



WEB COPY



W.A.No.527 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SURESH KUMAR
and
THE HONOURABLE MR.JUSTICE G.ARUL MURUGAN**

W.A.No.527 of 2020

1. The Employees State Insurance Corporation,
Represented by its Director General,
Panchadeep Bhavan,
CIG Marg,
New Delhi - 110 002.

2. The Employees State Insurance Corporation,
Represented by its Regional Director,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034.

... Appellants

-Vs-

P.D.Sangeetha,
D/o.Late P.Devarajan

... Respondent

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, to set aside the order dated 16.08.2019 made in W.P.No.7069 of 2003 directing the appellants to pay lumpsum of Rs.10,000/- to the respondent.

For Appellants : Mr.K.C.Ramalingam

For Respondent : Mr.K.Shanmugakani



WEB COPY



W.A.No.527 of 2020

COMMON JUDGMENT

(Judgment of the Court was delivered by **R.SURESH KUMAR, J.**)

This writ appeal has been directed against the order passed by the writ Court dated 16.08.2019 made in W.P.No.7069 of 2003.

2. The respondent P.D.Sangeetha was the daughter of one P.Devarajan who was the employee of the appellant Corporation and who died in harness on 15.07.1994 leaving behind his widow, i.e., the mother of the said Sangeetha and herself and her elder sister.

3. Immediately after the demise of the father of the respondent during the year 1994, she had made an application to the appellant Corporation seeking compassionate appointment.

4. However, since the Date of Birth of the respondent is 15.05.1979, in the year 1994, she was only 16 years old, therefore, the appellant Corporation could not have considered the said application and provided compassionate appointment to the respondent at that time, therefore, the application had been



W.A.No.527 of 2020

kept pending. This, in fact, is claimed to have been informed by the appellant Corporation to the respondent in 1994 itself.

5. Thereafter, the respondent became major on 15.05.1997, after she became major, she once again approached the appellant Corporation to seek for compassionate appointment. At that time, i.e., on 06.10.1997, when she made second attempt, she had made an application also, that application was taken into account and the same was rejected sometime in June 1999, i.e., 15.06.1999 by the following cryptic order:

"Madam,

With reference to the above, I am directed to inform that your case was examined by Head Quarters Office in accordance with Government of India instructions and Head Qrs. has informed that it is not a fit case for appointment on compassionate grounds."

6. Absolutely, no reason had been given by the appellant Corporation in making such rejection of the application, therefore, unmindful of the said rejection order, the respondent was continuing her effort to get compassionate appointment and makes further application and on her behalf, her mother also made an application, all these efforts taken by the respondent had since not yielded any desired result, the respondent filed writ petition, i.e., W.P.No.29457



W.A.No.527 of 2020

of 2002 seeking for a writ of mandamus. The said writ petition was ordered wherein a direction was given to the appellant Corporation to consider the application submitted on behalf of the respondent and such an order was passed by the writ Court on 08.08.2002.

7. Only in compliance of the said order passed by this Court, the appellant Corporation on 12.11.2002 had passed an order of rejection which was impugned before the writ Court in W.P.No.7069 of 2003. The said writ petition was considered and ordered by the learned Judge through the impugned order dated 16.08.2009 whereby a lumpsum compensation of Rs.10,00,000/- was directed to be paid by the appellant Corporation to the respondent *in lieu* of loss of earning because of the delay caused by the appellant Corporation in considering the application and providing job opportunity by way of compassionate appointment. Aggrieved over the same, the present appeal has been directed by the appellant Corporation.

8. Heard Mr.C.Ramalingam, learned counsel appearing for the appellant Corporation who would submit that, at the time when the death of P.Devarajan, who is the father of the respondent, has occurred in the year 1994, though an application had been made by or on behalf of the respondent, that application



W.A.No.527 of 2020

could not be taken into account, because she was only 16 years old at that time, therefore, it could not be considered by the appellant Corporation and in fact, the said decision had been conveyed of course orally to the respondent.

