

CASE NO.:  
Appeal (civil) 429 of 2007

PETITIONER:  
National Institute of Technology & Ors.

RESPONDENT:  
Niraj Kumar Singh

DATE OF JUDGMENT: 02/02/2007

BENCH:  
S.B. Sinha & Markandey Katju

JUDGMENT:  
J U D G M E N T

[Arising out of SLP (C) No. 10221 of 2006]

S.B. SINHA, J :

Leave granted.

This appeal is directed against a judgment and order dated 8.05.2006 and 16.05.2006 passed by a learned Single Judge of the Jharkhand High Court in a proceeding initiated suo motu under Section 12 of the Contempt of Courts Act, 1971.

One Shri B.P. Sinha was a Senior Storekeeper working with the Appellant \026 Institute. He died leaving behind his widow one Smt. Vidhya Devi on 17.06.1986. Allegedly, she made an application for an appointment of the respondent herein on compassionate ground. It was claimed that he was the grandson of the said late Shri B.P. Sinha. He was appointed on daily wages on 14.02.1987 and his services were extended from time to time.

After a gap of about 15 years, i.e., on 16.04.2001, the respondent made an application for his appointment on compassionate ground on a regular basis. Affidavits were allegedly filed by the said Vidhya Devi in support thereof; pursuant where to and in furtherance where of, the respondent was given an appointment in the post of a Chowkidar, i.e., in Class IV grade on temporary basis. On 14.12.2001, the said Vidhya Devi sought for appointment of her son Ashutosh Kumar while claiming so she also requested for cancellation of the respondent's appointment. As her request was not acceded to, she filed a writ petition in the High Court of Jharkhand which by reason of a judgment and order dated 10.01.2002 was dismissed holding:

"4. From the entire facts stated in the counter affidavit which is supported by documents, it is prima facie, clear that the petitioner has made false statements in paras 8 and 9 of the writ application. This is very serious matter. If the contention of the respondents made in the counter affidavit is conclusively proved, then the petitioner shall be liable to be prosecuted and punished in accordance with law.

5. So far the claim of the petitioner for appointment of her son, Asutosh Kumar on compassionate ground is concerned, the same is misconceived. Admittedly, petitioner's son was born in 1985 and the husband of the petitioner died in 1986. In other words, in 1986 when the petitioner's husband died, her son was a minor aged one year three months. After attaining majority i.e. after 18

years, no appointment can be given to the petitioner's son on compassionate ground. So far that relief is concerned, the writ application is dismissed.

6. Before parting with the order I must observe that the respondent \026 RIT would be at liberty to proceed against such persons who have made false representation and filed affidavit."

A Letters Patent Appeal was preferred thereagainst was also dismissed by a Division Bench of the said High Court by an order dated 11.07.2002.

In a separate writ petition, one Mithilesh Kumar sought for appointment on compassionate ground inter alia on the premise that his father, who was in service of the Institute and died in harness on 5.01.1988; wherein a learned Single Judge of the said High Court while dismissing the same on the ground that a long time has elapsed from the date of death of his father observed:

"If one or other person have been given appointment after long delay say after about 12 years of the death in recent past, within last one year or some person has been illegally appointed giving wrong information, petitioner may bring the same to the notice of the Principal, R.I.T. Jamshedpur, who will take care. In such case, if any illegality is found in the matter of appointment, the authority after notice to the concerned party, may pass an appropriate order."

The Principal of the Appellant \026 Institute received a letter from the said Mithilesh Kumar wherein it was alleged that several persons had been granted appointment after a long delay of about 10 years. The name of the respondent herein also figured therein. It was requested:

"I, therefore, request you to kindly look into the matter carefully and take necessary steps and pass appropriate order in the matter as directed by the Honourable High Court."

A contempt petition was initiated by the said Mithilesh Kumar alleging that the directions issued by the said learned Judge were not complied with. In the proceeding initiated under the Contempt of Courts Act, notices were issued against the appellant. Cause was shown by it. By an order dated 7.03.2003, the High Court directed:

"In the circumstances, I allow the opposite parties, further six weeks time. The competent authority may issue show cause notice to the illegal appointees and ask them to submit reply why their service being terminated because of illegal appointment on compassionate grounds. Three weeks time may be given to such employees.

