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WPCT 71 of 2022

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Rita Chandra & Anr.
Vs.
The Union of India & Ors.

Mr. Biswaroop Biswas, Advocate
Mr. Prabir Rej, Advocate
Mr. Pranab Kumar Das, Advocate

.....for the Petitioner

Mr. Souvik Nandy, Advocate

.....for the Respondent Nos. 2 to 5 (SAIL)

At the very outset, the learned Advocate for the Steel Authority of India prayed for exchange of affidavits. According to him, certain facts and documents are required to be collated and disclosed before this Court which has some bearing on the core issues involved in the instant writ-petition.

We are not impressed with the aforesaid submission as we find that it would simply delay the disposal of the case for the reason stated here-in-after.

The dispute relates to an appointment on compassionate ground. There is a scheme floated by the Steel Authority of India indicating the mechanism and modalities required for compassionate appointment. The scheme is before the Court and there is no dispute to its applicability in the present case. It is only the interpretation of different provisions of the said scheme to which we are mainly concerned with. There is neither any dispute on the date of the death nor the cause of the death as shown in the certificate annexed with the writ-petition and the only question which arose whether the disease comes within the scheme floated by the Steel Authority of India. If such being the position, it gives an impression in our mind that the Steel Authority of India, which is an authority under Article 12 of the Constitution of India, is not interested in speedy

disposal of the proceeding rather an attempt is made to delay such proceeding on the pretext of affidavit to be filed.

The authority must be sensitized so that the legal proceeding does not travel on the peripheral of the docket of the Tribunal or the Court rather they should come up with open mind which would achieve the speedy disposal and avoid unnecessary wastage of time of the Court on such fringe issues.

Since the facts relevant to the issues are not disputed nor the applicability of the relevant Rules, we feel that the highest officer of the Steel Authority of India should be communicated with this order so as to percolate a sense of responsibility among the other officials who are extending instructions to the appearing Counsel.

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After the aforesaid order is passed, we invited the Counsels appearing for the respective parties to address us on the issues involved in the instant matter.

Admittedly the deceased employee was referred to the Director, The Mission Hospital, Immon Kalyan Sarani, Sector 2C, Durgapur-12 as per advice of I/C (Medical & HS), Durgapur Steel Plant for arranging better treatment, as the said employee appeared to have suffered from "HTN, CVA, Rt, Hemiparesis". It was further indicated that in case of hospitalization the patient may be admitted in a 'Non-AC Single Room or Shared AC room or General Ward as available and the feedback regarding patient's diagnosis/treatment may be communicated to the said office.

Subsequently an application was made on 21st April, 2017 by the widow of the deceased employee disclosing his illness and seeking an appointment of her son on

compassionate ground. The said application was kept pending and in the meantime the employee died on 18th August, 2017. Subsequently by a Memo dated 23rd December, 2017 the Steel Authority of India through Jr. Manager (Press-works) communicated the decision taken by the competent authority that the application for compassionate appointment does not come within the purview of the scheme/guidelines applicable in this regard.

Immediately the said communication indicating the decision taken by the competent authority was challenged before the Tribunal and by the impugned order the said application is dismissed on the ground that the extant scheme applicable in this regard does not permit the appointment on compassionate ground.

Since the aforesaid facts are undisputed and relevant for the purpose of deciding the issue, we made the observations hereinbefore and request the appearing Counsels to address us on the proposition of law applicable in the instant case.

It is no doubt true that the guidelines in the form of circular was framed/issued on 31st January, 2012 pertaining to appointment on compassionate ground. It contemplated two eventualities; firstly, on the death of an employee due to accident arising out of and in course of employment and secondly medical invalidation on a specified debilitating disease appended to annexure-1 thereto.

Indubitably the instant case relates to an appointment on compassionate ground occasioned due to medical invalidation of an employee having suffered a specified debilitating disease included in the said annexure.

The learned Advocate appearing for the Steel Authority of India initially took a plea that the scheme/circular framed by the said authority which is annexed to the instant application is not the complete copy of the said guidelines/circular and for such reason we permitted the learned Advocate appearing for the Steel Authority of India to file a complete copy of the said circular/scheme, which, in fact, has been done.

The only distinction we find between the copy of the said circular/scheme annexed to the said application and the one handed over by the learned Advocate appearing for the Steel Authority of India that the annexure and the procedures provided under the said scheme was not annexed thereto. However, the substantive provisions were disclosed both by the petitioner and the learned Counsel for the Steel Authority of India and, therefore, there is no impediment or fetter on our part to proceed with the instant case and decide the issues involved therein.

