

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

WRIT PETITION NO.9485 OF 2005

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Between:

Pulagam Ratnavathi .. Petitioner

and

The Chairman-cum-Managing Director,

Rashtriya Ispat Nigam Ltd., Visakhapatnam

Steel Plant, Visakhapatnam and another .. Respondents

DATE OF JUDGMENT PRONOUNCEMENT : 13th NOVEMBER, 2015

SUBMITTED FOR APPROVAL:

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THE HON'BLE SRI JUSTICE SANJAY KUMAR

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|--|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgment? | Yes/No |
| 2. Whether copies of the Judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether His Lordship wishes to see the fair copy of the Judgment? | Yes/No |

***THE HON'BLE SRI JUSTICE SANJAY KUMAR**

+ WRIT PETITION NO.9485 OF 2005

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% DATED 13th NOVEMBER, 2015

Pulagam Ratnavathi ...Petitioner

Vs.

\$ The Chairman-cum-Managing Director,

Rashtriya Ispat Nigam Ltd., and another ... Respondents

<Gist:

>Head Note:

! Counsel for Petitioner : Ms. Y.Jhansi and
Sri G. Tuhin Kumar

^Counsel for the Respondents : Sri V. Ravinder Rao

? CASES REFERRED:

1. (2006) 5 SCC 766
2. (1989) 4 SCC 468
3. 1991 Supp. (2) SCC 689
4. (2015) 3 SCC 399
5. (1996) 6 SCC 1
6. 1995 (1) LLJ 378 : 1994 (2) CLR 576 (Mad.)

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION NO.9485 OF 2005

ORDER

This writ petition was filed assailing the action of the Rashtriya Ispat Nigam Limited (RINL), Visakhapatnam, in not considering the petitioner for compassionate appointment to a Class IV post and to set aside the proceedings dated 04.02.2005 issued by the Deputy Chief Personnel Manager, RINL, Visakhapatnam, rejecting her request for such appointment.

This writ petition was dismissed for non-prosecution on 07.08.2015. WPMP No.33286 of 2015 was filed seeking restoration of the writ petition. Accepting the reasons set out in the supporting affidavit, the dismissal order is set aside. The writ petition is restored to file and is taken up for disposal on merits.

The petitioner's husband was a permanent employee of the RINL, Visakhapatnam. He died in a road accident on 22.08.1993 while on his way to attend to his duties. The petitioner thereupon submitted a representation seeking compassionate appointment in the RINL as there was no other earning member in the family. The petitioner claims to have filed representations time and again in this regard and reference was made to the representations dated 17.06.1994, 08.06.1995, 14.06.1996, 06.06.1997, 08.06.1998, 20.06.1999, 15.05.2000, 09.07.2001, 23.06.2002 and 28.05.2003. Owing to the continued inaction of the RINL despite her repeated entreaties, she filed W.P.No.24272 of 2004 before this Court. The said writ petition was disposed of on 31.12.2004 directing the RINL to consider the case of the petitioner and pass appropriate orders thereon within a time frame.

Pursuant to this order, the impugned proceedings dated 04.02.2005 were issued by the Deputy Chief Personnel Manager, RINL, Visakhapatnam, stating that as per the Personnel Policy Circular No.25/90 dated 11.10.1990, the dependent of an employee who meets with a fatal accident arising out of and in the course of employment alone would be entitled to compassionate appointment and as the petitioner's husband met with a fatal road accident while on his way to attend duties, it was not an accident arising out of and in the course of his employment. She was therefore held disentitled to be considered for compassionate employment in terms of the Circular. Aggrieved thereby, she filed the present case.

