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W.P. No.34427 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR
and
THE HONOURABLE MR. JUSTICE P. DHANABAL

Writ Petition No. 34427 of 2019
and
WMP.No.35097 of 2019

1. Union of India,
Represented by the Secretary
Ministry of Communications & IT
Department of Posts,
Dak Bhavan, Sansad Marg,
New Delhi 110 011.
2. The Chief Postmaster General,
Tamilnadu Circle,
Anna Salai, Chennai 600002.
3. Superintendent
Railway Mail Service,
Chennai Sorting Division,
Chennai 600 008.
4. Head Record Officer,
Chennai Sorting Division,
Chennai 600 008.

.. Petitioners

Versus

1. Manimozhi



W.P. No.34427 of 2019

2. The Registrar,
Central Administrative Tribunal
Chennai.

.. Respondents

Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorari calling for the records relating to the order passed by the 2nd respondent in OA/310/00944/2017, dated 23.08.2018 and quash the same.

For petitioners : Mr. V. Chandrasekaran
For respondents : Mr. R. Malaichamy, for R1

ORDER

(Order of the Court was made by D. KRISHNAKUMAR, J)

This petition has been filed to quash the order passed by the 2nd respondent/Tribunal in OA/310/00944/2017, dated 23.08.2018 filed by the first respondent herein.

2. It is the case of the first respondent that her father was initially recruited through employment exchange to work as a Mazdoor in the third petitioner Division w.e.f. 12.09.1983 and worked in the said post without any break for a long time. While so, the first petitioner introduced a scheme called "Temporary Status for casual labourer" for casual labourer in Gr. D in the year 1991. As per the scheme, the third petitioner granted temporary status to 72 Mazdoors w.e.f. 01.01.2001 including her father. However, even after



W.P. No.34427 of 2019

completion of 3 years in temporary status, he was not regularized. While so, on 06.08.2014 her father died. Thereafter, the first respondent made a representation on 17.04.2017 to appoint her on compassionate grounds, but the same was rejected by the petitioners. Challenging the same the first respondent filed the Original Application before the Tribunal.

3. The Tribunal by relying upon the order passed in similar circumstances in OA. No. 1994/2014, set aside the orders dated 25.05.2017 and 30.05.2017 with a direction to the petitioners to consider the application of the first respondent for appointment on compassionate grounds in terms of the relevant scheme after due assessment of the financial conditions of the family. Challenging the same, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner Department submits that the deceased employee Vishwanathan was conferred with temporary status with effect from 01.01.2001 and he was treated on par with temporary Group D employees granting all benefits. However, till his death on 06.08.2014, his service was not regularised as MTS. Therefore, the first respondent is not entitled for compassionate appointment. Hence, the representation of the first respondent was rightly rejected by the petitioner Department.



W.P. No.34427 of 2019

5. The learned counsel for the first respondent submits before this Court that after granting temporary status to the first respondent's father Vishwanathan, annual increments were granted to him and once temporary status has been granted, the first respondent is entitled for compassionate appointment. Therefore, the order passed by the Tribunal is well considered and the same cannot be interfered with.

6. Heard the learned counsel appearing for the parties and perused the materials available on record.

7. The deceased Viswanathan was working as Mazdoor in the third petitioner Division and he was granted temporary status on 01.01.2001 but till his death, his service was not regularised by the petitioner Department. The said fact has not been disputed by the parties. The only claim of the first respondent is that as her father was conferred with temporary status and also received increment, he is entitled for compassionate appointment.

8. Therefore, the only question that needs to be answered in this Writ Petition is as to whether the granting of temporary status to the first respondent's father would enable the first respondent to get appointed on compassionate ground. In this regard, it is useful to rely upon the decision of



W.P. No.34427 of 2019

the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh and***

Others vs. Amit Shirvas reported in **2020 10 Supreme Court Cases 496**. The

relevant paragraph of the said judgment reads as follows:

"17. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The late father of the respondent was undoubtedly a work- charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.