As indicated above, the scheme provided two different modalities for appointment on compassionate ground. It is not a case where the employee died due to accident in course of employment, but certainly a case on medically debilitating disease, which would appear from the letter dated 8th February, 2017 issued by the competent official of the Steel Authority of India while recommending the hospitalization of the said deceased employee.

Para 5.3.1 of the said circular/scheme dated 31st January, 2012 postulates that the compassionate employment may be considered to the dependent family members on medical invalidation of an employee who suffered a debilitating disease as annexed in Annexure 1 thereto.

Para 5.3.2 further provides that a committee consisting of Head of Works, Head of Medical, Head of Personnel & Administration of the respective Plant/Unit shall be duly constituted by the Chief Executive empowering them for the purpose of declaring medical invalidity.

Para 5.3.3 has remote connection with the instant case because of his uniqueness in the event of sudden death of an employee continuing with the normal job and was under the treatment for the above disease to be not governed under the said guideline, as the date for consideration under the guidelines shall be a date on which the committee declares the employee as medically invalid. In other cases, it would be regarded as a natural death and a provision relating to death on duty shall be applicable which obviously does not provide for compassionate appointment.

We cannot overlook the fact that the paragraph 10 of the same provides that an application to be made in a prescribed manner and an obligation is cast upon the committee to take a decision not later than three months from the date of receipt of the application and upon granting personal hearing if necessary for better appreciation of facts. Annexure-1 to the said circular/scheme exhaustively contained various debilitating diseases and it is beyond cavil of doubt that it includes *Hemiplegia* as one of the neurological diseases which impedes the normal functioning of the employee.

Our attention is drawn to 7th Edition of “Bedside Clinics in Medicine” by the learned Advocate appearing for the Steel Authority of India, which defines Hemiplegia and Hemiparesis. The ‘plegia’ has been defined to mean complete or near complete paralysis and ‘paresis’ means

weakness or partial paralysis. The Hemiplegia, according to the said author, is a paralysis of one half of the body (specially of face, arm and legs) and it is a facio-brachiocrural paralysis. The trunk is exempted due to bilateral innervation. The Hemiparesis has been defined as weakness of one half of the body (specially of face, arm and leg).

One has to understand the meaning of 'plegia' and 'hemiparesis' as given in the said Book which imbibe within itself not only the complete paralysis but nearly complete paralysis as well as weakness or the partial paralysis. The scheme is benevolent and welfare in order to tide over the family, who suffered the sudden financial crisis because of untimely incapacitation or death of the sole bread earner.

Ironically, providing an employment on compassionate ground offends Article 14 of the Constitution of India, which provides an equal opportunity to all the eligible aspiring candidates to be considered for employment. However, an exception is carved out provided a scheme is framed by the employer in this regard and it is no longer res-integra that such scheme is constitutionally valid and have to be construed in the manner provided therein.

The High Court while exercising the powers under Article 226 of the Constitution of India, more particularly in relation to a case of compassionate appointment, is not vested with the power to frame the policy for the employer nor to re-write the policy beneficial to the dependent of the deceased employee and prejudicial to the employer. The inspiration can be drawn from the judgement of the Supreme Court rendered in case of ***State of Himachal Pradesh & Anr. vs. Parkash Chand*** reported in (2019) 4 SCC 285 in the following:

“10. In the exercise of judicial review under Article 226 of the Constitution, it was not open to the High Court to rewrite the terms of the Policy. It is well settled that compassionate appointment is not a matter of right, but must be governed by the terms on which the State lays down the policy of offering employment assistance to a member of the family of a deceased government employee. [Umesh Kumar Nagpal v. State of Haryana, SBI v. Kunti Tiwary, Punjab National Bank v. Ashwini Kumar Taneja, SBI v. Somvir Singh, Mumtaz Yunus Mulani v. State of Maharashtra, Union of India v. Shashank Goswami, SBI v. Surya Narain Tripathi and Canara Bank v. M. Mahesh Kumar.]”

There is no quarrel to the proposition as laid down in the above Report that the Court cannot re-write the policy nor can frame the policy pertaining to the compassionate appointment, as it is left to the employer and it is the freedom of the employer in this regard. Even the Court cannot compel the employer to frame a guideline or issue a scheme relating to compassionate appointment as it is within the exclusive domain of the employer and the Court should not over-reach nor should sit in the armchair of the employer.