In its counter affidavit, the RINL, Visakhapatnam, speaking through its Deputy Chief Personnel Manager, stated that a sum of Rs.2,37,960.80 was paid to the petitioner towards provident fund, gratuity, GSLI, death benefit fund and workman's compensation in the year 1993. It was admitted that after the death of her husband, the petitioner submitted representations dated 22.06.1995, 18.06.1996, 06.01.1997, 03.05.1997 and 06.06.1997 and two other undated representations, received on 23.12.1993 and 29.02.2000, seeking employment on compassionate grounds. Reference was again made to the Personnel Policy Circular No.25/90 dated 11.10.1990 and it was stated that as the petitioner's husband did not die in an accident arising out of and in the course of his employment, she was not entitled to compassionate employment. The Personnel Policy Circular No.25/90 dated 11.10.1990 was produced before this Court and is extracted hereunder:

'PERSONNEL POLICY CIRCULAR No.25/90

It is brought to the notice of all concerned that if an employee/trainee meets with a fatal accident arising out of and in the course of his employment in the Plant or Mines, compensation will be paid to the legal heirs as per the provisions of the Workmen's Compensation Act. It is clarified that in the case of a trainee, compensation amount will be payable at the rate of salary which he would have been entitled to on his absorption as a regular employee on completion of training.

In addition to the above, a dependent (wife/husband, son, unmarried daughter) of the deceased employee will also be provided with a suitable employment as per rules taking into account the age, qualification and experience of the dependent.

Therefore, in future, if any such mishap happens, nobody need agitate either for payment of compensation or employment to the dependent of the deceased.

This issues with the approval of the competent authority.'

It is not in dispute that the petitioner was paid compensation in relation to the death of her husband under the Workmen's Compensation Act, 1923. Significantly, as per the above Circular, it is only if an employee meets with a fatal accident arising out of and in the course of employment that such compensation would be paid. Therefore, on the one hand, the RINL paid compensation to the petitioner treating the death of her husband in the fatal accident as one which arose out of and in the course of his employment but when it came to the later part of the Circular, which speaks of providing suitable employment to a dependent of such deceased employee, it conveniently claims that his accident was not one arising out of and in the course of his employment! To compound matters further for the RINL, Ms. Y.Jhansi, learned counsel for the petitioner, placed before this Court the 'Employees' Family Benefit Scheme' of the RINL, which states as follows under Clause 5.1:

'5.1 In case of death/permanent total disablement of the employee while in service, the dependents of such employee will have the following options to choose:

1 a)* Death or Permanent Total Disablement arising out of and in course of employment while on duty/Death or Permanent Disablement arising out of accidents while coming to duty or going back from duty within one hour before or after the end of the shift on normal route of journey between the place of work and normal residence:

** Amended vide PP Circular No,1/99, dated 09.01.99.*

i) One of the dependents (wife/husband, son, unmarried daughter) may opt for employment and he/she may be considered for regular employment to any of the posts mentioned in the Annexure-V depending on age, qualifications, experience, etc.

The dependents who are not otherwise qualified to be inducted at higher intake points may be provided regular employment in S-1 Grade.

OR

ii) The dependent may opt for monthly payment equivalent to last pay (Basic+DA) drawn till the notional date of superannuation of the deceased employee without requiring to deposit with the Company the amount equivalent to Notional Provident Fund & Gratuity.

OR

iii) The dependent may opt for a lumpsum one time amount equivalent to (ii) above at a discount rate of 20% per annum without depositing the amount equivalent to Notional Provident Fund and Gratuity amounts with the Company.'

There is no explanation forthcoming from the RINL as to why the benefit under this scheme, which was introduced long ago, was not extended to the petitioner while examining her entitlement under the Policy Circular No.25/90 dated 11.10.1990.

Compassionate appointment is not a mode of recruitment and it is only a welfare measure aimed at coming to the rescue of the family of the deceased employee, which is left high and dry owing to the sudden death of the breadwinner. Normally, such employment cannot be provided to a dependent of the deceased employee unless the rules or regulations of the organisation permit it. Further, an application for such employment must be made without undue delay and has to be considered within reasonable time, as such employment is intended to meet the sudden crisis and cannot therefore be granted as a matter of course by way of a largesse, irrespective of the financial condition of the deceased employee's family. Courts have further held that such employment is permissible by offering the same to only one of the dependents of the deceased employee and should ordinarily be made to lowest category post. Further, an employer cannot be directed to act contrary to the terms of the policy governing compassionate appointment nor can such appointment be directed *dehors* the policy.

