

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.6112 of 2004

ORDER:

Heard Sri S.Satyam Reddy for petitioner. No representation for respondents.

The petitioner prays for Mandamus declaring order C.O.O.(CGM-IR)Rt.No.318, dated 15-12-2003, directing the 2nd respondent not to consider petitioner's request for employment as arbitrary and illegal and violative of order C.O.O.DS(Per.)Ms.No.239, dated 30-06-2003.

The circumstances relevant for disposing of the writ petition are firstly admitted and secondly are in a narrow compass. Hence, I consider it appropriate to chronologically refer to these circumstances for brevity.

The petitioner claims to be a Tribal woman and wife of one K.Narayana. The husband of petitioner was ITI Diploma Holder and was working as an Apprentice in the Central Power Distribution Company / 1st respondent.

The 1st respondent issued office order C.O.O.DS(Per.)Ms.No.239, dated 30-06-2003 providing for a few benefits to the dependants of the deceased regular employees and non-departmental persons. The husband of the petitioner

comes under the category of 'Non-Departmental Persons' and the clause providing benefits reads thus :-

"Non-Departmental persons :

(A) In case of Fatal accidents to the Non-Departmental persons an amount of Rs.20,000/- in case of adults and Rs.10,000/- in case of children is to be paid to the legal heirs of the deceased who met with Non-Departmental Fatal accident.

(B) Contract Labours who are employed by a contractor in APCPDCL/ Personnel appointed on Contract basis/ Apprentices engaged as per Apprenticeship Act.

In case of Fatal accident to Contract labour who are employed by a contractor in APCPDEC/ Personnel appointed on Contract basis and Apprentice engaged as per Apprenticeship Act an amount of Rs.50,000/- is to be paid to be legal heirs of the deceased and employment is to be provided to one of the dependents of the deceased, subject to fulfilling the following clauses.

(a) In respect of Contract Labour he has worked as Contract Labour in APCPDCL under a Contractor or different Contractors, who has executed the work of the Company duly certified by the Divisional Engineer.

(b) Contract labour covered under the Contract Labour Abolition Act of 1970 irrespective of the fact whether a contractor has obtained license or not and whether the Principal employer has registered under act or not."

The instant office order has been brought into effect from 01-04-2002. On 19-04-2003, while on duty the husband of the petitioner died due to electrocution due to non-functioning of circuit breaker at 33/11 KV SSA Champet. The petitioner applied for employment as well as disbursement of a few other reliefs provided by the respondents in terms of Circular, dated 30-06-2003. While the

matter stood thus, the 1st respondent issued Memo No.CGM(IR)/AS(IR)/PO(IR)/362-J2/2003 dated 10-10-2003 cancelling the Scheme provided for employment to the dependants of deceased Regular Employees or Non-Departmental Persons, which reads as follows :-

“Memo.No.CGM(IR)/AS(IR)/PO(IR)/362-J2/2003 Dt:10-10-2003

Sub:- APCPDCL-Accidents-Departmental/ Non-Departmental Accidents-Corporate, Comprehensive, Compensatory, Compassionate, Considerate, Reimbursery Scheme of 2003 –Cancellation for providing employment –Orders –Issued.

Ref:- 1. C. O. O. DS(Per) Ms. No. 239, dt. 30-06-2003.

2. CMD/ A. P. Transco, Lr. No. GM(IR)/ AS(IR)/ PO(IR)/ 1418/ 2003, Dt. 03-09-2003.

The orders issued in C. O. O. DS(Per) Ms. No. 239, dt. 30.06.2003, in respect of providing employment to dependents of the deceased contract labour who met with fatal accident and who were employed by a Contractor in APCPDCL/ Personnel appointed on contract basis/ Apprentices engaged as per Apprenticeship Act are hereby cancelled in view of administrative exigencies. (emphasis added)

2. The other terms and conditions of the C.O.O. are unaltered.”

The 1st respondent through the order impugned in the writ petition accepted the recommendation of respondents 2 and 3 for payment of financial assistance etc., and declined the proposal for giving employment to petitioner. The 1st respondent further directed the 2nd respondent not to consider the request of the dependant of deceased K.Narayana (ITI Apprentice) for providing employment as per the orders issued in

No.CGM(IR)/AS(IR)/PO(IR)/362-J2/2003 dated 10-10-2003. Hence, the writ petition.

