

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.14805 of 2018

ORDER:

This writ petition is filed seeking a Writ of Mandamus, declaring the action of 2nd respondent in issuing the proceedings dated 22.12.2017 as illegal, arbitrary and null and void and sought consequential direction to set aside the same and direct the 2nd respondent to provide employment to the dependant of the deceased as per the Bread Winner Scheme.

Heard Sri S.Pradeep Kumar, counsel for petitioners and Sri N.Vasudeva Reddy, Standing Counsel for the respondents.

It has been contended by the 1st petitioner that her husband was employed with the respondents and he was removed from service for alleged irregularities said to have been committed by the husband of the 1st petitioner, vide orders dated 26.11.2002. Thereafter, the husband of the 1st petitioner filed I.D.No.22 of 2004 before the Industrial Tribunal-cum-Labour Court under Section 2-A(2) of the Industrial Disputes Act. The 1st petitioner further submits that during the pendency of the said I.D., the husband of the 1st petitioner had died and the petitioners got themselves impleaded as legal representatives of the deceased-employee. The Tribunal vide orders dated 23.11.2006, passed Award setting aside the orders of removal with continuity of service and all other benefits, however, without back-wages. The Labour Court has also gave a finding that the case of the 2nd petitioner be considered for compassionate appointment.

In pursuance of the award passed by the Labour Court, petitioners have approached the respondents seeking compassionate appointment, but the respondents have rejected the case of the petitioners vide orders dated 22.12.2017 on the ground that the dependants of the dismissed employees are not entitled for compassionate appointment under Bread Winner Scheme. Counsel for petitioners contend that the deceased-employee was not a dismissed employee as the orders of dismissal were set aside by the Industrial Tribunal in I.D.No.22 of 2004. He further contend that the respondents have challenged the Award passed by the Labour Court by filing W.P.No.13030 of 2008 and this Court was pleased to dismiss the said writ petition vide orders dated 06.01.2017 and contend that the impugned rejection orders are liable to be set aside as they were passed without application of mind. Counsel for petitioners further contend that appropriate orders be passed in the writ petition by setting aside the impugned rejection order dated 22.12.2017 and further direct the respondents to consider the case of 2nd petitioner for compassionate appointment under Bread Winner Scheme.

The learned Standing Counsel for respondents contend that since the deceased-employee was dismissed from service, the case of the 2nd petitioner was not considered for compassionate appointment and the same was rightly rejected by the respondents vide orders dated 22.12.2017 and there are no merits in the writ petition and it is liable to be dismissed.

This Court, having considered the rival submissions of the parties, is of the considered view that the impugned rejection order dated 22.12.2017 is totally perverse and contrary to the findings given by the Labour Court in I.D.No.22 of 2004, dated 23.11.2006 as the deceased-employee's removal orders were set aside with continuity of service and other attendant benefits and when once the Labour Court has set aside the orders of removal, the contention of respondents that the deceased-employee was removed, therefore, his dependants are not entitled for compassionate appointment, is cannot be accepted. The impugned orders are, therefore, liable to be set aside and the same are accordingly set aside. The respondents are directed to consider the case of 2nd petitioner for compassionate appointment afresh and pass appropriate orders in terms of the findings given by the Labour Court in I.D.No.22 of 2004, dated 23.11.2006 in accordance with law within a period of six weeks from the date of receipt of a copy of this order.

With these observations, the writ petition is disposed of.
No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

30th January 2019

ajr