Before S.S. Nijjar & M.M. AGGARWAL, JJ.

BHUPINDER SINGH,—*Petitioner*

versus

STATE OF HARYANA AND OTHERS,—*Respondents*

C.W.P. No. 4712 of 2005

24th March, 2005

Constitution of India, 1950—Art. 226—Father of petitioner died while in service—Petitioner being dependent son applying for a job on compassionate grounds—Mother of petitioner working on the post of JBT teacher at the time when he made application for appointment—Rejection of case of petitioner for compassionate appointment upto the level of Chief Secretary—After about 5 years Establishment Officer to give undue benefit to petitioner, at his own level appointing him on the post of Clerk without the approval of the competent authority—Appointment of petitioner contrary to the instructions dated 8th May, 1995 and 20th August, 1996—Termination of services of petitioner after giving him a show cause notice—Action of respondents is neither arbitrary nor unreasonable—Petitioner not entitled to any relief as no legal right has been infringed—Petition dismissed.

Held, that any appointment which is made contrary to statutory service rules, is void-ab-*initio*. No legal right of the petitioner would be infringed, if the mistake is subsequently corrected. The petitioner had been issued a show cause notice. He has been permitted to give an explanation. From a perusal of the order passed by the Engineer-in-Chief, it becomes apparent that the petitioner was unduly favoured.Even under the policy decision, an appointment on compassionate grounds could not be offered to those dependents whose family income is more than Rs. 2,500 per month. Admittedly, the mother of the petitioner was drawing a salary of Rs. 3,468 per month on the post of JBT teacher at the time when the petitioner made the application for appointment. The application of the petitioner was in fact rightly rejected by the respondents on 7th March, 1996 on the ground that the income of the family of the deceased was more than Rs. 2,500 per month. Subsequently, the matter was got referred to

the Chief Secretary to Government of Haryana. Even the Chief Secretary opined that according to Government instructions dated 22nd August, 1996 the dependent of the deceased government employee will not be entitled to employment on compassionate grounds, in case one parent is alive and is in government service. Inspite of the aforesaid advice of the Chief Secretary, the appointment of the petitioner was approved by the Establishment Officer at his own level. In other words, the appointment was even without the approval of the competent authority i.e. Engineer-in-Chief. It was also in contravention of the Government instructions dated 8th May, 1995 and 20th August, 1996. The appointment had been granted to the petitioner in contravention of rules/instructions in connivance with the dealing official/officer with a *mala fide* intention and ulterior motive to give undue benefit to the petitioner. The approach adopted by the respondents cannot be said to be either arbitrary or unreasonable.

(Para 3)

Jitender Nara, Advocate, for the petitioner.

JUDGMENT

S.S. NIJJAR. J. (Oral)

(1) We have heard the learned counsel for the petitioner at length and perused the paper-book.

(2) The father of the petitioner was working as Accountant Clerk in the irrigation Department of Haryana, when he died on 12th May, 1994. The petitioner being the dependent son of the deceased applied for a job on compassionate ground on 3rd August, 1994. After more than five years, on 15th October, 1999, appointment of the petitioner was approved. He was appointed on the post of Clerk on 18th October, 1999. Since then the petitioner had been working on the post of Clerk, satisfactorily. The petitioner claims that he did not conceal any facts at the time when he sought appointment. On 5th July, 2004, the petitioner was issued a show-cause notice seeking his explanation as to why his services be not terminated as the appointment had not been made under the rules and with the approval of the competent authority i.e. Engineer-in-Chief. The petitioner submitted the reply to the show-cause notice and stated that the application for appointment was submitted on 3rd August, 1994. He did not hide the

fact that his mother was employed as a JBT teacher. His appointment is to be considered by taking into consideration the instructions prevalent at that time. The Department of irrigation kept on shuttling his case for appointment and finally decided to give him the appointment on 15th October, 1999. The department took five years and two months to issue the offer of appointment. If the appointment had been made at the proper time, the controversy with regard to the applicability of the instructions dated 8th May, 1995 would not have arisen. The petitioner also claimed that the approval not being granted by the competent authority, is an internal matter of the department. He should not be punished for the lapse of the department. The petitioner further claimed that he had rendered more than 4-1/2 years service and has now become over-aged. It would not be possible for him to apply for any other Government job. After considering the reply for any other Government have passed an order dated 16th March, 2005. The Engineer-in-Chief had taken into consideration the submissions of the petitioner noted above. It has been observed that the upper-age limit for recruitment to Government service has been raised from 35 to 40 years for the General Category. Therefore, the petitioner cannot claim that he would not be able to apply for any other Government job.

