

06-09-2021
ct no. 23
Sl. 12
Sayandeep

W.P.A. 12741 of 2021

Fulmani Murmu & Anr.

-Versus-

Union of India & Ors.

(Via Video Conference)

Mr. Chittapriya Ghosh
Mr. Smir Kumar Adhikari
Ms. Priyanka Saha

...for the petitioners

Mr. Ajay Chaubey
Mr. Sankar Sarkar
Ms. Shakshi Rathi

....For Union of India

This is the 2nd round of litigation between the parties. The husband of the petitioner No. 1 while working in Border Security Force (in short BSF) died on 13th November, 1971. After about 44 years, the petitioner No. 1 approached BSF authorities to provide for compassionate appointment to her adopted son, the petitioner No. 2. The application for compassionate appointment was initially rejected on 10th February, 2018. The petitioner No. 1 thereafter made a representation before the authorities to reconsider her application. On 7th January, 2021, in the petitioners' first writ petition being WPA No. 11092 of 2018, an order was passed directing the Commandant, BSF, Headquarter,

77 Battalion, Moga Road, Ferozepur, Punjab to take a decision with regard to the prayer of the petitioners for being appointed on compassionate ground on the basis of the enquiry report forwarded by the BDO, Jamboni Block within a period of 10 weeks from the date of communication of the said order. In the first round of litigation, the dispute was as to whether the petitioner No. 2 is the adopted son of the petitioner No. 1. There was also an allegation that the petitioner no. 1 had remarried after the death of her husband and had given birth two male child and a female child which disentitled the petitioner No. 2 as an adopted son to be considered for compassionate appointment as an adopted son of the petitioner No. 1.

Pursuant to the said order dated 7th January, 2021, the Commandant so directed passed an order on 24th April, 2021 again rejecting the petitioners' prayer for a compassionate appointment. The reason given in the said order dated 24th April, 2021 is that there has been a long delay of 44 years in applying for compassionate appointment and this inordinate delay has disentitled the petitioners from seeking compassionate appointment. Compassionate appointment is

not a matter of right. The petitioner therefore cannot seek any mandatory order of appointment after cancelling the rejection order dated 24th April, 2021 as sought for in the instant writ petition. The application for compassionate appointment made by the petitioners have been considered twice and rejected on both the occasions although on different grounds. The order dated 24th April, 2021 is a reasoned and detailed order taking into consideration the scope of the scheme for compassionate appointment and grounds on which compassionate appointment is given. Filing of successive writ petition for achieving a desired result has been held by the Supreme Court to be an abuse of process. Reference may be given to the Judgment reported in (2012)5 SCC 398 [**Sunil Kumar vs. State of Haryana**] in this regard.

In the instant case, the petitioner No. 1 has admittedly applied after 44 years and there is no contrary evidence on record even to prima facie show that such recording in the order dated 24th April, 2021 is incorrect. With the passage of time the age of the petitioner No. 2 has advanced. Even if he was 1 year of age in 1971, his age will be about 50 years as on date. It may not be possible to give employment on

compassionate ground to the petitioner no. 2. The present writ petition being the 2nd round of litigation in the factual backdrop as aforesaid, according to me, is an abuse of process.

The instant writ petition is accordingly dismissed however without any order as to costs.

Since I have not called for any affidavits, the allegations contained in the writ petition are deemed to have not been admitted by the respondents.

Urgent photostat certified copy of this order, if applied for, is to be given to the parties upon compliance with the necessary formalities.

(Arindam Mukherjee, J.)