

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

Writ Petition No. 6835 of 2016

Vice President and Managing Director and one another
Vs.
Smt. Chayya Ramesh Umate and one another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. V.G. Wankhede, Advocate for Petitioners
Mr. P.N. Verma, Advocate for Respondents

CORAM : MANISH PITALE, J.

DATED : APRIL 22, 2019

By this writ petition the petitioner Corporation has challenged the Judgment and order dated 18/04/2016, passed by the Industrial Court, whereby the complaint filed by the respondents has been allowed and the petitioner Corporation has been directed to consider the claim of the respondent No.1 for grant of employment on compassionate ground in the light of circulars issued by the petitioner Corporation and if the respondent No.1 is found fit, to grant her employment in accordance with law.

2. The facts in brief leading up to file the present writ petition are that the husband of the respondent No.1 was appointed as Conductor with the petitioner Corporation on 28/2/1997. He died on 05/09/2001 and by that time he has completed service

of 4 years 5 months 11 days. The circular of petitioner Corporation dated 16/02/1994, *inter alia*, provided that the application for appointment on compassionate ground could be considered if the deceased employee had completed 5 years of service. Subsequently, Circular dated 07/2/2005 was issued by the petitioner Corporation deleting the said clause requiring 5 years of service of deceased employee and further Circular dated 01/12/2006 made it clear that the applications made for compassionate appointment between 21/09/2001 to 08/06/2006 shall be considered without insisting upon the aforesaid clause of minimum 5 years service of deceased employee. It has come on record that the respondent No.1 submitted application for compassionate appointment on 11/10/2001 before the petitioner Corporation. On 22/12/2001, the petitioner Corporation rejected the application of respondent No.1 on the ground that her claim could not be considered because her deceased husband had not completed 5 years of service when he died on 05/09/2001. The circular dated 16/02/1994 was applied to the case of respondent No.1 and she was not granted benefit of subsequent circulars dated 07/02/2005 and 01/12/2006, only on the ground that the husband of the respondent No.1 has expired prior to 21/09/2001.

3. The respondent approached the Industrial Court, Akola by filing complaint under Section 28 of

the Maharashtra Recognition Trade Unions and Prevention of Unfair Labour Practice Act, 1971, claiming that the petitioner Corporation was not justified in seeking compliance of the aforesaid clause of circular dated 16/02/1994, mandating minimum 5 years of service of deceased employee, even when the said clause stood specifically deleted by subsequent circular dated 07/02/2005. The Industrial Court passed the impugned order dated 18/04/2016, accepting the contentions raised on behalf of the respondent and thereby allowed the complaint and granted relief to respondent No.1.

4. While challenging the said Judgment and order of the Industrial Court the principal ground raised on behalf of the petitioner Corporation is that when the date of death of the husband of the respondent No.1 was admittedly 05/09/2001, being prior to 21/09/2001 when the subsequent circular dated 07/02/2005 was made effective, the Industrial Court ought not to have allowed the complaint filed by the respondent. As opposed to this, it was contended on behalf of the respondent that the crucial date in the present case was the date when the subsequent circular dated 07/02/2005 came into effect i.e. 21/09/2001 and the application submitted by respondent No.1 on 11/10/2001. It is submitted that the application that was submitted for appointment on compassionate ground after 21/09/2001 were correctly held by the

Industrial Court to be considered as per circular dated 16/02/1994 with the aforesaid clause requiring minimum 5 years of service of deceased employee being deleted as per subsequent circular dated 07/02/2005. It is submitted that further circular dated 01/12/2006 by petitioner Corporation made it abundantly clear that the relevant period was between 21/09/2001 to 08/08/2006 and the applications submitted during the said period were required to be considered without insisting upon the aforesaid clause mentioned in earlier circular dated 16/02/1994. On this basis, it is submitted that the writ petition deserves to be dismissed.

5. Heard counsel for both the parties.

6. In this case the Industrial Court has taken into consideration the facts in detail and reference has been made to all the relevant circulars i.e. circulars dated 16/02/1994, 07/02/2005 and 01/12/2006. By applying the true purport of the aforesaid circulars to the facts of the present case, the Industrial Court has reached the following conclusions.

(15) The circular dated 16/02/1994 as relied by the respondents disclosed the provisions of the grant of employment on compassionate ground to the one of the family member of the employee who died while in service. The circular dated 16/02/1994 further disclosed the term that the deceased employee must have completed

5 years of services and while counting the services, the service on daily wages and time scale will be considered. The circular dated 07/02/2005 as relied by the complainants disclosed the cancellation of the term of completion of 5 years of services by the deceased employee for grant of appointment on compassionate ground in respect of the matters after the dated 21/09/2001. The circular dated 01/12/2006 as relied by the complainant appears to be issued in reference to the circular dated 07/02/006, disclosed the cancellation of the condition of the completion of 5 years of service by the deceased employees for the grant of appointment on compassionate ground, in respect of the matters after the dated 21/09/2001. The circular further disclosed the directions as issued to implement the term of cancellation of the term of completion of 5 years of services in respect of the matters for the period 21/09/2001 to 08/6/2006.

16) In the present complaint admittedly the complainant no.1 is the widow of deceased Ramesh, who was the employee of the respondents corporation and died while in services. It is not disputed fact on record that on 11/10/2001 complainant No.1 being the wife of deceased Ramesh has submitted the application for the grant of appointment on compassionate ground as per the circulars. Therefore the application of the complainant will come within the admit of the matters of the period 21/09/2001 to 08/6/2006. As per the circulars dated 07/02/2005 and 01/12/2005 the condition of the completion of the 5 years of services by deceased employee is cancelled, the application of the complainant no.1 was required to be considered for the appointment on

compassionate ground, the claim of complainant no.1 can not be rejected on the ground that deceased Ramesh has not completed 5 years of services. It has come on record that the complainant no.1 has specifically issued the notice to the respondents through her advocate, called upon the respondents to comply the circulars dated 07/02/2005 and 01/12/2006. The evidence as come on record disclosed that the respondents have not considered the application of the complainant No.1, have not granted the employment on compassionate ground and thus committed the breach of the circulars and thus unfair labour practices under Item 9 of Schedule IV of M.R.T.U. and P.U.L.P. Act.

17) Considering all these circumstances evidence as come on record I hold that the complainants have succeeded to make out the case of unfair labour practice under Item 9 of Schedule IV of M.R.T.U. and P.U.L.P. Act. Therefore the complainant is entitled for the reliefs as claimed.

7) Perusal of reasoning of the Industrial Court quoted above shows that the interpretation placed on said circulars is in furtherance of scheme of grant of appointment on compassionate ground framed by the petitioner Corporation. If the said circulars are read together in their true spirit, it becomes clear that in the present case what was crucial was the date of application submitted by the respondent No.1 and the period during which it came up for consideration before the petitioner Corporation. It appears that the petitioner Corporation on review of its own policy for

compassionate appointments found that the insistence on completion of 5 years of service by deceased employee was not in furtherance of the object of the scheme for grant of compassionate appointments. Therefore, it cannot be said that the Industrial Court has committed any error in holding that when the application submitted by respondent No.1 dated 11/10/2001 came up for consideration before the petitioner Corporation, as per circulars dated 07/02/2005 and 01/12/2006, said application was required to be considered without insisting upon the aforesaid clause of completion of 5 years of service by deceased. Hence, no fault could be found with the aforesaid approach adopted by the Industrial Court. Therefore, this writ petition is found to be without any merit. Accordingly, it is dismissed.

JUDGE

MP Deshpande