Kumar Sharma for the Respondent.

C The Judgment of the Court was delivered by

PRAFULLA C. PANT, J. 1. This appeal is directed against judgment and order dated 1.5.2014, passed by the High Court of Judicature for Rajasthan, in D.B. Civil Special Appeal (W) No. 428 of 2014 whereby the Division Bench declined to interfere with the order passed by learned Single Judge.

2. We have heard learned counsel for the parties, and perused the record.

E 3. Brief facts of the case are that one Kalyan Singh father of the respondent Revat Singh was a driver with appellant Rajasthan State Road Transport Corporation (hereinafter referred to as the "Corporation"). He died in harness on F 26.6.2006. The respondent sought compassionate appointment on the post of driver. His educational qualification was 8th standard pass. The appellants considered the application for appointment on compassionate ground, and rejected the same on the ground that the respondent was not G qualified either for the post of driver or that of conductor. The respondent was accordingly communicated by the appellants vide letter dated 18.1.2008. The respondent made further correspondence in the matter after obtaining driving licence on 23.1.2007. However, said licence was not for heavy H vehicles. When the appellants did not accept request for

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appointment against the post of driver, the respondent filed writ petition no. 1892 of 2011 which was allowed by the learned Single Judge vide order dated 29.1.2014, directing the appellant to consider case of the respondent for the post of driver. A

4. Aggrieved by the order of the learned Single Judge, the appellant filed intra court appeal, but the same was disposed of by the Division Bench of the High Court vide impugned order dated 1.5.2014 declining to interfere with the order of learned Single Judge, and observed that the said order advances the cause of justice considering the hardship faced by the family of deceased employee. However, it was further observed by the Division Bench that the order would be treated to have been passed in the special facts and circumstances of the case. B C D

5. Learned counsel for the appellant – Rajasthan State Road Corporation - submitted before this Court that the High Court has erred in law in directing the appellant to consider the case of respondent for appointment against the post of driver on the compassionate ground. It is specifically pointed out that the respondent is not qualified for the post of driver as he is neither matriculate nor possessed driving licence for heavy vehicles. E

6. Shri Virender Kumar Sharma, learned counsel for the respondent, did not deny that the respondent was only 8th standard pass, and the driving licence obtained in the year 2007, was in respect of light vehicles. F

7. During arguments, we are informed by learned counsel for the appellant–Corporation that respondent has now been offered and engaged as Artisan Grade III. On behalf of the respondent, it is pleaded that the respondent be engaged at least against post of Artisan Grade II. However, there is nothing on the record to show that such post is lying vacant nor is it G H

A clear that a person can be directly appointed to the post of Artisan Grade II.

B 8. In **I.G.(Karmik) and others vs. Prahalad Mani Tripathi (2007) 6 SCC 162**, this Court has held that compassionate appointment can not be granted to a post for which the candidate is ineligible. It is further held in said case that even though higher post was applied for on compassionate ground, when a lower post offered considering qualification and eligibility as per rules was accepted by the candidate, he cannot claim higher post.

C 9. In **Steel Authority of India Limited v. Madhusudan Das, (2008) 15 SCC 560**, this Court has clarified the law relating to compassionate appointments in following words:

D “15. This Court in a large number of decisions has held that the appointment on compassionate ground cannot be claimed as a matter of right. It must be provided for in the rules. The criteria laid down therefor viz. that the death of the sole bread earner of the family, must be established. It is meant to provide for a minimum relief. When such contentions are raised, the constitutional philosophy of equality behind making such a scheme be taken into consideration. Articles 14 and 16 of the Constitution of India mandate that all eligible candidates should be considered for appointment in the posts which have fallen vacant. Appointment on compassionate ground offered to a dependant of a deceased employee is an exception to the said rule. It is a concession, not a right. (See *SBI v. Anju Jain, (2008) 8 SCC 475 para 33.*)”

H 10. In **State of Gujarat v. Arvindkumar T. Tiwari, (2012) 9 SCC 545**, this Court while examining the law in the matters of compassionate appointment, has made following observations:

“11. The courts and tribunals do not have the power to issue direction to make appointment by way of granting relaxation of eligibility or in contravention thereof. In State of M.P. v. Dharam Bir (1998) 6 SCC 165, this Court while dealing with a similar issue rejected the plea of humanitarian grounds and held as under: (SCC p. 175, para 31)

“31. ... The courts as also the tribunals have no power to override the mandatory provisions of the Rules on sympathetic consideration that a person, though not possessing the essential educational qualifications, should be allowed to continue on the post merely on the basis of his experience. Such an order would amount to altering or amending the statutory provisions made by the Government under Article 309 of the Constitution.”

“12. Fixing eligibility for a particular post or even for admission to a course falls within the exclusive domain of the legislature/executive and cannot be the subject-matter of judicial review, unless found to be arbitrary, unreasonable or has been fixed without keeping in mind the nature of service, for which appointments are to be made, or has no rational nexus with the object(s) sought to be achieved by the statute. Such eligibility can be changed even for the purpose of promotion, unilaterally and the person seeking such promotion cannot raise the grievance that he should be governed only by the rules existing, when he joined service. In the matter of appointments, the authority concerned has unfettered powers so far as the procedural aspects are concerned, but it must meet the requirement of eligibility, etc. The court should

A therefore, refrain from interfering, unless the appointments so made, or the rejection of a candidature is found to have been done at the cost of “fair play”, “good conscience” and “equity”. (Vide *State of J&K v. Shiv Ram Sharma* (1999) 3 SCC 653 and *Praveen Singh v. State of Punjab* (2000) 8 SCC 633.)”

C 11. Therefore, in view of the law laid down by this Court as above, we are of the opinion that since the respondent was not qualified for the post of driver, as such the High Court erred in law in directing the appellant to consider his case against the post of driver of heavy vehicle.

D 12. Therefore in the above circumstances, this appeal deserves to be allowed as the respondent is not qualified for the post of driver. Accordingly, the appeal is allowed. However, the respondent shall be allowed to work on the post of Artisan Grade III as offered to him. No order as to cost.

Nidhi Jain

Appeal allowed.