On receipt of such reply, they will go through it and find out whether any one of other has been appointed illegally, against the scheme, after such delay or not. One week's time is allowed for such scrutiny. Thereafter, the O.Ps will obtain necessary order from the Board of Governors within one week and issue appropriate order, in accordance with law.

In case, the court's order is not complied within the said period of six weeks, petitioner may bring the same to the notice of the court for initiation of proceeding against the

Director, NIT, Jamshedpur and the members of the Board of Governors."

A notice to show cause thereafter was issued by the appellant, in terms whereof the respondent was asked to show cause as to why his appointment shall not be cancelled. Pursuant thereto cause was shown. The appointment of the respondent thereafter was cancelled by an order dated 1.03.2005 stating:

"We have gone through the contents of your replies and after considering the same as there was no justified reasons submitted by you, your said reply is found to be unsatisfactory. This is not a disciplinary/ departmental proceeding and your request for hearing under commission of enquiries act is not admissible.

In view of the above and in pursuance of the directive of Hon'ble High Court dated 11.03.03 in contempt case (Civil) No. 866 of 2002, we hereby terminate your services from NIT Jamshedpur with immediate effect, that is from the date of issue of this letter."

The order came to be questioned before the High Court. A contempt proceeding was initiated suo motu by a learned Single Judge of the High Court observing:

"10. In spite of the aforesaid facts, respondents on the basis of order passed in contempt case terminated the services of the petitioner by order dated 01.03.2005 without initiating any disciplinary / departmental proceeding although petitioner continued in service for the last 15-16 years. In fact, by terminating the services of the petitioner, the respondents have flouted the judgment passed by the learned Single Judge and affirmed by the Division Bench of this Court.

11. Considering the entire facts narrated herein above, I am of the view that the contention of the respondents in the Counter affidavit filed in this case cannot be appreciated. Prima facie it appears that while passing the order of termination, respondents have in fact ignored the judgment and order passed by the learned Single Judge and affirmed by the Division Bench of this Court.

12. However, before passing appropriate order, I direct respondent no. 2 and 3, namely, Director, National Institute of Technology, Jamshedpur and Registrar, National Institute of Technology, Jamshedpur to appear in person before this Court on 16.05.2006."

It was directed that the contemnors shall appear in person and file show cause, if they so desire. A show cause was filed by them. The Registrar of the Appellant \026 Institute appeared in person. An application was filed by the Director of the Appellant \026 Institute inter alia stating that the order of termination was passed by the then director of the institute, Dr. D. Bhattacharya. In view of the said assertions, the High Court observed:

"Mr. P.K. Prasad, learned counsel appearing for the respondents, on instruction, submitted that Dr. D. Bhattacharya is presently working in I.I.T. Kharagpur. Hence the petitioner is directed to add Dr. Bhattacharya as party respondent.

Considering the averments made in the I.A. petition this

case is adjourned to 29.06.2006 to enable the present Director to file show cause and to reconsider the order of termination of the services of the petitioner and take a decision in the matter. The petitioner shall take steps for service of notice on the present Director both by registered post and courier for which steps must be taken within a week."

The question which arises for consideration is as to whether in a situation of this nature, the High Court was justified in initiating proceedings under the Contempt of Courts Act and that too suo motu.

Admittedly, the appellant is a State within the meaning of Article 12 of the Constitution of India. It, therefore, in the matter of appointment, is under a constitutional obligation to give effect to the constitutional scheme of equality as enshrined under Articles 14 and 16 of the Constitution of India.

Appointment on compassionate ground would be illegal in absence of any scheme providing therefor. Such scheme must be commensurate with the constitutional scheme of equality.