18. In the aforesaid behalf, an analogy can be drawn with the Madhya Pradesh Industrial Employment (Standing Orders) Rules, 1963, under which employees can be classified as permanent, permanent seasonal, probationers, badlis, apprentices, temporary and fixed-term employment employees. A work-charged contingency employee can also be classified under any of the aforementioned categories and under the said Standing Orders, the classification as permanent can be granted even on the completion of 6 months service in a clear vacancy.

19. We are not required to labour much on the aforesaid issue and really speaking this issue is no more res integra in view of the judgment of this Court in Ram Naresh Rawat v. Ashwini Ray & Ors., which opined that a 'permanent' classification does not amount to regularisation. The case dealt with the aforesaid Standing Orders and it has been observed in paras 24, 26 & 27 as under:



WEB COPY



W.P. No.34427 of 2019

“24. It is, thus, somewhat puzzling as to whether the employee, on getting the designation of “permanent employee” can be treated as “regular” employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as “permanent employee” would be treated as a regular employee but it does not appear to be exactly that kind of situation in the instant case when we find that merely after completing six months' service an employee gets right to be treated as “permanent employee”. Moreover, this Court has, as would be noticed now, drawn a distinction between “permanent employee” and “regular employee”.

26. From the aforesaid, it follows that though a “permanent employee” has right to receive pay in the graded pay-scale, at the same time, he would be getting only minimum of the said pay- scale with no increments. It is only the regularisation in service which would entail grant of increments etc. in the pay-scale.

27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in negative terms (See Indian Council of Agricultural Research & Anr. v. T.K. Suryanarayan & Ors. [(1997) 6 SCC 766])”

20. The conclusion to be drawn from the aforesaid is that attaining the status of permanent employee would entitle one only to a minimum of the pay-scale without any increments. It is this aspect



which was sought to be emphasised by learned counsel for the respondent to contend that this would not apply, because in the present case, krammonati and increments were given. However, we may note that in the order dated 7.2.2002 granting the benefit of monetary krammonati to employees, including the respondent's father, it was specified that the same would not affect the posts of such employees.

21. The moot point, thus, is that having been granted increments, could a person be said to have reached the status of a regular employee? In order to answer this question, we may note that while considering this aspect in the aforesaid judgment, it was specifically opined that even "if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is trite that right to equality under Article 14 is not in the negative terms." We say so, not with the objective of giving a licence to the appellants to withdraw any of the benefits, which are already granted, and we make this unequivocally clear. However, we cannot at the same time make a conclusion that the status acquired is that of a regular employee upon having achieved the status of a permanent employee in service.

22. Thus, the classification of the late father of the respondent as a permanent employee, and this distinction between a 'permanent' status and a 'regular' status appears to have been lost sight of in the impugned judgments.

23. We may also notice the reliance placed by learned counsel for the respondent on certain other cases where orders similar in nature were passed by the High Court and an SLP against one of these orders was dismissed, but then we have already observed that



this will not give a right for perpetuating something which is not permissible in law.

24. We had the occasion of examining the issue of compassion appointment in a recent judgment in Indian Bank & Ors. v. Promila & Anr.⁴ We may usefully refer to paras 3, 4, & 5 as under: (SCC p.731)

“3. There has been some confusion as to the scheme applicable and, thus, this Court directed the scheme prevalent, on the date of the death, to be placed before this Court for consideration, as the High Court appears to have dealt with a scheme which was of a subsequent date. The need for this also arose on account of the legal position being settled by the judgment of this Court in Canara Bank & Anr. v. M. Mahesh Kumar, (2015) 7 SCC 412, qua what would be the cut-off date for application of such scheme.

4. It is trite to emphasise, based on numerous judicial pronouncements of this Court, that compassionate appointment is not an alternative to the normal course of appointment, and that 4 (2020) 2 SCC 729

there is no inherent right to seek compassionate appointment. The objective is only to provide solace and succour to the family in difficult times and, thus, the relevancy is at that stage of time when the employee passes away.

