

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 15867 of 2015

Banani Das

.....

Petitioner

Mr. B.S. Tripathy, Adv.

Vs.

Chairman, CBDT, Income Tax

.....

Opposite Parties

Deptt. and others

Mr. S.B. Panda, CGC

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE S.K. MISHRA

ORDER

13.07.2022

Order No.

10.

This matter is taken up through hybrid mode.

2. Heard Mr. B.S. Tripathy, learned Counsel for the Petitioner and Mr. S.B. Panda, learned Central Government Counsel for the Opposite Parties-Union of India.

3. The Petitioner has filed this Writ Petition seeking to quash the Order dated 27.03.2015 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00542 of 2013, and to issue direction to the Opposite Parties No.1 to 6 to give compassionate appointment to the Petitioner against any of the Group-C posts lying vacant under them, within a stipulated time.

4. Mr. B.S. Tripathy, learned Counsel for the Petitioner contended that while rejecting the claim of the Petitioner for compassionate appointment, the Tribunal has committed gross error apparent on the face of the record. It is contended that the authorities, without conducting proper inquiry and without giving opportunity of hearing, have come to a conclusion that the Petitioner has passed B.Sc. in the year 2012 from Utkal University, as is evident from copy of the provisional certificate, and that her date of birth as 17.01.1983 and thus she was 28 years old as on 21.03.2011. Further,

she is the daughter of Smt. Narayani Das and the marriage of the deceased employee, late Sachidananda Das, Ex-Sr.TA with Smt. Narayani Das was not found to be legally sustainable by the Court, as the deceased had legally married to another surviving lady, namely, Smt. Annapurna Das. Furthermore, Smt. Narayani Das, the biological mother of Banani Das, the Petitioner herein, owns a three storied building in Sankarpur, Diha Sahi of Cuttack Town, and that the ground floor and 2nd floor of said building are given on rent of Rs.4500/- and Rs.5000/- per month respectively. The 1st floor of the building is being used for her residential purpose and the Petitioner is staying with Smt. Narayani Das at present, as has been found on enquiry. Therefore, the case of the Petitioner has not been considered for appointment under compassionate ground. It is contended that while conducting enquiry, no opportunity of hearing was given to the Petitioner and behind her back, a report was called for and on that basis, the Petitioner was denied the benefit, which cannot be sustained in the eye of law.

5. Mr. S.B. Panda, learned Central Government Counsel for the Opposite Parties-Union of India contended that since the Petitioner owned a three storied building at Sankarpur, Diha Sahi, Cuttack, she is not financially distressed so as to claim compassionate appointment. More so, there is dispute with regard to marriage between the deceased employee and Smt. Narayani Das, who is mother of the petitioner. In view of the disputed questions of fact, the authority is well justified in rejecting the claim of the Petitioner for compassionate appointment. Consequentially, the tribunal has not committed any error apparent on the face of the record so as to call for interference of this Court.

6. Having heard learned counsel for the parties and after going

through the records, this Court finds that the conclusion arrived at by the authority declaring the Petitioner as not eligible for compassionate appointment, is based on the fact that no enquiry was conducted and no opportunity of hearing was given to her and, as such, nothing has been placed on record indicating that while coming to such conclusion, as has been recorded in the Minutes of Meeting of the Compassionate Appointment Committee held on 27.05.2013, opportunity was given to the Petitioner. Therefore, on the basis of the findings of the Compassionate Appointment Committee, as mentioned above, the Petitioner cannot be denied the benefit of compassionate appointment. But deliberation was made on the basis of the records, which were placed by the Committee constituted for compassionate appointment, and it was decided that these cases should have ordinarily been treated as closed as the claims were more than three years old, and as per the guidelines issued by the DoPT vide O.M. No. 14014/19/2002-Estt(D) dated 05.05.2003, such claims were not to be considered. But fact remains, if for years together the authorities do not take into consideration the grievance for compassionate, the limitation prescribed for three years, cannot have any application because the purpose is for granting compassionate appointment to a member of the bereaved family and if that would not be adhered to strictly, the purpose of social justice to the bereaved family would be defeated. The Compassionate Appointment Committee, while considering the case of the Petitioner, has come to the following conclusion in the Minutes of Meeting held on 27.05.2013:-

“a) She passed B.Sc in the year 2012 from Utkal University and a copy of the provisional certificate has been filed.

b) Her date of birth is 17.01.1983. Thus, she was 28

years and 02 months old as on 21.03.2011.

c) She is the daughter of Smt. Narayani Das. The marriage of the deceased employee, Late Sachidananda Das, Ex. Sr. TA with smt. Narayani Das was not found to be legally sustainable by the court as the deceased had legally married to another surviving lady named Smt. Annapurna Das.

d) Smt. Narayni Das, the biological mother of Ms. Banani Das, owns a three storied building in Sankarpur, Diha Sahi of Cuttack town. Ground Floor and 2nd floor of the building are given rent of Rs.4500/- and Rs.5000/- per month respectively. 1st floor of the building is being used for her residential purpose. Ms Banani Das is staying with Smt. Narayni Das at present as has been found on enquiry.

e) Ms. Banani Das being the only child of smt. Narayani Das has full rights over the three storied house property in the city of Cuttack from which house rent of Rs.9,500/- per month is being received.

f) Smt. Narayani Das, an ex-employee of General Electrical Division –II, Cuttack is getting pension of Rs.6275/- per month.

g) Ms. Banani Das is also earning Rs. 1500/- per month from private tuitions.

h) There is nobody who is dependent on Ms Banani Das.

i) The wife of late Sachidananda Das, Smt. Annapurna Das has filed a petition addressed to the CCIT on 06.06.2011 requesting for compassionate appointment to her only daughter Ms. Subhalaxmi Das and stating that Ms. Banani Das is not her daughter . She has further stated that Ms. Banani Das is neither staying with her nor taking care of her.”

7. Furthermore, nothing has been placed on record to indicate that opportunity of hearing was given to the Petitioner before coming to a conclusion in the above issues and learned Central Government Counsel also failed to produce any material indicating that opportunity of hearing was given to the Petitioner for the said purpose. Therefore, the contention raised that the authority without

conducting inquiry and without given opportunity of hearing to the Petitioner has arrived at the conclusion, has sufficient force. As such, the Tribunal has failed to appreciate such facts in proper perspective and affirmed the order dated 27.05.2013 passed by the Compassionate Appointment Committee, which cannot sustain in the eye of law. Consequentially, the Order dated 27.03.2015 passed by the Central Administrative Tribunal, Cuttack Bench, Cuttack in O.A. No. 260/00542 of 2013 is liable to be quashed and the same is hereby quashed. The matter is remitted back to the Compassionate Appointment Committee to reconsider the case of the Petitioner for giving compassionate appointment and pass appropriate order in accordance with law by affording opportunity of hearing to the Petitioner, as expeditiously as possible, preferably within a period of four months from the date of production of certified copy of this Order.

8. The Writ Petition is accordingly disposed of.
Issue urgent certified copy as per Rules.

(DR. B.R. SARANGI)
JUDGE

(S.K. MISHRA)
JUDGE