This Court in Punjab Water Supply & Sewerage Board v. Ranjodh Singh & Ors. [2006 (13) SCALE 426], has observed:

"\005The statutory bodies are bound to apply the rules of recruitment laid down under statutory rules. They being 'States' within the meaning of Article 12 of the Constitution of India, are bound to implement the constitutional scheme of equality. Neither the statutory bodies can refuse to fulfil such constitutional duty, nor the State can issue any direction contrary to or inconsistent with the constitutional principles adumbrated under Articles 14 and 16 of the Constitution of India\005"

All public appointments must be in consonance with Article 16 of the Constitution of India. Exceptions carved out therefore are the cases where appointments are to be given to the widow or the dependent children of the employee who died in harness. Such an exception is carved out with a view to see that the family of the deceased employee who has died in harness does not become a destitute. No appointment, therefore, on compassionate ground can be granted to a person other than those for whose benefit the exception has been carved out. Other family members of the deceased employee would not derive any benefit thereunder.

This Court in Auditor General of India and Others v. G. Ananta Rajeswara Rao [(1994) 1 SCC 192] held:

"5. A reading of these various clauses in the Memorandum discloses that the appointment on compassionate grounds would not only be to a son, daughter or widow but also to a near relative which was vague or undefined. A person who dies in harness and whose members of the family need immediate relief of providing appointment to relieve economic distress from the loss of the bread-winner of the family need compassionate treatment. But all possible eventualities have been enumerated to become a rule to avoid regular recruitment. It would appear that these enumerated eventualities would be breeding ground for misuse of appointments on compassionate grounds. Articles 16(3) to 16(5) provided exceptions. Further exception must be on constitutionally valid and permissible grounds.

Therefore, the High Court is right in holding that the appointment on grounds of descent clearly violates Article 16(2) of the Constitution. But, however, it is made clear that if the appointments are confined to the son/ daughter or widow of the deceased government employee who died in harness and who needs immediate appointment on grounds of immediate need of assistance in the event of there being no other earning member in the family to supplement the loss of income from the bread-winner to relieve the economic distress of the members of the family, it is unexceptionable. But in other cases it cannot be a rule to take advantage of the Memorandum to appoint the persons to these posts on the ground of compassion."

In *Yogender Pal Singh v. Union of India* [AIR 1987 SC 1015], this Court held :

"While it may be permissible to appoint a person who is the son of a police officer who dies in service or who is incapacitated while rendering service in the Police Department, a provision which confers a preferential right to appointment on the children or wards or other relatives of the police officers either in service or retired merely because they happen to be the children or wards or other relatives of such police officers would be contrary to Article 16 of the Constitution."

In *Government of Andhra Pradesh, General Administration, Hyderabad and Others v. D. Gopaiah and Others* [2006 (6) ALT 553 (FB)], a Full Bench of the Andhra Pradesh High Court noticing the aforementioned judgment, opined :

"By reason of Articles 14 and 16 of the Constitution of India, great hopes and aspirations were generated in the minds of the people of India that employment shall not be given on descent. Public employment is considered to be public wealth. The economy of the State has taken a tilt from agriculture to public employment and the growth rate of employment has increased to 34%. On a plain reading, Article 16 of the Constitution of India carries no exception."

It was further stated :

"The matter relating to grant of compassionate appointment only in limited situation took its root in public employment. The State and the Central Governments issued several circulars, took various policy decisions and also changed their policy decisions from time to time resulting in spurt in litigation. A close study of the circulars issued by the State as also the pattern of litigations generating therefrom leads us to take judicial notice about -gross abuse of the schemes and inherent lack of safeguards.

Before further adverting to the aforementioned question, we may notice that the petitioners themselves stated that in the State of Andhra Pradesh, no appointment had been made as a ban had been in vogue since 1987. The appointments are being made only on contract basis by way of schemes, which *stricto sensu* violate the recruitment rules and Articles 14 and 16 of the Constitution of India. A lot of employment is generated through the populist scheme of regularisation of services. There are schemes for employment for displaced persons, schemes for taking over the services of the taken over projects, landless persons and so on and so forth. A

person can obtain appointment in terms of aforementioned schemes or on contract basis, on political pressures, on demand of trade unions, as also on the pressures of the Nongovernmental organisations. The long and short of the matter is that unless there is somebody to push his case, an employment cannot ordinarily be obtained by a citizen in terms of Articles 14 and 16 of the Constitution of India. The majority of the population faces the paradox of articulated programmes for obtaining employment.