9. Thereafter, after attaining the majority, the respondent had made an application only on 06.10.1997.

10. The said application was rejected by order dated 15.06.1999, the said rejection order was not questioned or challenged by the respondent and she further going on giving applications and in the year 2002, she approached this Court seeking for a mandamus, where since a direction was given by the writ Court to consider such application filed by or on behalf of the respondent, that was considered and based on the vacancy position as well as the scheme of compassionate appointment and also taking into account of the DOPT memorandum, the appellant Corporation had come to the conclusion that, the application subsequently submitted by or on behalf of the respondent cannot be considered positively for providing compassionate appointment and reasons were given in the order dated 12.11.2002 for rejecting such application.

11. The learned counsel would also contend that, as per DOPT



W.A.No.527 of 2020

instructions, only 5% vacancies would be earmarked for purpose of compassionate appointment and during the year 1994, 1995 and 1996, since there had been excess appointment that 5% quota has already been exhausted and therefore, absolutely there was no reason to consider any application for compassionate appointment including the respondent.

12. Only at the end of 1996, some vacancies had arisen, however there was no application on the side of the respondent as still the respondent was minor, therefore, the question of considering the candidature of the respondent at the end of 1996 along with other similarly placed candidates did not arise at all, he contended.

13. The learned counsel would also submit that, subsequently only on 06.10.1997, i.e., well after she became major, the respondent had made an application, that application was rejected by the order of the appellant Corporation dated 15.06.1999 and that rejection order never been questioned and only a mandamus had been sought for in the writ petition filed in the year 2002 where some directions had been given, in compliance of the same, the present order has been passed on 12.11.2002 stating all these reasons, therefore, there was every justification on the part of the appellant Corporation to maintain



W.A.No.527 of 2020

the impugned order before the writ Court dated 12.11.2002.

WEB COPY

14. The learned counsel therefore would submit that, however the learned Judge has not considered all these factual matrix in proper perspective and has allowed the writ petition by way of giving a direction to the appellant Corporation to make a bulk payment of Rs.10,00,000/- as one time compensation *in lieu* of loss of earning because of the alleged delay caused by the appellant Corporation in considering the application of the respondent for compassionate appointment.

15. On the other hand, Mr.K.Shanmugakani, learned counsel appearing for the respondent would contend that, during the year 1994, i.e., the year of death of the father of the respondent, on behalf of the respondent, application was submitted and this is an admitted fact. The said 1994 application has never been rejected at any point of time, therefore, the moment the respondent became major, the application submitted already in the year 1994 and had been kept pending at the office of the appellant Corporation ought to have been acted upon and accordingly, the compassionate appointment should have been given.

16. Since it is the further admitted fact that, in the year 1996, there had



W.A.No.527 of 2020

been vacancies arise and based on which, at least 3% application which had already been rejected sometime in 1994 had been again reconsidered and in December' 1996, the appellant Corporation had given compassionate appointment to those persons, therefore, such a gesture can very well be extended to the respondent also who became major on 15.05.1997, on that date when she became major, there had been vacancies which is less than 5% and there was no DOPT instructions issued at that time, as it had come only in the year 1998 and the application submitted by or on behalf of the respondent also was kept pending right from 1994, therefore, there was no need to make any further application. However, as the respondent has become major on 15.05.1997 she had made a further request on 06.10.1997 which was considered to be an application submitted by the respondent afresh and based on which, without any reason that was rejected on 15.06.1999 as there has been no reason cited in the said order, that will not have any impact on the right of the respondent to seek for compassionate appointment, therefore, further applications or remainders had been given which were since not considered, the respondent was constrained to approach this Court by filing the writ petition seeking a mandamus in the year 2002 where a direction was given, pursuant to which, the present order dated 12.11.2002 has been passed where reasons stated in the said order would not be sustained in view of the aforestated factual



W.A.No.527 of 2020

matrix, hence there was every justification on the part of the learned Judge who allowed the writ petition by giving a direction for one time compensation to the extent of Rs.10,00,000/- to the respondent and such an order passed by the writ Court is fully justified and hence, it does not warrant any interference from this Court, he contended.

