

1st October,
2021
(AK)
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W.P.C.T. 24 of 2016

Union of India and others
Vs.
Goutam Adhikary

Mrs. Soma Ray Chowdhury
...for the petitioners.

Mr. P.C. Das
Mrs. Soma Chowdhury (Bandhu)
Ms. Rima Mishra
...for the respondent.

The conspectus of the present case is short.

Learned counsel for the appellants challenges an order whereby the tribunal remanded the matter back to the authority for reconsideration upon taking into account the proposition laid down in the judgment of *Namita Goldar and another Vs. Union of India and others* reported at 2010 (3) CHN (CAL) 593. In the said judgment, it was categorically held, inter-alia, that the circular issued by the Railway Board on January 2, 1992 stood quashed to the extent it prevents the children of the second wife from being considered for appointments on compassionate ground.

Learned counsel for the appellants contends that the application of the respondent for compassionate appointment was filed after almost seventeen years from the date of demise of the original employer. As such, the

request for compassionate appointment was rightly refused.

That apart, by placing reliance on the following judgments, learned counsel argues that compassionate appointment is not a 'right' accrued in favour of the heirs of the deceased at all but it is a concession on the part of the employer:

- i) *AIR 2012 SC 2294 (Union of India and another vs. Shashank Goswami and another)*
- ii) *AIR 2012 SC 3281 (State of Gujarat and others vs. Arvindkumar Tiwari and another)*
- iii) Unreported judgment in *N.C. Santhosh vs. State of Karnataka and others*.

Learned counsel, by placing reliance on a circular issued by the Railway Authorities, in particular Clause 2 thereof (at page-86 of the writ petition), contends that a second marriage, without permission of the employer, since not allowed by the personal law of the original employee, cannot be validated by granting benefits accruing to the deceased person, on his demise, as a matter of right.

Learned counsel further contend that, despite there being a compromise decree between the contenders to the compassionate appointment, which was passed comparatively recently prior to the application for compassionate appointment, the respondent kept quiet and had not pursued any application for compassionate

appointment during the entire period of delay of seventeen years.

Hence, learned counsel contends that the application was rightly rejected and such rejection ought to have been affirmed by the tribunal instead of remanding the matter, as done in the impugned order.

Learned counsel appearing on behalf of the respondent places reliance on *Namita Goldar* (supra) and points out that, in paragraph no.9 thereof, the circular on which the Railway Authorities relied for refusing to grant compassionate appointment to the respondent, was itself set aside by the said judgment of the co-ordinate Bench.

Learned counsel also places the 'speaking order of rejection' of the respondent's appointment on compassionate ground dated May 19, 2014 and submits that such rejection was only on the ground of the said circular, since quashed.

Learned counsel for the respondent further relies on *Union of India and another vs. V.R. Tripathi* reported at (2019) 14 Supreme Court Cases 646, wherein the proposition laid down in *Namita Goldar* was reiterated.

Upon hearing learned counsel for the parties, we are of the view that, as apparent from the order dated May 19, the only ground for rejection of the respondent's application for compassionate appointment was the circular issued by the Railway Board on January 2, 1992, since quashed.

The question of delay was never raised in the impugned rejection order. That apart, a letter was annexed by the respondent to the original application before the tribunal, which indicates that there was a communication on behalf of the Railway Authorities as far back as on July 31, 1996, which clearly shows that there had been a prior application for appointment on similar ground by the respondent subsequent to the demise of his father, the original employer, in October, 1994.

However, the said prior application loses relevance, since the current application was filed only in the year 2011, without any reference to such prior communication.

Moreover, even it is assumed hypothetically that an application had been made by the respondent prior to 1996, there is nothing on record to show that the respondent ever pursued such application.

However, even independently of the prior application, it is clearly revealed from the order of refusal dated May 19, 2014 passed by the Railway Authorities that the sole ground of refusal to grant compassionate appointment was the Railway Board's letter No. E (NG) II/91/RC-I/136 dated January 2, 1992.

Such letter/circular itself having been categorically quashed in *Namita Goldar* case (supra), there was no scope for such refusal by the Railway Authorities.

In such view of the matter, the impugned order of the tribunal, remanding the matter to the competent authority for fresh adjudication upon a consideration of *Namita Goldar's case* (supra) is not tainted by any illegality or jurisdictional error.

Rather, the tribunal acted absolutely in accordance with law in directing the authorities to reconsider the matter in proper perspective, without usurping the role of the appointing authority, which would tantamount to depriving the parties from a forum of challenge.

Accordingly, W.P.C.T 24 of 2016 is dismissed on contest, without, however, any order as to costs.

Urgent website certified copies of this order, if applied for, be given to the parties upon compliance of all necessary formalities.

(Sabyasachi Bhattacharyya, J.)

(Jay Sengupta, J.)