(3) Counsel for the petitioner has vehemently argued that in the absence of any fraud or misrepresentation, the appointment of the petitioner cannot be withdrawn on the ground that his initial appointment was against the policy of the Haryana Government. We are unable to accept the aforesaid submission of the learned counsel. It is a settled proposition of law that any appointment which is made contrary to statutory service rules, is *void-ab-initio*. No legal right of the petitioner would be infringed, if the mistake is subsequently corrected. In the present case, the petitioner had been issued a show-cause notice. He has been permitted to give an explanation. From a perusal of the order passed by the Engineer-in-Chief. It becomes apparent that the petitioner was unduly favoured. Even under the policy decision, an appointment on compassionate grounds could not be offered to those dependents whose family income is more than Rs. 2500 per month. Admittedly, the mother of the petitioner was drawing a salary of Rs. 3468 per month on the post of JBT teacher at the time when the petitioner made the application for appointment. The application of the petitioner was in fact rightly rejected by the

respondents on 7th March, 1996 on the ground that the income of the family of the deceased was more than Rs. 2500 per month. Subsequently, the matter was got referred to the Chief Secretary to Government of Haryana. Even the Chief Secretary opined that according to Government instructions dated 22nd August, 1996, the dependent of the deceased Government employee will not be entitled to employment on compassionate grounds, in case one parent is alive and is in Government service. Inspite of the aforesaid advice of the Chief Secretary, the appointment of the petitioner was approved by the Establishment Officer at his own level. In other words, the appointment was even without the approval of the competent authority i.e. Engineer-in-Chief. It was also in contravention of the Government instructions dated 8th May, 1995 and 20th August, 1996. The appointment had been granted to the petitioner in contravention of rules/instructions in connivance with the dealing official/officer with a *mala fide* intention and ulterior motive to give undue benefit to the petitioner. In our opinion, the approach adopted by the respondents cannot be said to be either arbitrary or unreasonable, especially in view of the law laid down by the Supreme Court in the case of **The District Collector & Chairman Vizianagaram (Social Welfare Residential School Society) Vizianagram and Another** *versus* **M. Tripura Sundari Devi (1).** In the aforesaid case, the Supreme court has observed as under :—

> "4. It has been brought to our notice during the course of the arguments that the original selection was made by mistake on the presumption that the respondent had satisfied the qualifications-recruitments as stated in the advertisement, without scrutinising the certificates copies of which were sent with her application. The selection committee presumed that all those who had applied in response to the advertisement must have had the requisite qualifications needed for the posts. However, the order appointing the respondent had made it clear that the respondent should come alongwith the original certificates. When the respondent approached the appellants with the originals of the certificates which were scrutinised, it was

(1) 1990 (4) S.L.R. 237

found that in fact she was short of the qualifications. It is in these circumstances that she was not allowed to join the services.

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It is at that stage that the mistake was discovered in the present case and the respondent was not permitted to resume her duties. We see nothing wrong in this action.

6. It must further be realised by all concerned that when an advertisement mentions a particular qualification and appointment is made in disregard the same, it is not a matter only between the appointing authority and the appointee concerned. The aggrieved are all those who had similar or even better qualifications than the appointee or appointees but who had not applied for the post because they did not possess the qualifications mentioned in the advertisement. It amounts to a fraud on public to appoint person with inferior qualifications in such circumstances unless it is clearly stated that the qualifications are relaxable. No court should be a party to the perpetuation of the fraudulent practice. We are afraid that the Tribunal lost sight of this fact."

(4) Learned counsel for the petitioner, however, relies on a Division Bench judgment of the Rajasthan High Court in the case of **Shashi Bala** *versus* **State of Rajasthan, (2)** in support of the submission that since the petitioner had put in 4 1/2 years of service, he should now be permitted to continue on the job. In the aforesaid case, the Division Bench dealt with the peculiar situation. The petition had been preferred by a widow. Her husband had died while in Government service. At the time of his death, he had two minor sons. The widow applied for appointment under the Rajasthan Recruitment of Dependents of Government Servants Dying while in Service Rules, 1975, on the post of Class IV. The petitioner was the second wife of the deceased. The first wife had given a "No objection Certificate" to the appointment of the petitioner i.e. the second wife. The first wife