The moment the scheme is in place, such scheme is to be construed in a more pragmatic manner than in pedantic manner, as the object and purpose sought to be achieved therefrom must seemingly be achieved. Any interpretation, which would frustrate the very object and purpose underline the birth of said scheme, should be guarded against and there is no impediment or fetter on the part of the Court to interfere whenever the employer travels beyond the circumference of the said circular/scheme. Equally there is no dispute to the proposition that the issue pertaining to compassionate appointment and the scheme framed in this regard must not be construed and/or interpreted treating such scheme to be more advantageous or beneficial to the employee but has to be construed in a more objective manner. The language used in the said

scheme is explicit and laudable without inviting any ambiguity or exercise of the interpretative process taking shelter under the external aid, such plain and simple meaning has to be attributed and other means of interpretation should be avoided.

Merely because the scheme is benevolent, beneficial and welfare in nature, it does not cloath with the powers to relax the same as held by the Supreme Court in case of **V. Sivamurthy vs. State of Andhra Pradesh & Ors.** reported in **(2008) 13 SCC 730** in the following:

“35. The issue is not what is most advantageous to the government servant, but what is the actual term of the scheme. The question is not whether an interpretation which is more advantageous or beneficial to the government servant should be adopted. The question is whether the policy as it stands which is clear and unambiguous, is so unreasonable or arbitrary or absurd as to invite an interpretation other than the normal and usual meaning. Matters of policy are within the domain of the executive. A policy is not open to interference merely because the court feels that it is not practical or less advantageous for government servants for whose benefit the policy is made or because it considers that a more fairer alternative is possible. Compassionate appointment being an exception to the general rule of appointment, can only be claimed strictly in accordance with the terms of scheme and not by seeking relaxation of the terms of the scheme. The fact that on account of certain delays in processing the application, a government servant may lose the benefit of the scheme, is no ground to relax the terms of the scheme. If in a particular case the processing of an application is deliberately delayed to deny the benefit to the government servant, the inaction may be challenged on the ground of want of bona fides or ulterior motives. But where the time taken to process the application (through the Medical Board, District/State Level Committee and the Government) is reasonable, the government servant cannot contend that relief should be extended, even if the left-over period is less than five years. Let us give an example. If an application for compassionate appointment on the ground of medical invalidation is given five years and one week before the date of superannuation, obviously the government servant cannot expect that the entire process of scrutiny, medical examination, recommendation and consideration at three levels should be completed in one week. He cannot contend that when he had made the application the left-over period was more than five years and therefore his dependent is entitled to appointment. As stated above, these are matters of policy and the courts will not interfere with the terms of a policy, unless it is opposed to any constitutional or statutory provision or suffers from manifest arbitrariness and unreasonableness.”

As indicated above, several debilitating diseases have been disclosed in the annexures to the said scheme and there is a close nexus appears to be between the Hemiplegia and Hemiparesis. Though it is not a duty of the

Court, who is not an expert in medical science to arrive at the positive finding whether the disease which is Hemiplegia is having close proximity with the disease Hemiparesis, the medical experts or the competent authority in this regard is to take final opinion thereupon.

This Court further finds that the authority has proceeded to decide the said application in a slipshod manner and communicated such decision, which is cryptic in nature; meaning thereby it simply contemplate that the case does not come within the ambit of the said circular/scheme. One has to indicate the reason why it does not come within such circular/scheme and should not decide the cause in ambiguous manner. Furthermore, the application was made while the said employee was alive and admitted in hospital because of the said disease and the said scheme/guideline provides the constitution of a committee and taking decision not later than three months which, in fact, has not been done.

In course of the hearing, it is brought to our notice that the said deceased employ was admitted in the hospital run by the employer and, therefore, it has all the documents within their control and a reasonable opinion and/or decision may be arrived regarding medical invalidation on the basis thereof.

We find that the authority has not disclosed the reasons in a proper manner and, therefore, it is a fit case where the said authority should revisit his decision.

Accordingly, the order of the Tribunal is hereby set aside. As a consequence thereof, the order of the Steel Authority of India dated 23rd December, 2017 is hereby set aside.

The Steel Authority of India is directed to reconsider the said application strictly in terms of the provisions contained in the said circular/scheme dated 31st January, 2012 and if necessary, after giving an opportunity of hearing to the writ petitioners and take a decision, which shall be communicated to the petitioners.

We expect that the said authority shall complete the exercise as indicated above within two months from the date of the communication of this order and the decision would be communicated within a week therefrom.

With the above observations, the writ petition being **WPCT 71 of 2022** is **disposed of**.

(Harish Tandon, J.)

(Prasenjit Biswas, J.)