The schemes for grant of compassionate appointment on medical invalidation, as noticed hereinbefore, had been made wider and wider. The State has for one reason or the other compromised with the basic principles underlying grant of public employment and has deviated from the constitutional norms; sometimes it widened the scope and ambit of grant of appointment on compassionate ground to such an extent that it had to backtrack its steps. The State's policy decision in this regard had never been on firm root. They took different steps at different times depending on the whims and caprice of the concerned officer or acted on pressure of the Employees' Unions.

The law interpreting Articles 14 and 16 of the Constitution of India in this regard has also undergone ups and downs."

The Appellant Institute has made a scheme. The said scheme must be read in conformity of the aforementioned decision of this Court.

The appointment on compassionate ground, thus, could have been offered only to a person who was the widow of the deceased or a dependent child. Admittedly, the son of the deceased Ashutosh Kumar was only one year old at the time of his father's death. He could not, thus, have been given any appointment on compassionate ground. It may be true that Smt. Vidhya Devi filed an application for grant of appointment on compassionate ground in favour of the respondent. But, it now stands admitted that he was not the natural grandson of late Shri B.P. Sinha but was a grandson of his cousin brother. Therefore, he was not entitled for appointment in terms of the scheme of the Institute. The Institute, therefore, committed an illegality in granting him such an appointment. Moreover the purported the appointment on compassionate ground had been given in 2001, i.e., after more than 15 years from the date of death of the said Shri B.P. Sinha.

If the appointment of the respondent was wholly illegal and without jurisdiction and such an appointment had been obtained by practising fraud upon the appellant, the same was a nullity. We are, however, not oblivious of the fact that the same attained finality in view of the fact that the writ petition of the said Vidhya Devi was dismissed. Despite the same, the principles of res judicata shall not apply in a case of this nature. It is well-known that where an order is passed by an authority which lacks inherent jurisdiction, the principles of res judicata would not apply, the same being nullity. [See Chief Justice of A.P. v. L.V.A. Dixitulu, 1979 (2) SCC 34 and Union of India v. Pramod Gupta (D) By LRs. and Ors. (2005) 12 SCC 1]

Moreover, any appointment in violation of the constitutional scheme would also be rendered a nullity. [See Secretary, State of Karnataka & Ors. v. Umadevi & Ors. (2006) 4 SCC 1, Indian Drugs & Pharmaceuticals Ltd. v. Workman, Indian Drugs & Pharmaceuticals Ltd. 2006 (12) SCALE 1, Municipal Corporation, Jabalpur v. Om Prakash Dubey [2006 (13) SCALE 266]. National Fertilizers Ltd. and Ors. v. Somvir Singh (2006) 6 SCALE 101 and Ranjodh Singh (supra)]

The question, therefore, should have been considered by the learned Single Judge having regard to the aforementioned legal position.

We may, furthermore, notice that in the writ petition filed by Mithilesh Kumar, this Court made certain observations. A contempt petition was also filed by him wherein certain directions were issued.

If pursuant to or in furtherance of such a direction of the High Court, albeit in a different proceeding, the Appellant \026 Institute had initiated a proceeding against the respondent and after giving him an opportunity of showing cause terminated his services, it must be held to have acted bona fide. No proceedings under the Contempt of Courts Act should have, therefore, been initiated against the appellants.

Furthermore, the writ petition of the respondent was yet to be heard on merit. Before the writ petition was itself disposed of, in our opinion, the learned Judge should not have initiated a contempt proceeding and particularly when the same had been done (assuming that the same was wrong) to give effect to another order passed by the High Court.

We, therefore, are of the opinion that the impugned judgment cannot be sustained which is set aside accordingly. The appeal is allowed. No costs.