(2) 2001 (3) S.C.T. 408

had received all the payments of her husband relating to State Insurance, Gratuity alongwith other pensionary benefits. The petitioner was appointed on 21st May, 1987. She was again appointed on 4th June, 1987 on the same post, but at a different Industries Centre. She joined on 6th June, 1987 and since then she was continuously working on the post. Respondent No. 3—Director of Industries without issuing any show-cause notice or giving any opportunity of hearing terminated the services of the petitioner. It was this order which was challenged by the petitioner. The writ petition was dismissed by the learned Single Judge, on the ground that the impugned orders were passed, after thorough enquiry. Aggrieved by the aforesaid judgment, the petitioner filed appeal before the Division Bench. Before the Division Bench, it was argued on behalf of the State that it was not necessary to issue any show-cause notice to the appellant as her services had been terminated on the basis of the audit objection raised by the Accountant General, Rajasthan. The objection was that the payment of salary to the appellant was not permissible as she was not the legally wedded wife/widow of the deceased Government servant, as the other widow was alive and was being given pensionary benefits. Taking into consideration the very peculiar facts of the case, it has been observed by the Division Bench that the Head of Department had taken the decision to appoint the appellant, keeping in view the overall interest and welfare of the family members of the deceased government servant. It was not disputed that pursuant to the appointment made in the year 1987, the appellant had actually worked as Class IV employee and had earned her salary. Therefore, it was held that the payment of salary to the appellant for actual services rendered by her cannot be faulted in any manner, that too, by the audit objection of the year 1998-99 and the termination of services of the appellant was also made without affording any opportunity. The Division Bench noticed that it is not the case of the department that the appellant had secured her appointment by concealment of any fact from them. It was also noticed that the definition of "Family" includes the wife and husband, sons and married or widowed daughters and son/daughter adopted according to the provisions of law, who were dependent upon the deceased Government servant. The Division Bench also came to the conclusion that even under the Rules, the appointing authority, after analysing the entire situation, made the

appointment keeping in view the over all interest and welfare of the dependents of the deceased Government servant. It was, therefore, observed as follows :—

> "11..... When the authority competent to make such appointment and also competent to decide about the suitability of the person for giving appointment took decision in favour of the appellant for giving her employment, such decision cannot be questioned after a long lapse of 13 years in the facts and circumstances of the case and since the appointment being of beneficial nature and on compassionate ground the decision of the competent authority cannot now be called in question by the Audit Department which was in deep slumber for 13 years and services of the appellant could not be terminated on the basis of the audit objection."

(5) These observations of the Division Bench would be of no assistance to the petitioner in this case as it has been categorically held by the competent authority that the appointment has been given to the petitioner contrary to the provisions of the policy. The matter would be squarely covered by the ratio of law laid down by the Supreme Court in the case of M. Tripura Sundari Devi *(Supra).*

(6) We are also unable to accept the submission of the learned counsel for the petitioner that a direction ought to be given for relaxation of the upper-age in case of the petitioner, in case he now applies for a Government job. In support of the aforesaid submission, the learned counsel has relied on a judgement of the Supreme Court in the case of **State of Haryana and another** *versus* **Ankur Gupta (3).** In the aforesaid case, the Supreme Court was considering a matter where the respondent had been appointed as a clerk on 12th September, 1997 on compassionate grounds under the die-in-harness scheme. On 18th May, 2001, he was issued a show-cause notice to which, the respondent submitted a reply. However, by order dated 24th September, 2001, the appointment letter dated 12th September, 1997 was cancelled. Aggrieved against the aforesaid order, the respondent filed a writ petition in this Court. The High Court held that though the appointment may not have been in accordance with the policy of compassionate appointment, yet the fact that the respondent (petitioner) had worked

(3) 2003 (4) R.S.J. 332

for four years and was not guilty of any fraud or misrepresentation in seeking appointment under the Scheme, the impugned order dated 24th September, 2001 was not justified. The State of Haryana was in appeal against the aforesaid judgment before the Supreme Court. It was held by the Supreme Court that the appointment admittedly was not permissible in view of the policy which came into force on 22nd August, 1996. The Supreme Court considered the other judgments relating to the factors to be taken into consideration in appointment of an individual on compassionate grounds and held as follows :—

> "10. Looked at from any angle the view of the High Court is indefensible. The judgment of the High Court is, therefore, set aside. But while allowing the State's appeal it cannot be lost sight of that the respondent was in Government service for more than about 4 years. It is stated by learned counsel for the respondent that he has already become over-aged for Government employment. In the peculiar circumstances, in case the respondent applies for a job in the Government within a period of two years and is selected de hors the compassionate appointment scheme, the question of his having crossed the age bar, would not stand on his way and the service rendered by him shall be duly considered. The appeal is allowed, subject to the aforesaid observations. Costs made easy."

(7) These observations are of no avail to the petitioner. The respondents have rejected the plea of the petitioner that he has become over-aged as the petitioner is only 30 years of age. The upper-age for entry into Government service has been raised from 35 to 40 years. It is also not a case of an appointment where the petitioner had not been shown any undue favour. From the facts narrated above, it becomes evident that the petitioner had clearly manipulated the appointment. Given the dishonest conduct, the petitioner cannot possibly be granted any relief, under the equitable and extraordinary jurisdiction of this Court under Articles 226/227 of the Constitution of India. Therefore, it would not be possible to issue any directions with regard to the relaxation of age in favour of the petitioner at any future stage when he may apply for a Government job. We are of the opinion that no legal right of the petitioner has been infringed.

(8) In view of the above, we find no merit in the writ petition and the same is dismissed.

R.N.R.