

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 11.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE N.AUTHINATHAN

W.P.No.26819 of 2016
& W.M.P.No.23049 of 2016

- 1.Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
5th Floor, Sanchar Bhavan,
Janapath, New Delhi - 110 001.
 - 2.Chief General Manager,
Bharat Sanchar Nigam Limited,
Chennai Telephones,
89, Millers Road,
Chennai - 600 010.
- ... Petitioners

-vs-

- 1.P.Raghavendran
 - 2.The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.
- ... Respondents

Prayer: Writ Petition has been filed under Article 226 of the Constitution of India, praying for a Writ of Certiorari, calling for the records relating to the order dated 15.04.2016 passed by the second respondent in O.A.No.983 of 2015 and quash the same.

For Petitioners : Mr.Y.Bhuvanesh Kumar
For Respondent No.1 : Mr.P.R.Sathyanarayanan
For Respondent No.2 : Tribunal

O R D E R

[Order of the Court was made by N.AUTHINATHAN, J.]

The petitioners have come up with the present Writ Petition for a Writ of Certiorari, to call for the records of the order 15.04.2016 passed by the second respondent / Central Administrative Tribunal, Madras Bench, in O.A.No.983 of 2015 and to quash the same.

2.The first respondent's father D.Pachaiappan, was a Group-D employee of Chennai Telephones (BSNL). He expired on 15.11.2005, while he was in service. He left behind his wife, a son (first respondent) and a daughter. The first respondent submitted an application dated 27.04.2006 for appointment on compassionate ground. The Chennai Telephones forwarded the said application for consideration to the Corporate Office of BSNL at New Delhi. The High Power Committee of BSNL considered the case of the first respondent and made the following observations:

"The ex-official expired on 15.11.2005 at the age of 48 years, survived by his wife, one son and a daughter. The family pension is Rs.2,710/+ + IDA and other terminal benefits were Rs.21,357/-. The family is living in its own house. The son has applied for CGA, who is already working as electrician. The widow refused to accept the job, if offered to her. Keeping in view the assets, liabilities and overall assessment of the financial condition of the family of the deceased official, the Committee did not consider the family to be living in penury and rejected the request under provisions of the scheme for the purpose."

3.The decision taken by the Corporate Office was intimated to the first respondent through Chennai Telephones, by a letter dated 07.05.2009. As his request for compassionate appointment was rejected, the first respondent submitted an application dated 04.09.2013 for reconsideration. The Chennai Telephones refused to reconsider the case stating that the BSNL Corporate Office has already rejected the case vide letter dated 25.09.2013.

4.Aggrieved by the rejection of his request for reconsideration, the first respondent approached the Central Administrative Tribunal, Madras Bench, by way of O.A.983 of 2015, seeking the following relief: "to call for the records relating to proceedings No.ASR/CGA/1207/2006/15 dated 07.05.2009 which was also confirmed in proceedings No.ASR/CGA/1207/2006/23

dated 25.09.2013 issued by the second respondent and quash the same as arbitrary and illegal and direct the respondents to appoint the applicant in any suitable post in any unit under compassionate grounds."

5.The first respondent claimed that his father left the family in penury. Due to his sudden death, the first respondent could not pursue his studies. His mother is also not keeping good health. The family does not possess any property other than a small flat where the family resides. They have also taken out loan to meet the expenses for the marriage of the daughter of the deceased, who was unmarried at the time of death of the employee. He has unemployed. He does odds job to save the family from starvation.

6.The BSNL by its letter No.273-18/2005-Pers.IV dated 27.06.2007, directed the Circle High Power Committee to consider applications for compassionate appointment as per weightage point system. As per the weightage point system, the assessment criteria for recommendation of the indigent condition of the family by the Circle High Power Committee shall be -(a) Cases with 55 or more NET POINTS, shall be *prima facie* treated as eligible for consideration by Corporate Office High Power Committee for compassionate appointment and (b) Cases with NET POINTS below 55 (i.e.54 or less) shall be treated as non-indigent condition and rejected. The case of the first respondent was also considered as per the weightage point system.

7.In the case at hand, as per the check list prepared by Chennai Telephones, the first respondent secured 56 weightage points. His application was forwarded to BSNL Corporate Office. However, the BSNL High Power Committee rejected the request on the ground that the family is living in their own house and the first respondent was already working as an electrician. It has also taken into account that the family received terminal benefits as Rs.21,357/- with family pension of Rs.2,710/- + IDA. It is said that the High Power Committee examined the case in conformity with the order of the policy scheme dated 09.10.1998 and the weightage point system.

8.In his request for reconsideration dated 04.09.2013, the first respondent would assert that they have taken out loan for the marriage of his sister and they have to repay the same. His mother in her representation supported his case. However, the Chennai Telephones has not chosen to reconsider the request

of the first respondent, on merits and to pass orders, but has rejected the request by merely quoting the earlier rejection. Therefore, we are of the considered view that the request of the first respondent to reconsider his case deserves to be accepted.

9.The writ petitioners followed the policy guidelines on compassionate ground appointment, issued by DOP&T in OM No.14014/6/94-ESTT(D) dated October 9, 1998. However, it introduced the weightage point system on 27.06.2007 to assess the indigent condition of the family of the deceased. The learned for the petitioners put forth a contention that the weightage point system introduced in the year 2007 is only an extension of the guidelines issued by the DOP&T and it cannot be termed as a new scheme. In this connection, he relied on a judgment of a Full Bench of the Kerala High Court in O.P.(CAT) No.458 of 2010 dated 19.01.2015. The Full Bench has observed thus: "the provision for weightage point system has been introduced as a procedure for processing the case of compassionate appointment and it will not affect any substantive right of the applicant since the object is to find out the most eligible person or family having the indigent condition requiring an appointment under the scheme." It has also held that the scheme as on the date of consideration of the application for compassionate appointment will be the relevant one.

