

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.06.2017

CORAM

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
And
THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.35172 of 2016
And
W.M.P.No.30282 of 2016

The Executive Director,
Steel Authority of India Ltd.,
Salem Steel Plant,
Salem - 636 013. ... Petitioner

Vs.

1.The Central Administrative Tribunal
Madras Bench,
rep. by its Registrar,
Additional Civil Courts Building,
Chennai - 600 104.

2.G.Chandrasekaran ... Respondents

Prayer:

Writ petition filed under Article 226 of Constitution of India praying Writ of Certiorari calling for the records of the first respondent resulting in the impugned order passed by the first respondent in O.A.No.1300/2014 dated 05.07.2016 and quash the same.

For Petitioner : Mr.A.Ilango

For Respondents: Mr.C.Prakasam for R2
R1 - Tribunal

O R D E R

(Order of the Court was made by M.DHANDAPANI,J.)

The writ petition has been filed by the petitioner seeking issuance of Writ of Certiorari calling for the records of the first respondent resulting in the impugned order passed by the first respondent in O.A.No.1300 of 2014 dated 05.07.2016 and to quash the same.

2.Heard both sides.

3.The brief facts of the case are as follows: The second respondent is the son of the employee of the petitioner who rendered service as Operator Grade - II in the petitioner Steel Plant and died on 16.02.2011 in an accident. After the accident, the second respondent made a representation to the petitioner for compassionate appointment. Since no order was passed, he was forced to file O.A.No.310 of 2014 before the Central Administrative Tribunal and the Tribunal directed the Authorities to pass orders, within a period of two months from the date of receipt of a copy of the order. In compliance with the orders, the petitioner passed the order dated 07.05.2014, rejecting the request for compassionate appointment. Challenging the said order, the second respondent filed O.A.No.1300 of 2014 before the Central Administrative Tribunal. The Central Administrative Tribunal after elaborate discussion, set aside the impugned order therein and issued a direction to the respondent therein to reconsider the claim of the petitioner therein for compassionate appointment. Challenging the same, this writ petition has been filed.

4.There is no dispute regarding the entitlement of compassionate appointment from the petitioner. The only point arising in this writ petition is whether the second respondent is entitled for compassionate appointment and whether he satisfy Clause 5.2.1 of the guidelines and Paragraphs 3.5.6(1)(d) and 3.5.6(1)(f) of the National Joint Committee for Steel Industry (NJCS) agreement.

5.It is useful to extract hereunder the relevant portions of the Guidelines for dealing with compassionate cases:

"GUIDELINES FOR DEALING WITH COMPASSIONATE
CASES

1.OBJECTIVE:

1.1.To provide relief/benefit to dependent family members of employees in cases of death, permanent total disablement and medical invalidation.

3.COVERAGE:

a)In case of death or permanent total disablement due to accident 'arising out of and in course of employment' as per NJCS agreement.

c)The cases of "death in harness" shall not be covered under the guidelines for dealing with appointment on compassionate cases.

4.DEPENDENTS:

4.1."Dependent Family Member" means:

(a)Spouse; or

- (b) Son; or
- (c) Daughter;

who was / were wholly dependent on the employee at the time of his / her death or separation due to permanent total disablement or separation on medical invalidation as the case may be.

5.RELIEF/BENEFIT:

5.1.1.In the cases of death/permanent total disablement as per NJCS agreement and in medical invalidation cases, the dependent family members/ employees are encouraged to opt for benefits under Employee Family Benefit Schemes. Once an option to avail benefit under EFBS Scheme is exercised, the employee or dependent family members shall not have any claim for compassionate employment.

5.2.1.Compassionate employment will be provided to one of the dependent family members of an employee in case of death or permanent total disablement due to 'accident arising out of and in the course of employment' as per NJCS Agreement.

5.2.2.The requests for compassionate appointment should normally reach the competent authority within three months of date of death/permanent total disablement."

6.It is also useful to extract hereunder the relevant portions of the National Joint Committee for Steel Industry (NJCS) agreement:

"3.5.6.1.The employees covered by this settlement shall continue to be entitled to the benefits admissible under the Workmen's Compensation Act, 1923 as under:

d)Workmen's Compensation benefit will continue to be extended to injury cases causing death or permanent/ temporary disablement arising during journey from residence to place of work and back within one hour of the start or end of his duty hours provided that the accident takes place on the normal route of journey to the place of work.

f)In case of death or permanent total disablement due to accident arising out of and in course of employment, employment to one of his/ her direct dependents will be

provided. However, instead of employment, the dependent may opt for benefits under Employees' Family Benefit Scheme (EFBS)."

7.It is not in dispute that the FIR was given by the second respondent to the Omalur Police Station at about 8.30 a.m. He has stated that his father has met with an accident and has given the time of the accident as approximately 4.30 a.m. In the F.I.R., the second respondent has stated as follows:

'My father was working as Senior Supervisor in Iron and Steel factory he used to travel in bus daily to work on 16.2.2011 morning at about 4 a.m., I dropped him at Sikkananpatti bus stop as usual. My father was standing in the bus stop One Periyasamy from our village came hurriedly to our house and told that your father met with motor accident and died. I and my relatives went to the spot and saw that my father was lying dead in the road with blood injury on his head and hand as he was hit by a vehicle This incident happened at about 4.30 a.m. in the morning on 16.02.2011.'

