BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.09.2020
CORAM
**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM**
**and**
**THE HONOURABLE MRS.JUSTICE R.THARANI**

Review Application (MD) No.179 of 2019
and
W.M.P.(MD) No.23627 of 2019
in
W.P.(MD) No.17004 of 2017

1.The Chairman,
BSNL Corporate Office,
Statesman House, B148, Barakhamba Road,
New Delhi-110 001.

2.The Chief General Manager,
BSNL Tamil Nadu Telephone Circle,
Anna Salai, Chennai-600 002.

3.The General Manager, BSNL Telecom District,
Rathinasamy Nadar Road,
Madurai-625 002. .. Applicants/Respondent

-vs-

S.Chellameena,
D/o.Late K.Santhanam .. Respondent/Petitioner

Review Application filed under Order 47 Rules 1 and 2 read with Section 114 of Code of Civil Procedure to review the order dated 11.11.2019 made in W.P.(MD) No.17004 of 2017.

Prayer in WP(MD). 17004 to 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records relating to the impugned order of the Hon'ble Central Administrative Tribunal, Chennai Bench, Chennai made in O.A.No.1595 of 2014 dated 23.12.2015 confirming the impugned order of the 2nd respondent in No.E62/SDE-HRD-II/284/2008-11/27, dated at MA2, the 24.12.2011 and the impugned order of the 3rd respondent in No.E62/SDE-HRD-II/284/2008-11/23 dated MA-2, the 18.03.2011 and to quash the same as illegal and consequently direct the respondents herein to appoint the Petitioner herein on compassionate ground applying the differences of marks eligible by the petitioner's family within a reasonable time stipulated by this Court.

For Applicants : Mr.A.Haja Mohideen, Senior Standing Counsel

For Respondent : Mr.J.Lawrance

**ORDER**

(Order of the Court was made by T.S.Sivagnanam, J.)

We have heard Mr.A.Haja Mohideen, learned Senior Standing Counsel for the applicant/BSNL and Mr.J.Lawrance, learned counsel appearing for the respondent. We have also heard the Assistant Regional Manager of BSNL, Madurai, who has participated in the hearing of the case, through Video Conference.

2.This Review Application has been filed to review the order and direction issued in W.P.(MD) No.17004 of 2017, dated 11.11.2019.

3.The said writ petition was filed by the respondent/petitioner challenging the order passed by the Central Administrative Tribunal, Chennai in O.A.No.1595 of 2014, dated 23.12.2015. The matter relates to grant of appointment on compassionate ground.

4.Mr.A.Haja Mohideen, learned Senior Standing Counsel would strenuously contend that the order passed in the writ petition has to be reviewed in the light of the various decisions of the Hon'ble Supreme Court wherein, it was pointed out that appointment on compassionate ground is an exception to the general rule and it can be only in accordance with the rules and the policies framed by the State. In this regard, the learned Senior Standing Counsel placed reliance on the decision in the case of **MGB Gramin Bank vs. Chakrawarti Singh [(2014) 12 SCC 583)]; Vijendra Kumar Verma vs. Public Service Commission, Uttarakhand & Ors. [(2011) 1 SCC (L&S) 150]; State of Himachal Pradesh & Anr. vs. Shashi Kumar [(2019) 3 SCC 653)].** Apart from the above, the learned counsel has also filed a compilation of case laws wherein, the Hon'ble Supreme Court has laid down as to how applications for compassionate appointment have to be dealt with.

5.The sum and substance and the argument of Mr.A.Haja Mohideen, learned Senior Standing Counsel is that the Courts do not have power to exercise sympathetic jurisdiction in respect of grant of appointment on compassionate ground and it can be only in accordance with the policy guidelines framed.

6.To be noted that the impugned order before us was an order passed by the Central Administrative Tribunal in an application filed by the respondent challenging the order passed by the 2nd review applicant, dated 24.12.2011 and the order of the 3rd review applicant, dated 18.03.2011 by which, the application for grant of appointment on compassionate ground was rejected on certain grounds. The correctness of the order passed was tested by us and we found that there is an error in the assessment of granting weightage points to the candidate in accordance with the policy guidelines issued by the applicants. We have recorded our reasons as to why the respondent is entitled to such a relief. We quote paragraphs 6 and 7 of the order under review here-in-below:-

