

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.13683 of 2015

ORDER:

When the matter is taken up for hearing, it has been contended by the counsel for the petitioner that the disciplinary authority had imposed a major punishment of removal from service for certain allegations said to have been proved in the enquiry, vide order dated 04.12.2014. thereafter, petitioner had preferred an appeal before the appellate authority and the appellate authority was pleased to consider the appeal and modified the order of removal to that of reversion to office assistant with maximum stage of pay in Office Assistant Cadre vide order dated 09.03.2015.

.....his writ petition is filed seeking a writ of mandamus declaring the action of the respondents in not appointing the 1st petitioner's son, who is the 2nd petitioner herein on compassionate appointment as 1st petitioner worked as coal cutter, GDK No.3 Incline, E.C.No.0813372 to the respondents company for several years, was declared as medically unfit as being illegal, arbitrary and unconstitutional and sought for a consequential direction either to appoint the 2nd petitioner as compassionate appointment or pay the compensation of an amount of Rs.6,00,000/- to the 1st petitioner with interest.

Heard Sri Yellanki Pulla Rao, learned counsel for the petitioners and Sri Nandigama Krishna Rao, learned Standing counsel for the respondents.

It has been contended by the 1st petitioner that he was initially appointed as Badli worker in the respondent company in the year 1975 and was promoted as coal cutter in the year 1977 and his services were confirmed. It is contended by the petitioner

that while he was discharging his duties as coal cutter, his health was badly affected and frequently remained absent. The respondents have construed the said conduct of the petitioner as misconduct and initiated disciplinary proceedings and after detail enquiry, he was removed from service vide order dated 14.10.2004. Petitioner has challenged the removal order before the Industrial Tribunal under Section 2-A(2) of the Industrial Disputes Act and the labour Court, Godavarikhani vide order dated 20.02.2008 was pleased to set aside the orders of removal and directed the respondent authorities to reinstate the petitioner into service subject to medical fitness. Thereafter, the petitioner was subjected to medical fitness and he was declared as unfit for re-employment as coal cutter vide proceedings dated 11.05.2009. The petitioner further submits that in those circumstances, petitioner has submitted a representation to the respondents on 24.01.2014 requesting the respondents to consider the case of the 2nd respondent for appointment on compassionate grounds, as the petitioner was declared as medically unfit or in the alternate to pay an amount of Rs.6,00,000/- as additional monitory benefits in lieu of compassionate appointment. The respondents have considered the case of the petitioners and rejected vide order dated 19.02.2014. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioners contends that the respondents have declared the 1st petitioner as medically unfit and also declined additional monitory benefit, which action of the respondents is illegal, arbitrary and violative of Article 14 and 16 of Constitution of India and contends that appropriate orders be passed in this writ petition directing the respondents to provide employment to the 2nd petitioner who is the son of the 1st petitioner

on compassionate ground or in the alternate direct the respondents to pay an amount of Rs.6,00,000/- in lieu of compassionate appointment to the 2nd petitioner.

Learned Standing counsel for the respondents had contended that the 1st petitioner is removed from service as he was medically unfit and that the reinstatement order could not be given effect to as the removal order would revive. He further contends that the children of an employee removed from service are not entitled for compassionate appointment and contends that there are no merits in the writ petition and the same is liable to be dismissed.

Learned Standing counsel failed to appreciate that the labour Court has set aside the orders of removal. In spite of the same, the respondents have taken a stand that the orders of removal will revive consequent upon on the failure of the petitioner in the medical examination and failed to appreciate that the persons who are medically unfit and who are not in a position to discharge duties, according to respondents policy, they should provide compassionate appointment to the children of such of those employees who are declared as medically unfit or atleast consider the case of the petitioner for grant of compensation in lieu of providing compassionate appointment.

This Court is of the considered view that ends of justice would be met, if the respondents are directed to consider the case of the 2nd petitioner who is the son of the 1st petitioner for appointment on compassionate grounds without being influenced by impugned rejection orders dated 19.02.2014 and pass appropriate orders in another four weeks in accordance with rules.

With these observations, the writ petition is disposed of. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed.

ABHINAND KUMAR SHAVILI, J

28th November, 2018
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