17. We have considered the said rival submissions made by the learned counsel appearing for both sides and perused the materials placed before this Court.

18. As has been rightly pointed out by the learned counsel appearing for the respondent that, the death of the respondent's father occurred on 15.07.1994, immediately in the very same year within a short period, an application was submitted by or on behalf of the respondent. This factor became evident as it has been admitted by the appellant Corporation in the very rejection order dated 12.11.2002 itself.

19. In order to substantiate the said contention, the first paragraph of the order dated 12.11.2002 is extracted hereunder:

"Km.P.D.Sangeetha, Daughter of late Shri



P.Devarajan who was an employee of the E.S.I.Corporation in the Tamil Nadu Region had applied for a job in the Corporation on compassionate grounds as her father had expired while in the service of the Corporation (on 15.07.1994). Km.Sangeetha sought compassionate appointment during 1994 and she was verbally informed that her request for compassionate appointment could not be considered as she was not of the required age (she was below 18 at that time). Again she approached the Regional Office for appointment on 06.10.1997 after completing 18 years of age. The case was examined on merit as per the existing instructions on the subject and it was not found a fit case for compassionate appointment as Shri P.Devarajan died on 15.07.1994 and the request of Km.P.D.Sangeetha for compassionate appointment was received in Hqrs. Office on 06.10.1997 after 3 years of the death of her father. Km.Sangeetha and her mother Smt.D.Lalitha represented a few times, including her representation dated 2.2.2001 and the Advocate's Notice dated 30.04.2002 regarding her compassionate appointment."

20. Therefore, there was an application in the year 1994 and that application has never been rejected, only it was claimed that, orally the stand of the appellant Corporation was conveyed to the respondent stating that since she being a minor it cannot be considered at that time, that means after she attains



W.A.No.527 of 2020

majority, consideration would be made.

WEB COPY

21. Subsequently, on 15.05.1997, the respondent became major, therefore immediately that application could have been considered and compassionate appointment could have been given.

22. Even though a stand has been taken by the appellant Corporation that, during the year 1994, 1995 and 1996, there was no vacancy and only at the end of the year 1996, vacancies arose, where three other persons applications were considered and compassionate appointment were given, if that being so, in the year 1997, when she became major, her application could also been considered in any of the vacancies and compassionate appointment could have been given.

23. The appellant Corporation mainly making a contention that, the application was submitted only on 06.10.1997, i.e., after three years of the death of the father of the respondent, but factually, it is incorrect, the reason being that, it is an admitted fact that, during the year 1994 itself application was submitted, that was never considered or rejected.

24. Only the application that has been given on 06.10.1997 after she became major was rejected by order dated 15.06.1999 and the entire order has



W.A.No.527 of 2020

already been extracted hereinabove, where absolutely no reason has been given, except stating that, the case is not a fit case for appointment on compassionate ground, that kind of cryptic order without assigning any reasons cannot be passed by any authority, therefore, on the face of it, that order would not survive under the legal scrutiny, therefore non-challenging of the said order would not become a defective one to pursue the right of the respondent who continuously pursuing her right to get compassionate appointment by making application after application, remainder after remainder by herself and her mother on her behalf.

25. Since all these efforts taken by the respondent had not yielded any desired results, she approached this Court in the year 2002 seeking a mandamus which was also issued by this Court.

26. Only pursuant to the said mandamus issued by this Court, at last on 12.11.2002, the appellant Corporation had come forward to pass a rejection order stating all these reasons.

27. The first reason that, the application can be kept it for only one year, beyond which, it cannot be kept is not correct, because in any scheme of the



W.A.No.527 of 2020

compassionate appointment, for minimum three years, the application would be kept pending, within which, if the person who seeks compassionate appointment become eligible to be considered for compassionate appointment, certainly, it would be considered, this is the settled legal position.