> *"6.S.No.1 of the tabulated column deals with the dependents weightage and there is no dispute to the points awarded to the Petitioner which is 30.The family pension has been computed at Rs.3,552/- and weightage points have been awarded by applying the point to be awarded for the pension ranging from Rs.3501/- to Rs.3750/-. The correctness of this has to be seen, for which, we have perused the Pension Payment Order issued to the Petitioner's father and we find that the family pension which has been sanctioned as per the CGS Rules, 1972 at the normal rate is Rs.2132/- and that is from 24.8.2014 onwards and the enhanced rate is Rs.3552/- which was for a period from 24.8.2007 to 23.8.2014. In our considered view, policy guidelines have been framed to test the indigent condition of the dependant of the deceased employee. Therefore, the interpretation to be given to the policy guidelines should lien in favour of the applicant rather than in favour of the management. Therefore the appropriate rate of family pension that should be taken is Rs.2,132 instead of Rs.3,552/- because that is the normal rate of family pension payable to the widow of the deceased deals with left out service, whereas, on the date of death, admittedly, the Petitioner's father had less than one year of service and therefore, zero has been awarded, which is correct. S.No.4 deals with with Application's weightage and the weightage of 'nil' points is awarded as the applicant is not the widow. With regard to terminal benefits, the respondents have awarded five points by taking the terminal benefits at Rs.577,923/-.To be noted, that while passing the order of rejection, dated 18.03.2011 and in the order rejecting the appeal petition by order, dated 24.12.2017, the manner of computation of weightage point was not furnished to the Petitioner. Even before the Tribunal, the*

*respondents in their counter affidavit did not disclose the computation particulars. The Petitioner filed a reply statement stating that computation is wrong and for the first time, before this Court, the computation is given. In the computation, leave encashment and amount paid on account of maturity of LIC policy and GPF has been taken into consideration for arriving at Rs.5,77,923/-. Leave Encashment is a benefit given to the employee and he would be entitled to encash the same even while in service and if the employee does not do so, he is entitled to encash the same on attaining the age of superannuation. Therefore, considering the stand taken by the respondents and bearing in mind the scheme of appointment on compassionate grounds, we are of the view that the said amount of Rs.1,25,799/- paid towards leave encashment cannot be termed as terminal benefits, because it was eligible to be encashed by the employee while in service. The payment of amount towards maturity of LIC Policy also cannot be termed as terminal benefits, because it is the deceased employee, who had paid the premium either by himself or being deducted from the salary. Therefore, the said amount of LIC of Rs.1,01,601/- should be excluded from the terminal benefits. Thus by taking the terminal benefits as Rs.3,50,000/- + Rs.523/- as GPF, the total amount of terminal benefit is Rs.3,50,523/-. The appropriate weightage point to be awarded is 7.*

*7.Next, we move to S.No.6 which deals with accommodation. The respondents have granted ''0'' points on the ground that their family owns a house surrounded with 1600 sq.ft of vacant land. The photograph of the house has been filed in the typed-set of papers and we find that it is a tiled house and a very old construction. Property tax assessment was made which shows that the built up area is 200 sq.ft and the vacant land is to the extent of 1627 sq.ft. To be noted is that the Petitioner alone is not the sole legal heir of her father, there are nine legal heirs including the Petitioner. Assuming all the daughters have consented to release their respective shares in favour of their mother, at best, the Petitioner can get 1/9th share which would be less than 9 sq.ft. Therefore, we are of the view that for such accommodation, appropriate weightage point to be granted is 10. If the computation is done in the above manner, then the Petitioner secures 65 points(30+18+7+10) which is well above* *the cut-off mark of 55 as per the policy guidelines. Therefore, the Petitioner is entitled to be granted appointment on compassionate grounds."*

7.In the grounds raised before us and in the arguments advanced by the learned Senior Standing Counsel for the applicants, we are unable to find any ground, which points out an error, which is apparent on the face of our order. The decisions, which were cited by the learned Senior Standing Counsel for the applicants are all decisions where the Hon'ble Supreme Court has directed as to how the application for compassionate appointment has to be considered and there is no question of any compassion or benediction that can be exercised by the Court while granting such a relief. However, the case before us was a matter which travelled up to the Central Administrative Tribunal and the order passed by the Central Administrative Tribunal was considered for its correctness and we have assigned our reasons in support of our conclusion that the respondent is entitled for grant of compassionate appointment.

8.Thus, in the absence of any grounds made out to review the order, we cannot permit the applicants to re-argue the writ petition, as the settled legal position is that the review application is not an appeal in disguise.

9.For the above reasons, this Review Application is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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Sub Assistant Registrar(CS)

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