

07.12.2023
Item No.06
Court No.11
Avijit Mitra

WPCT 108 of 2023

In re: An application under Article 226 of the
Constitution of India;
And

Smt. Purnima Adhikary & anr.
- Versus -
Union of India & ors.

Mr. Himadri Barua
....for the petitioners
Mr. Santanu Chattopadhyay
....for the respondent nos. 2 to 7

The present writ petition has been preferred
challenging an order dated 11th May, 2023 passed by
the learned Tribunal in the original application being
OA 350/01434/2016.

Shorn of unnecessary details the facts are that
the husband of the petitioner no.1 died-in-harness on
5th January, 2001. To tide over the financial distress
due the loss of the sole bread earner, the petitioner
no.1 submitted a representation for compassionate
appointment of the petitioner no.2, who is her son, on
26th February, 2001. Thereafter the petitioner no.1
submitted several representations including a
representation dated 12th July, 2004. As the same
were not considered, the petitioners preferred a writ
petition being WP No.11192 (W) of 2007 which was
disposed of by an order dated 30th August, 2011

directing the competent authority to consider the claim of the petitioner no.2. An appeal preferred against the same by the Bharat Sanchar Nigam Limited (in short, BSNL) was dismissed by a Co-ordinate Bench of this Court on 29th September, 2012. Thereafter the respondent no.5 passed an order on 25th April, 2012 intimating that the claim was examined and not found fit by the High Power Committee (in short, HPC) since as per the weightage point system the petitioner no.2 scored only 50 points. The said order was challenged by a writ petition being WP No.14232 (W) of 2012 and the same was disposed of on 17th April, 2013 observing *inter alia* that the Hon'ble High Court had no jurisdiction to entertain the writ petition. The petitioners thereafter filed an original application before the learned Tribunal which was disposed of by an order dated 1st May, 2015 directing the respondents to reconsider the case of the petitioner no.2 in the matter of awarding weightage point in respect of housing accommodation. Pursuant to such direction an order was passed on 28th June, 2016. Thereafter another order was passed by the respondent no.5 on 4th July, 2016 rejecting the claim for compassionate appointment. Challenging the said order of 4th July, 2016, the petitioners preferred the original application which was disposed of by the order impugned in the present writ petition.

Mr. Barua, learned advocate appearing for the petitioners submits that the argument, as advanced on behalf of the petitioners, that as they are living in a rented house since their dwelling house has already been destroyed due to natural calamity, they are entitled to the weightage of 10 marks for accommodation, was not considered by the learned Tribunal and no finding was returned on the same. Such infirmity warrants interference of this Court.

Drawing our attention to a memo dated 23rd December, 2022, Mr. Barua submits that on the self-same date another memo was issued and the contents of the same do not tally. In view of such contradictory observations a proper inspection needs to be conducted afresh to decide as to whether the petitioners are residing in a rented house.

He further argues that the learned Tribunal failed to appreciate that the petitioners approached the authorities claiming compassionate appointment within two months after the death of the employee but the matter was kept pending by the respondents and as such the delay is attributable to the respondents and for such efflux of time, the petitioners cannot be held responsible.

Per contra, Mr. Chattopadhyay, learned advocate appearing for the respondent nos. 2 to 7 submits that to bring uniformity in assessment of indigent condition

of the deceased's family, a weightage point system was introduced in accordance with the DoPT guidelines in the year 2007 wherein it was mentioned that the candidates would have to obtain 55 points or more for being eligible to be considered by the High Power Committee (in short, HPC) for compassionate appointment. The claim of the petitioner no.2 was considered but he secured 50 marks which is below the cut-off 55 marks. No marks were allotted towards accommodation since the family was living in its own house, as would be explicit from the averments made in the original application and the memo dated 28th June, 2016 and as such no marks were awarded towards accommodation by the HPC and there is no infirmity in such decision.

The sole point which arises for consideration as to whether the respondents' decision not to award marks towards accommodation suffers from any infirmity. The fact that the petitioners are having a dwelling house would be explicit from the averments made in the original application and from the contents of the letter dated 12th July, 2004 issued by the petitioner no.1 and annexed to the original application wherein it has been stated *inter alia* that '*Last 12th March, 2003, due to severe hail Storm our dwelling house is damaged, especially all the asbestos have completely smashed and we have taken shelter at our*

neighbour's house. I am herewith enclosing the photograph of our house'. In view thereof, no weightage could be awarded for accommodation and accordingly the petitioners could not secure the cut off marks for coming within the zone of consideration.

The discrepancies pointed out by Mr. Barua in the memo dated 23rd December, 2022 do not create any right in favour of the petitioners since the petitioners were admittedly having a dwelling house.

The whole object towards grant of compassionate appointment is to enable the family members of a deceased employer to tide over a sudden financial distress. Such compassionate appointment is not a vested right and needs to be considered only on the basis of the provisions of the scheme.

The learned Tribunal, upon dealing with all the factual issues arrived at specific findings and we do not find any error, least to say any patent error of law in the judgment impugned. The same also does not suffer from any jurisdictional error or manifest injustice warranting interference of this Court.

In view thereof, the writ petition is dismissed.

There shall, however, be no order as to costs.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Gaurang Kanth, J.)

(Tapabrata Chakraborty, J.)