28. Secondly, the reason stated is that, there was no vacancy during the year 1994, 1995 and 1996, but the fact remains that, admittedly at the end of 1996, vacancies arose, that is the reason why three such applicants who made such applications for compassionate appointment, though had been earlier rejected in the year 1994 had been reconsidered and appointment had been given in the year 1996, i.e., on 26.12.1996 and the relevant details have been extracted by the learned Judge in paragraph No.5 of the impugned order which speaks for itself as to how the other three persons were treated, whereas the respondent treated differently, therefore, it is a clear case of discrimination.

29. When vacancies arose at the end of the year 1996, certainly that position would continue in the year 1997 and on 15.05.1997, the respondent since has become major, she would be fully qualified and eligible to seek such compassionate appointment which is ought to have been considered by the appellant Corporation.



W.A.No.527 of 2020

WEB COPY

30. However, for whatever reasons or the reason best known to them, no such consideration has been made, therefore, it triggered the respondent to make a further request on 06.10.1997, therefore the 06.10.1997 request cannot be treated as an application made first time, that approach on the part of the appellant Corporation is a faulty one and based on which, they cannot say that the application was rejected on 15.06.1999. Assuming that there has been a rejection order on 15.06.1999, if we look at the reasons stated in the said order, absolutely, no such reasons has been stated, therefore this rejection order is only an eyewash, hence the Court cannot take the order seriously because it does not carry any reason for such rejection.

31. Subsequently, a direction was given in the year 2002, therefore, it become necessitated on the part of the appellant Corporation to consider the application for compassionate appointment. Having considered the same, now some reasons had been given and each reasons has been dealt with by this Court, insofar as the excess appointment beyond 5% ceiling fixed by the Central Government notification is concerned, that has come only subsequently in the year 1998, therefore that will no way affect the prospects of the respondent to get compassionate appointment in the year 1997 itself as she become major on



W.A.No.527 of 2020

15.05.1997.

WEB COPY

32. Therefore, for none of such reasons that has been stated in the order dated 12.11.2002, the order would sustain, therefore the learned Judge has rightly set aside the said order and has given the relief.

33. Insofar as the relief that has been given by the writ Court is concerned, after having considered the very long delay that has been caused for various reasons, at this fag end instead of giving a direction to give compassionate appointment, the learned Judge thought it would be fruitful to give a direction to give a lumpsum compensation. That kind of approach of the learned Judge adopted by applying the ratio of the Hon'ble Supreme Court in the case of *Subhadra Vs. Ministry of Coal and another* reported in (2018) 11 SCC 201, where such a gesture since has been shown by the Hon'ble Supreme Court, is to be approved. The principle enunciated by the Hon'ble Supreme Court has been adopted by the learned Judge in the present case also as the circumstance warrants to invoke the said principle and accordingly, the learned Judge had given a direction to give lumpsum compensation to the respondent who was the writ petitioner.

34. The said approach of the learned Judge, in the considered opinion of us, is not infirm or faulty or erroneous and therefore, such a reasoning given and



W.A.No.527 of 2020

the conclusion reached by the learned Judge is to be accepted, hence the order impugned is to be sustained.

35. Resultantly, this appeal fails, hence it is liable to be rejected, accordingly, it is dismissed. However, there shall be no order as to costs. As a sequel, there shall be a direction to the appellant Corporation to comply with the order of the writ Court by paying the compensation as directed by the writ Court through the impugned order with 6% interest per annum from the date of judgment till the date of payment within a period of eight weeks from the date of receipt of a copy of this order.

(R.S.K., J.) (G.A.M., J.)
21.11.2023

NCC : Yes
Index : Yes
Speaking Order : Yes

vji

To



W.A.No.527 of 2020

1. The Director General,
The Employees State Insurance Corporation,
Panchadeep Bhavan,
CIG Marg,
New Delhi - 110 002.
2. The Regional Director,
The Employees State Insurance Corporation,
No.143, Sterling Road,
Nungambakkam,
Chennai - 600 034.



WEB COPY



W.A.No.527 of 2020

**R.SURESH KUMAR, J.
and
G.ARUL MURUGAN, J.**

vji

W.A.No.527 of 2020

21.11.2023