10.Subsequent to the said judgment, the Supreme Court in the decision dated 15.05.2015 in *CANARA BANK AND ANOTHER vs. M.MAHESH KUMAR* [(2015) 7 SCC 412], held that the claim for compassionate ground appointment must be considered as per the scheme which was in vogue at the time of death of the employee concerned. It has also been held that administrative or executive order cannot have retrospective effect, so as to take away the right accrued to the dependent of a deceased employee. As per this decision, the first respondent's request for compassionate appointment must be considered strictly in accordance with the governing scheme, which was in force at the time of death of the employee. We are bound by the judgment of the Hon'ble Supreme Court. Following the dictum laid down by the Supreme Court in the said case, the Central Administrative Tribunal directed the writ petitioners to reconsider the case as per the old scheme existed as on the date of death of first respondent's father [15.11.2005]. Therefore, we of the view that the Central Administrative Tribunal is justified in giving the directions as aforesaid.

11.As per the policy guidelines dated 27.06.2007, the family pension left out service of the deceased employee, the terminal benefits received by the family, the availability of

housing facilities to the family, the monthly income and the delay in making the request for appointment on compassionate ground have to be taken into account while assessing the indigent condition of the family. Under clause 16(c) of the scheme dated 09.10.1998, the scheme directs an objective assessment of the financial condition of the family. A balanced and objective assessment of the financial condition of the family has to be made. As per Clause (e) of the Scheme request for compassionate appointment consequent on death of Group-D staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case. In the case at hand, the deceased employee was a Group-D staff.

12. In an identical case, a Division Bench of this Court in W.P.No.25164 of 2013 dated 11.11.2016 has held that the guidelines which came into force in the year 2007 introduced new set of parameters for consideration of the request for appointment on compassionate ground and it would not be appropriate to apply the weightage point system retrospectively. The ruling of the Division Bench will apply on all force to the present case. Therefore, we are unable to agree with the above mentioned views of the Hon'ble Full Bench of the Kerala High Court.

13. In *MGB GRAMIN BANK vs. CHAKRAWARTI SINGH* [(2014) 13 SCC 583], the Supreme Court has held that "Compassionate appointment should be provided immediately to redeem the family in distress and it is improper to keep such a case pending for years." In the case at hand, the application for compassionate appointment was made 27.04.2006. The Chennai Telephones informed the rejection of the claim only on 07.05.2009. Had the BSNL disposed of the application of the first respondent immediately, as per the dictum laid down by the Supreme Court, there would have been no occasion for application of the weightage point system which came into existence in the year 2007.

14. For the reasons supra, we do not find any valid reasons to interfere with the findings of the Central Administrative Tribunal, Madras Bench. The Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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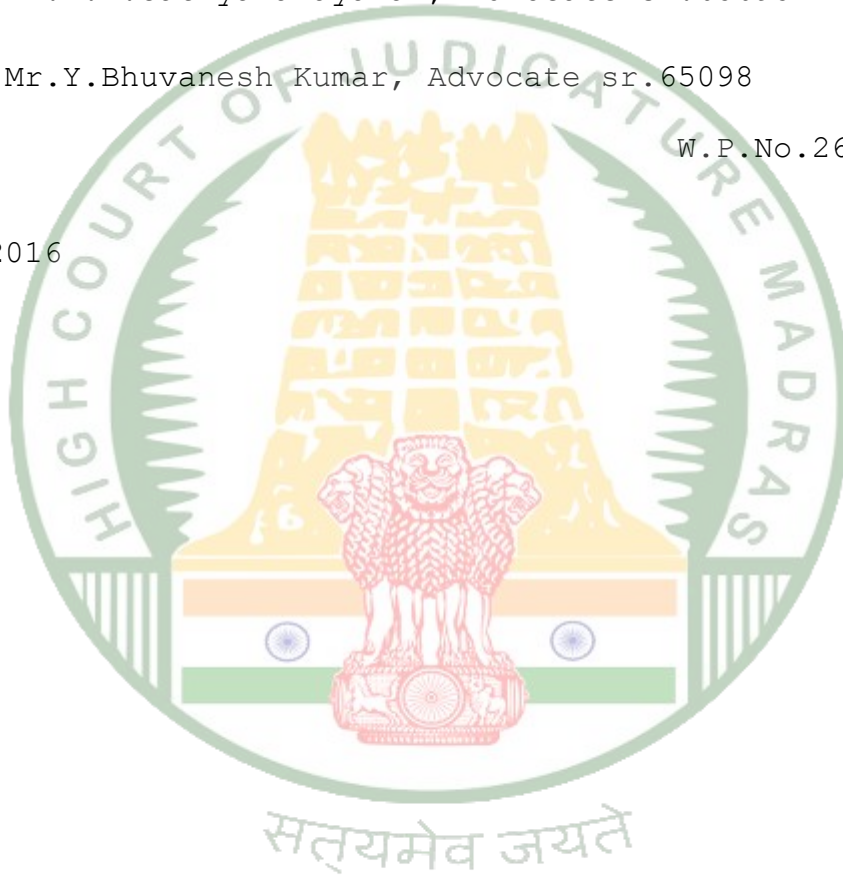
The Registrar,
Central Administrative Tribunal,
Madras Bench, Chennai - 600 104.

+ 1 cc to Mr.P.R.Sathyanarayanan, Advocate sr.65695

+ 1 cc to Mr.Y.Bhuvanesh Kumar, Advocate sr.65098

W.P.No.26819 of 2016

KSJ [CO]
VS 30/12/2016



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