5. An aspect examined by this judgment is as to whether a claim for compassionate employment under a scheme of a particular year could be decided based on a subsequent scheme that came into force much after the claim. The answer to this has been emphatically in the negative. It has also been observed that the grant of family pension and payment of terminal benefits cannot be treated as a substitute for providing employment assistance. The crucial aspect is to turn to the



scheme itself to consider as to what are the provisions made in the scheme for such compassionate appointment.”

25. *We are, thus, unable to give any relief to the respondent, much as we would have liked under the circumstances, but are constrained by the legal position. The family of the late employee has already been paid the entitlement as per applicable policy.*

26. *We may, however, notice a subsequent development arising from certain additional documents placed on record pertaining to the amendment to the policy of 18.8.2008 vide Circular dated 29.9.2014. In terms of this Circular, the compassionate grant amount was increased from Rs. 1,00,000/- to Rs. 2,00,000/-. Another Circular was issued on 31.8.2016, through which, a decision was taken that the dependents of deceased employees drawing a salary from the work- charged/contingency fund would be entitled to compassionate appointment, but it was clarified vide Circular dated 21.3.2017 that pending cases before the date of the 31.8.2016 Circular would be decided only in terms of the amended Policy dated 29.9.2014. That being the position, this last Circular also does not come to the aid of the respondent as it would amount to making the policy retrospectively applicable, while the Circular says to the contrary.*

27. *We, however, are of the view that we can provide some succor to the respondent in view of the Circular dated 21.3.2017, the relevant portion of which reads as under:*

“2. In this regard, it is clarified that the compassionate appointment for the employees of Workcharge and Contingency Fund is in force also w.e.f. 31.08.2016. And the cases pending before this date, will be decided only in accordance with the directions issued for compassionate



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W.P. No.34427 of 2019

appointment on 29.09.2014, i.e., they will be eligible only for compassionate grant and not the compassionate appointment.

The proceedings be ensured accordingly.”

28. The aforesaid Circular records that pending cases will be decided in accordance with the directions issued for compassionate appointment on 29.9.2014. The present case is really not a pending case before the authority, but a pending lis before this Court.

29. We are, thus, of the view that it would be appropriate to use our powers under Article 142 of the Constitution of India to do complete justice between the parties by increasing the amount from Rs. 1,00,000/- to Rs. 2,00,000/- as aforesaid. We, in fact, adopted a similar approach in Punjab State Power Corporation Limited & Ors. v. Nirval Singh.

30. It appears from the documents on record that possibly a sum of Rs. 1,00,000/- was deposited by the respondent with the State Bank of India in an interest-bearing deposit in 2016, and the amount would possibly be lying in the same deposit. This would have been pursuant to the impugned order. We, thus, direct that this FDR be released to the respondent and that this amount, along with interest which would accrue to the benefit of the respondent, apart from the additional amount of Rs. 1,00,000/-, we have found as payable to the respondent which should be so paid within a period of two (2) months from today, failing which it will carry interest @ 12 per cent per annum (simple interest) till the date of payment.

31. The appeal is accordingly allowed leaving the parties to bear their own costs."

9. In the said decision, a distinction has been made out between the



W.P. No.34427 of 2019

employees who were conferred with the status of a work-charged employee, a permanent or a regular employee. It was also made clear that unless the applicant satisfies the eligibility criteria, he/she is not entitled for compassionate appointment. As the service of the father of first respondent was not regularised, as per the decision of the Honourable Supreme Court referred to above, first respondent has not satisfied the eligibility criteria for compassionate appointment, therefore, her application will not be considered for compassionate appointment. Consequently, the order passed by the Tribunal is set aside. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J] [P.D.B., J]
29.11.2023

Speaking order: Yes/No
Index : Yes/No
pvs

To
The Registrar,
Central Administrative Tribunal, Chennai.



WEB COPY



W.P. No.34427 of 2019

D.KRISHNAKUMAR, J.
and
P.DHANABAL, J.

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W.P. No.34427 of 2019

29.11.2023