

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.14206 of 2005

ORDER:

This writ petition is filed seeking a writ of Mandamus, declaring the action of the respondents in not considering the representation dated 29.12.2003, wherein the petitioner has sought for compassionate appointment, as arbitrary, illegal, unjust and violative of Articles 14, 16 and 21 of the Constitution of India and sought a consequential direction to the respondents to consider the case of the petitioner for compassionate appointment in any suitable post.

Heard learned counsel for the parties.

It has been contended by the petitioner that his father was employed as Canteen Helper with the respondents and while he was discharging his duties, the respondents have imposed major punishment of dismissal from service vide orders dated 01.04.1999. The petitioner further contended that after dismissing his father, the respondents have approached the National Industrial Tribunal at Mumbai by filing an application under Section 33 (2) (b) of the Industrial Disputes Act, 1947 (for short, 'the Act') seeking approval of the orders of dismissal of his father, and the same was numbered as Approval Application No.NTP-33 of 1999. However, during pendency of the said case, the petitioner's father expired on 24.09.2001 and thereafter the Tribunal disposed of the said case along

with some other cases vide common order 24.09.2002. The operative portion of the said common order reads as under:

“The result of the aforesaid discussion in all these cases mentioned in paragraph 1 of this judgment the applications under section 33 (2) (b) of the Acts have abated and the Court therefore cannot grant approval to the applications filed therein.”

The petitioner also contended that the effect of the order dated 24.09.2002 passed by the National Industrial Tribunal in Approval Application No.NTB-33 of 1998, which was disposed of along with sine other applications, is that the dismissal order passed by the respondents has not been approved and it should be deemed that his father was in service till he died on 24.09.2001. It is also contended that since the petitioner's father was deemed to have been in service as on the date of his death, the petitioner has submitted an application on 29.12.2003 requesting the respondents to consider his case for compassionate appointment in any suitable post. But, so far the respondents have not passed any orders on the said representation. In those set of circumstances, the petitioner filed the present writ petition contending that his case for appointment on compassionate grounds be considered.

Counsel for the petitioner submitted that on 13.02.2007, this Court granted interim direction to the respondents to consider the case of the petitioner for engaging his services on casual basis in case the load of work requires such services and pass appropriate orders within a period of four weeks, and thereafter the respondents have filed

vacate petition and the same was dismissed vide order dated 04.04.2008 making the interim order granted on 13.02.2007 absolute. Counsel for the petitioner further contended that though this Court granted interim direction to the respondents on 13.02.2007, so far the respondents have not passed any orders. It is also contended by the counsel for petitioner that the respondents have filed a counter contending that the petitioner's father was dismissed from service on 01.04.1999 and before the National Industrial Tribunal could adjudicate the case, the petitioner's father has expired and it should be treated that the petitioner's father is a dismissed employee, therefore, the case of a petitioner for appointment on compassionate grounds cannot be considered.

Counsel for the petitioner also submitted that when National Industrial Tribunal has not approved the orders of dismissal, the contention of the respondents that the case of the petitioner for appointment on compassionate grounds cannot be considered on the ground that he is the son of the dismissed employee, cannot be accepted and, as such, sought for appropriate orders to be passed in the writ petition directing the respondents to consider the case of the petitioner for appointment on compassionate grounds by duly treating that the petitioner's father died while he was in service.

Standing Counsel appearing for the respondents had contended that earlier also, the petitioner's father was removed from service in the year 1994 and on an appeal and review being preferred, the

punishment of removal was modified to that of withholding four increments and pursuant thereto, he was reinstated into service. Standing counsel further submitted that after reinstatement, the petitioner's father had indulged in unauthorized absence and the respondents, having no other option, initiated disciplinary proceedings and after conducting detailed enquiry, the petitioner's father was dismissed from service vide proceedings dated 01.04.1999 and later the respondents have approached the Tribunal by filing application under Section 33 (2) (b) of the Act seeking approval of the dismissal order and the Tribunal had declined to grant approval to the respondents vide orders dated 24.09.2002 holding that the proceedings have been abated as the petitioner's father expired during pendency of the case. Standing Counsel also submitted that since the petitioner's father was dismissed employee by the time of his death, the petitioner is not entitled for compassionate appointment as he is the son of the dismissed employee, therefore, there are no merits in the writ petition and the writ petition is liable to be dismissed.

This Court, having considered the rival submissions of learned counsel for the parties, is of the considered view that when approval of dismissal orders sought for by the respondents from the Tribunal was not granted, it cannot be contended by the respondents that the petitioner's father was a dismissed employee. When the Tribunal has specifically not approved the action of the respondents in dismissing the petitioner's father from service, the orders of dismissal passed by

the respondents on 01.04.1999 are non-est in the eye of law and the petitioner's father must be treated to have died while in service and the petitioner is entitled for consideration of his case in tune with the compassionate appointment policy and the respondents are directed to consider the case of the petitioner for compassionate appointment in any suitable post without denying his case on the ground that he is the son of a dismissed employee, within a reasonable period of time, preferably within a period of two months from the date of receipt of a copy of this order.

After dictating this order, it has been brought to the notice of this Court by learned counsel for parties that Indian Airlines has been merged with that of Air India with effect from 01.04.2007 and all the assets of Indian Airlines also have been merged with that of Air India. Therefore, it is the Air India which must consider the case of the petitioner in tune with the policy of compassionate appointment.

Accordingly, the writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J