

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 10806 of 2014

Union of India & Others

.....

Petitioners

Mr. P.K. Parhi, A.S.G.I.

Vs.

Radha Krishna Mohanta

.....

Opposite party

Mr. D.K. Mohanty, Advocate

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

25.04.2022

Order No.

20.

This matter is taken up through hybrid mode.

2. Heard Mr. P.K. Parhi, learned ASGI for the petitioners-Union of India and Mr. D.K. Mohanty, learned counsel for the opposite party.

3. The petitioners-Union of India have filed this writ petition seeking to quash the order dated 13.08.2013 passed in O.A. No.865 of 2012 vide Annexure-4, by which the Central Administrative Tribunal, Cuttack Bench, Cuttack taking into account the various arguments from the learned counsel of both the sides, directed the authority to consider the prayer for compassionate appointment of opposite party once again in view of the facts and circumstances mentioned in the light of the extent rules and instructions and communicate the decision to the opposite party in a well-reasoned and speaking order within a period of three months from the date of receipt of this order, while quashing the impugned order dated 03.08.2012 rejecting the claim of the petitioner for grant of compassionate appointment.

4. Mr. P.K. Parhi, learned ASGI for the petitioners-Union of India contended that once the case of the petitioner for grant of compassionate appointment was rejected, the tribunal could not have directed to reconsider the same by passing the order impugned. He

further contended that the opposite party is not eligible to get such appointment and, as such, while considering his case for compassionate appointment, the authority found him not eligible and accordingly rejected his application. Therefore, the tribunal has committed grave error in passing the order impugned, which warrants interference by this Court.

5. Mr. D.K. Mohanty, learned counsel for the opposite party vehemently contended that so far as rejection of claim for compassionate appointment of the opposite party is concerned, the same has been done taking into consideration the subsequent rules, which are not applicable to the opposite party and, as such, the petitioners-Union of India have exceeded their jurisdiction by rejecting the claim of the opposite party for giving compassionate appointment, taking into consideration the rules prevalent at the time death. Therefore, the tribunal is well justified in directing the authority to consider the case of the opposite party afresh in terms of the rules applicable.

6. Having heard learned counsel for the parties and after going through the records, this Court finds that the opposite party claims for compassionate appointment and to that effect though he had filed application, the same was rejected mechanically without any application of mind, taking into consideration subsequent rules/guidelines which are not applicable to the opposite party.

7. In *State of Madhya Pradesh v. Ashish Awasthi*, 2021(II) OLR (SC) 1072, the apex court in a clear and categorical term observed that the Policy prevalent at the time of death of the deceased employee is only to be considered and not the subsequent policy. But in the present case, there is deviation from that. Therefore, the tribunal has quashed the order of rejection passed by the authority refusing to grant

compassionate appointment, and directed to reconsider the case of the opposite party again in terms of the rules/guidelines applicable at the relevant point of time. Without adhering to the same, the petitioners-Union of India have approached this Court by filing this writ petition, which cannot sustain in the eye of law.

8. In the above view of the matter, this Court does not find any error apparent on the face of order impugned passed by the tribunal so as to warrant interference with the same. Accordingly, the writ petition merits no consideration and the same is hereby dismissed. The petitioners-Union of India is directed to reconsider the case of the opposite party in terms of the rules applicable to the opposite party at the time of death of the deceased employee, so as to give compassionate appointment to the opposite party in accordance with law.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Ashok/Sukanta