As point out by the Supreme Court in **STATE OF JAMMU & KASHMIR V/s. SAJAD AHMED MIR**, compassionate appointment is an exception to the general rule and should not be taken recourse to unless compelling circumstances demand it. The Supreme Court observed that if in spite of the death of the breadwinner, the family survived and a substantial period is over, there would be no necessity to say 'goodbye' to the normal rule of appointment and to show favour to one, at the cost of the interest of several others, ignoring the mandate of Article 14 of the Constitution. However, in that case the application for compassionate employment was made four

and a half years after the death of the breadwinner and the writ petition was filed three years after rejection of the application for compassionate appointment.

It is also significant to note that in ***SUSHMA GOSAIN V/s. UNION OF INDIA***, the Supreme Court observed that all claims for appointment on compassionate grounds should be considered without delay, as the purpose of providing such appointment is to mitigate the hardship due to the death of the bread earner in the family. The Supreme Court held that it would be improper to keep such cases pending for years. The same principle was reiterated in ***PHOOLWATI (SMT.) V/s. UNION OF INDIA*** and more recently, in ***VIJAYA UKARDA ATHOR (ATHAWALE) V/s. STATE OF MAHARASHTRA***.

The learned counsel for the RINL reiterated the contention that the death of the petitioner's husband in the accident was not in the course of his employment and it cannot be said to arise out of and in the context of such employment.

It is an admitted fact that the petitioner's husband met with the accident while he was on his way to attend to his duties. In ***REGIONAL DIRECTOR, ESI CORPORATION V/s. FRANCIS DE COSTA***, a three Judge Bench of the Supreme Court dealt with a case arising under the Employees' State Insurance Act, 1948. The employee therein was cycling to his place of work and met with an accident one kilometre away from the factory. The question before the Supreme Court was whether the injury sustained by him amounted to an 'employment injury' within the meaning of Section 2(8) of the Employees' State Insurance Act, 1948, entitling him to claim disablement benefit. It was held in the context of the said legal provision that the injury must be of such an extent as could be attributed to an accident or occupational disease arising out of his employment and that a mere road accident while an employee was on his way to the place of employment cannot be said to have its origin in his employment. Such an accident was held not to be reasonably incidental to his employment. However, as stated earlier, this decision was rendered in the context of the specific legal provision.

Per contra, in ***T.N.C.S. CORPORATION LTD. V/s S. POOMALAL***, the Madras High Court held that the death of the employee in a communal clash while on his way to work arose during the course of his employment.

In any event, this issue is not required to be adjudicated presently in the light of the 'Employees' Family Benefit Scheme' floated by the RINL itself, which states that the death of an employee in an accident while coming to duty or going back from duty on the normal route of journey, within an hour before or after the shift, entitles the dependent of such deceased employee to seek compassionate appointment. It is not the case of RINL that the death of the petitioner's husband did not fulfil the aforesaid requirement, as it is admitted that he died while on his way to attend to his duties. *Ergo*, the reason put-forth by the RINL in the impugned proceedings dated 04.02.2005 is clearly untenable.

That apart, the contradiction in its stand in applying the Policy Circular No.25/90 dated 11.10.1990 is manifest as the fatal accident involving the petitioner's husband cannot be said to be one arising out of and in the context of his employment for the purpose of granting him compensation under the Workmen's Compensation Act, 1923, but treated otherwise for providing compassionate appointment to his dependant. The rejection of the petitioner's request under the impugned proceedings is therefore unsustainable on facts and in law.