8.The learned counsel appearing for the petitioner would submit that as per the F.I.R., the time of the accident as given by the second respondent was approximately 4.30.a.m. Hence, the death of the employee is not arising out of and in the course of employment as per the rules of the company and the death has occurred more than one and half hours before the start of the duty hours at 06.00 a.m. The accident took place at Omalur Main Road which is almost 15 kms. from the petitioner company.

9.The learned counsel for the petitioner though admitted the factual position that the accident was at 4.30 a.m., however, he submitted that it was one and half hours before the start of the duty hours at 6.00 a.m. and as per the guidelines, the second respondent is entitled for one hour and since the half an hour is not covered in the guidelines, the second respondent's claim for compassionate appointment was rejected and he prayed for allowing the writ petition.

10.In support of his arguments, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court reported in (2008) 15 SCC 560 (Steel Authority of India Limited Vs. Madhusudan Das and Others) the relevant portions of which reads as follows:

"20.Reverting back to the question as to whether in a case of this nature, it was required to be pleaded and proved that the

death occurred in an accident, we must advert to the meaning of the term accident. This Court in Mackinnon Mackenzie and Co.(P) Ltd. v. Ibrahim Mahmmmed Issak held: (SCC p.611, para 5)

"5.To come within the Act the injury by accident must arise both out of and in the course of employment. The words 'in the course of the employment' mean 'in the course of the work which the workman is employed to do and which is incidental to it'. The words 'arising out of employment' are understood to mean that 'during the course of the employment, injury has resulted from some risk incidental to the duties of the service, which, unless engaged in the duty owing to the master, it is reasonable to believe the workman would not otherwise have suffered'. In other words there must be a causal relationship between the accident and the employment. The expression 'arising out of employment' is again not confined to the mere nature of the employment. The expression applies to employment as such - to its nature, its conditions, its obligations and its incidents. If by reason of any of those factors the workman is brought within the zone of special danger the injury would be one which arises 'out of employment'. To put it differently if the accident had occurred on account of a risk which is an incident of the employment, the claim for compensation must succeed, unless of course the workman has exposed himself to an added peril by his own imprudent act."

.....

22. There are a large number of English and American decisions, some of which have been taken note of in ESI Corpn. In regard to essential ingredients for such finding and the tests attracting the provisions of Section 3 of the Act. The principles are:

(1) There must be a causal connection between the injury and the accident and the accident and the work done in the course of employment.

(2) The onus is upon the applicant to show that it was the work and the resulting strain which contributed to or aggravated the injury.

(3) If the evidence brought on record establishes a greater probability which satisfies a reasonable man that the work contributed to the causing of the personal injury, it would be enough for the workman to succeed, but the same would depend upon the fact of each case.""

11. We are unable to apply the principles laid down in the decision of the Hon'ble Supreme Court reported in (2008) 15 SCC 560 (Steel Authority of India Limited Vs. Madhusudan Das and Others) since in the said case the claim for compassionate appointment is denied based on the Workmen Compensation Act. In the present case, the claim for compassionate appointment is rejected based on the guidelines of the petitioner company. Hence, the judgment relied on by the learned counsel for the petitioner cannot be applied to this case.

12. In the facts and circumstances, it is useful to refer the decision of the Hon'ble Supreme Court reported in (1994) 1 SCC 192 (Auditor General of India Vs. G. Ananta Rajeswara Rao):

"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 breadwinner 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 breadwinner 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."

13.Per contra, the learned counsel for the second respondent would submit that the second respondent on the information from one Periyasamy from his village who came hurriedly and told that his father met with an accident and died, has given the time of the accident as approximately 4.30 a.m. and further submitted that in the F.I.R., the second respondent has categorically stated that his father used to travel in the bus daily for work and he left the house at 4.00 a.m. and he prayed for dismissal of the writ petition.

14.Although the facts of the case is crystal clear that the second respondent's father was in the course of employment and there is no dispute on reading of the F.I.R., that he left the house at 4.00 a.m. to his workplace, the petitioner however, rejected the claim of the second respondent on the basis of the one hour benefit of the start or end of the duty, in the normal route of journey to the place of work as discussed in the earlier paragraph. It is admitted fact that the deceased employee's residence is 15 Kms away from the workspot. It is also admitted fact that the second respondent's father left the house at 4.00 p.m., in order to reach the work spot. Though the petitioner has not extended the benefit given in the guidelines and rejected the claim of the second respondent, we are unable to accept the reason given in the order dated 07.05.2014 rejecting the claim of the second respondent for compassionate appointment. We are inclined to accept the view taken by the Tribunal for remanding the matter for reconsideration.

15.Considering the above said principles laid down by the Hon'ble Supreme Court, we are not inclined to interfere with the order passed by the Tribunal. Accordingly, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

1.The Central Administrative Tribunal
Madras Bench,
rep. by its Registrar,
Additional Civil Courts Building,
Chennai - 600 104.

+2cc to Mr.A.Elango,Advocate sr.45000(2/8/2017)

+1cc to Mr.C.Prakasam,Advocate sr.45427

W.P.No.35172 of 2016 and
W.M.P.No.30282 of 2016

ss(20/7/2017)



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