

WPA 11858 of 2023

Suraj Jaiswara
Vs.
The Union of India & Ors.

Mr. Shamik Chatterjee
Mr. Aditya Bakrim Mahata
Mr. Sahil Kabir

....for the petitioner

Mr. Sauvik Nandy
Mr. Subhajit Das

.....for the Union of India

A point of demurrer to the writ petition is taken by Mr. Nandy, learned counsel appearing on behalf of the Union of India relating to the lack of territorial jurisdiction of this Court, to entertain the writ petition. It is submitted that since the petitioner's father was a Government employee, the Central Administrative Tribunal is the Court of first instance.

The petitioner's father joined service on June 26, 1993. He was declared to be **unfit** for continuation of his service on July 6, 2022. The same was communicated to the petitioner's father on August 23, 2022 and subsequently he retired from his service on September 22, 2022.

Mr. Chatterjee, learned counsel appearing on behalf of the petitioner submits that the point of maintainability cannot be urged at present due to the fact that the Gun & Shell Factory, Cossipore is now a

Defence Public Sector Undertaking (DPSU) pursuant to a notification dated September 21, 2021. Therefore, the petitioner's father being an employee of a Gun & Shell Factory, is to be considered an employee of a DPSU and not a Central Government employee.

Mr. Nandy, learned counsel appearing on behalf of the Union of India draws the attention of this Court to Clause 5 of the said office Memorandum dated September 24, 2021. He submits that in respect of matters pertaining to personnel (Government employees) **pending** before various administrative tribunals, High Courts and Supreme Court, the New PUSUs will be responsible to defend as assignee or successor-in-interest, as per existing rules till the time the employees are on *deemed deputation* with the DPSUs and protect the interests of the Union of India. He also refers to an order passed by the learned Central Administrative Tribunal (CAT), to support his contention that such employees should approach CAT and not the Hon'ble High Court in its writ jurisdiction.

He also refers to an order passed by the Hon'ble High Court at Patna dated July 26, 2022 (**Satya Prakash Sah vs. The Union of India**) in support of his contention that the High Court should not entertain such matters which relates to the Central Government employees.

Considering the rival submissions of the parties and the materials placed on records, this Court is of the view that vide office Memorandum dated September 24, 2021 the Department of Defence Protection, Ministry of Defence, Government of India clearly directed that from the appointed date i.e. with effect from October 1, 2021, the Management, Control, operations and maintenance of 41 production units and the identified non-production units would be transferred to the Government owned Defence Public Sector Undertakings/Government companies. Therefore, the employees of such organisations would be considered to be employees of DPSUs and not Government employees. Gun & Shell Factory, Cossipore was directed to be under the Management and Control of Advanced Weapons and Equipment India Limited/ a Government company. This Court also finds that by the office Memorandum dated September 24, 2021 all the matters pertaining to personnel (Government employees) **pending** before the various Administrative Tribunals, High Courts and Supreme Court were to be defended by the new DPSUs in place and stead of Union of India. The present writ petition has been filed on May 11, 2023. Therefore, the question of such a matter being a **pending** matter on October 1, 2021 (appointed date), does not and cannot arise.

Therefore, this Court sees no bar to entertain the present writ petition since the petitioner's father was an employee of a DPSU.

The next limb of submission made by Mr. Nandy relates to the scheme for compassionate appointment that was notified vide office Memorandum dated August 2, 2022 not being applicable to the petitioner. He submits that since there is no new scheme regarding compassionate appointments of the dependants of the employees of DPSUs, petitioner's case cannot be considered, till such time the scheme is framed by DPSU. With due respect, such a submission cannot be accepted. It is well settled that the scheme that is prevalent on the date of death of an employee or on the date of permanent incapacitation of the employee is the relevant scheme for the purpose of considering a prayer for compassionate appointment. A beneficial reference may be made to the Apex Court's decision reported in (2022) 2 SCC 157 (**State of M.P. & Ors. vs. Ashish Awasthi**)

In such view of the matter, this Court is of the view that the scheme/policy/guidelines applicable on the date of death/permanent incapacitation of the employee is the applicable one. Therefore, since the petitioner's father has been declared to be **unfit** on July 6, 2022 and was directed to retire from service on September 22, 2022, the applicable rule/scheme will

be the one that was in force on the aforesaid date, i.e. September 22, 2022.

This Court also cannot be persuaded by the order dated April 20, 2022 passed by the Learned CAT, Calcutta Bench in **(Chandana Dey vs. Union of India)** directing the representation of the petitioner to be considered upon framing of a new policy.

To the mind of this Court the applicable policy is the policy that was prevailing on the date of the death/incapacitation. Therefore, the petitioner's representation cannot be considered in accordance with the ***new policy*** to be framed by the appropriate authorities. This Court finds it perplexing that such a submission is made on behalf of the Union of India when the date of applicable policy governing the field of compassionate appointment is no more ***Res Integra***.

In the light of the discussions hereinabove, this Court directs the representation of the petitioner dated April 10, 2023 to be considered by the Executive Director, Gun & Shell Factory within a period of six weeks from date upon giving personal hearing to the petitioner. The said representation shall be disposed of with a reasoned order which shall be communicated to the petitioner within two weeks from date of passing of the order. In considering the representation of the petitioner the policy applicable on the date of

retirement of the petitioner's father after being declared **UNFIT shall** be taken into account.

With the aforesaid directions **WPA 11858 of 2023** is **disposed of**.

Since affidavits have not been invited in the present writ petition, the allegations made in the writ petition are deemed not to have been admitted by the parties.

All parties are to act on a server copy of this order downloaded from the official website of this Hon'ble Court.

Urgent certified website copies of this order, if applied for, be made available to the parties subject to compliance with all requisite formalities.

(Lapita Banerji, J)