The 2nd respondent filed counter affidavit and admits that the deceased K.Narayana was working under a Contractor as ITI Apprentice Trainee and died on 19-04-2003 due to electrocution. The 2nd respondent for not granting the relief of employment to petitioner relies upon the office order dated 10-10-2003 and the direction issued by the 1st respondent through office order dated 15-12-2003. The 2nd respondent prays for dismissing the writ petition.

From the stand of 2nd respondent, it is clear that at the first instance the case of petitioner for employment as well as granting other benefits was forwarded to the 1st respondent. The request for employment was rejected in view of cancellation of the Scheme through office order dated 10-10-2003 and the further direction issued on 15-12-2003.

I have perused the Corporate, Comprehensive, Compensatory, Compassionate, Considerate, Reimbursery Scheme of 2003 operated by respondents between 01-04-2002 and 10-10-2003. It is not in dispute that the deceased comes under the category of 'Non-Departmental Persons'. The Scheme has been in force with effect from 01-04-2002. The 1st respondent through Memo dated 10-10-2003 cancelled the order dt.30-06-2003. While cancelling the order, nothing has stated about the cases of death

happened in the interregnum and how those cases have to be considered by the respondents.

On the other hand, the expression used in Memo dated 10-10-2003 viz., 'the orders are hereby cancelled'. Therefore, it is relevant for appreciating the legality of impugned order. In Webster dictionary, the meaning of word 'hereby' reads thus:-

“by this or the present declaration, action, document etc., by means of this or as a result of this”.

The plain and literal meaning of these words, can be that the Scheme ceases to be in operation with effect from 10-10-2003. The husband of petitioner died on 19-04-2003 i.e., when the scheme is in operation and when the petitioner has a right for consideration under a Scheme operated by the respondents. The death, if had happened subsequent to 10-10-2003, the respondents are justified in saying the Scheme is not in operation, therefore, the request for employment of a dependant cannot be considered. The respondents in the absence of any further order issued by the 1st respondent on the cases which have arisen in the interregnum i.e., between 01-04-2002 and 10-10-2003, issuing a direction through order dated 15-12-2003 not to consider the request of dependant of deceased K.Narayana III apprentice for employment is arbitrary, illegal and unsustainable. The interpretation and understanding of Memo dated 10-10-2003 by respondents is unsustainable. For the Memo uses the word hereby cancelled, meaning thereby that

through order dated 10-10-2003, the benefits are withdrawn. In other words, Memo dated 10-10-2003, does not in any way affect the benefit conferred on dependants of a deceased during the interregnum. The direction issued in para '4' viz.,

“The Superintending Engineer/ Opn./ Mahabubnagar is directed not to consider the request of the dependent of the deceased Sri K.Narayana (I.T.I.Apprentice) for providing employment as per the orders issued in Memo.No.CGM (IR)/ AS (IR)/ PO(IR)/ 362-J2/ 2003, dated 10-10-2003”

of the office order dated 15-12-2003, for the above reasons, is set aside. Respondents 1 and 2 are directed to consider the case of petitioner for employment subject to petitioner satisfying the conditions stipulated in para '(ii)' of order C.O.O.DS(Per.)Ms.No.239, dated 30-06-2003, within three months from the date of receipt of a copy of this order.

The writ petition is ordered as indicated above. There shall be no order as to costs.

As a sequel, the miscellaneous applications, if any pending, shall stand closed.

S. V. BHATT, J

Date: 06-04-2017

Note:

Issue C.C. in two weeks

(B/o)

Prv



WRIT PETITION No.6112 of 2004

06-04-2017

Prv