It is also contended by the learned counsel for the RINL that granting of relief to the petitioner at this late stage would not arise as the petitioner's husband died way back in the year 1993 and the petitioner managed to survive all these years despite the refusal of her request for compassionate employment. However, it is an admitted fact that the petitioner's first representation for such appointment was received way back in December, 1993, just four months after the death of her husband on 22.08.1993. It is also an admitted fact that till this Court directed the RINL to pass appropriate orders on the petitioner's representation; it did not even choose to respond to her repeated appeals for compassionate appointment. Though it is true that compassionate appointment is not a mode of recruitment and is only an exception to the general rule, it would not be open to the employer to deny such appointment on wholly untenable grounds and keep the matter pending for years together by driving the aggrieved dependant of the deceased employee from pillar to post and thereafter take advantage of the said delay and assert before the Court that the dependant would no longer be entitled to compassionate appointment, having survived for long years without it. The employer cannot be permitted to take advantage of its own wrong in denying compassionate appointment at the right time and, if the facts of the case warrant, such appointment can be provided even at a

later point of time. This Court would therefore be entitled to direct such appointment despite the lapse of a long time after the death of the employee.

In the present case, the petitioner filed an affidavit dated 03.10.2015 stating that her husband died leaving her behind along with a daughter, who was aged 10 years at that point of time. She further stated that as on date she is 48 years of age, while her daughter is about 32 years of age. According to her, after the death of her husband, they were unable to make both ends meet; that she did not have any source of income and had only studied up to Class V. She asserted that she could not provide a good education to her daughter and had to put a stop after Class X. The amounts received from the RINL, consequent to the demise of her husband, were stated to have been spent towards the upbringing of her daughter and to provide her basic education. The petitioner further stated that she was doing tailoring work at home, while her daughter was giving tuitions for young children at home. She therefore prayed that employment may be given to her daughter, who still remained unmarried as she could not perform her marriage due to abject poverty and financial distress.

No counter-affidavit has been filed by the RINL rebutting the aforestated averments made by the petitioner.

Viewed thus, it is clear that this is a case where the RINL denied compassionate appointment on wholly untenable grounds, be it in terms of its contradictory actions under the Policy Circular No.25/90 dated 11.10.1990 or in terms of its 'Employees' Family Benefit Scheme'. The only ground put-forth by the RINL in the impugned proceedings dated 04.02.2005 therefore does not stand to reason. Having wrongfully denied the petitioner such appointment pursuant to the order passed by this Court directing consideration of her case, after maintaining a studious silence in the face of her many representations, it is not open to the RINL to take advantage of its own delay and wrongful actions and cite the passage of time as a ground to deny compassionate appointment at this stage. This Court finds that the reasons justifying the exception to the rule by way of a compassionate appointment of a dependant of the deceased employee still continue to hold good in so far as the petitioner is concerned.

The scheme of providing compassionate appointment is a welfare scheme aimed at providing succour to the family of the breadwinner, who is suddenly snatched away by cruel fate. Such a scheme must be implemented by the employer

in the right spirit, but in the present case, the RINL unfortunately did not do so. As the petitioner who was in her 20's at the time she sought compassionate appointment has now attained the age of 48 years and her unmarried daughter is eligible for seeking such appointment under the rules, this is a fit case for the RINL to consider her candidature for such appointment in terms of its 'Employees' Family Benefit Scheme' and the Circular dated 11.10.1990.

The daughter of the petitioner is therefore permitted to make an application in this regard with supporting documents within two weeks from the date of receipt of a copy of this order. Upon receipt of such application, the respondents shall consider the same in accordance with the rules and in the light of the observations made *supra* and take appropriate action in the matter within four weeks thereafter.

The writ petition is allowed to the extent indicated above.

Before parting with the case, it is necessary to note that the RINL has been sued in the name of its officials by designation and not in its own name. However, as this writ petition has been pending on the file of this Court for over a decade, this Court is not inclined to dismiss the writ petition for this purely technical lapse. The Registry is therefore directed to amend the description of the first respondent as under:

'Rashtriya Ispat Nigam Limited, represented by its Chairman and Managing Director, Visakhapatnam Steel Plant, Visakhapatnam' instead of 'The Chairman-cum-Managing Director, Rashtriya Ispat Nigam Limited, Visakhapatnam Steel Plant, Visakhapatnam,' before issuing a copy of this final order.

WPMP No.33286 of 2015 is allowed. Other pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

13th NOVEMBER, 2015

Note: L.R. copy to be marked

B/o PGS