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WPCT 17 of 2010
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IA No.: CAN 2 of 2023
Union of India & Others
- *Versus* -
Hirabati & Another

Mr. Suman Chattopadhyay
... for the UoI/Petitioners.
Mr. P. C. Das,
Mr. S. K. Ganguly,
Ms. Soma Chowdhury, Ms. Tithi Paul
...for the Respondents

We are satisfied with the explanation given towards the absence of the learned advocate of the petitioners before the Court when the matter was last taken up for hearing on 28th April, 2023 and earlier on 4th January, 2023. Accordingly, the order dated 28th April, 2023 as well as the order dated 4th January, 2023 are recalled. The writ petition is restored to its original file and number and with the consent of the parties the main writ petition is taken up for hearing. The applications, being CAN 1 of 2023 and CAN 2 of 2023 are, accordingly, disposed of.

Union of India and its functionaries are aggrieved by the order dated 4th September, 2009 passed by the learned Tribunal in the original application, being OA 1115 of 2003. By the said order the learned Tribunal directed the petitioners herein to grant full pay and allowances to the wife of the deceased employee from the date of the accident till the date of his superannuation upon adjusting the payment already

made and to sympathetically consider the claim for employment assistance of the deceased's son, being the applicant no.2/respondent no.2 herein and if possible, to provide him employment in Group – D category.

Shorn of unnecessary details, the facts are that one Shri Motilal was employed under the Railways and while he was working as Traffic Pointsman Grade A, he met with an accident on 22nd July, 2000 and was run over by the engine in which he was working and as a result his left leg had to be amputated. He was medically examined and intimated by a memo dated 28th August, 2001 that he had been found unfit in medical category Aye/two but fit in medical category CEY/two. Subsequent thereto, by a letter dated 22nd November, 2001 he was called for screening for absorption. Motilal, however, preferred an appeal before the competent authority for re-medical examination against de-categorization. By a letter dated 21st June, 2002, the Deputy Chief Medical Director directed the competent authority to request Motilal to submit his application for re-medical examination through proper channel for necessary action. As requested, Motilal duly submitted a representation on 15th July, 2002. Motilal thereafter attained the age of superannuation on 31st May, 2003 and during the period from the date of his accident till superannuation he was paid full salary for the period from 23rd July 2000 to 25th April, 2001 (282

days) and half pay leave from 26th April, 2001 to 26th July, 2001 (92 days). As Motilal's claim was ultimately not considered, he along with his son being the respondent no.2 herein were constrained to approach the learned Tribunal but unfortunately during pendency of the original application, Motilal expired on 31st May, 2005 and his wife, namely Hirabati was substituted in his place. The original application was thereafter finally decided upon exchange of pleadings and the application was disposed of by the order impugned in the present writ petition.

Mr. Chattopadhyay, learned advocate appearing for the petitioners submits that the petitioners had all along acted in consonance with the prescribed rules and guidelines. Motilal was called for medical examination and was thereafter medically de-categorized and offered absorption. He, however, refused to accept such offer and submitted a fresh prayer for re-medical examination. In the midst thereof, Motilal also submitted an oral prayer for voluntary retirement. Though Motilal was offered absorption, he did not avail such benefit and continued in service till his superannuation. He was thus not interested to render further service though he was asked to do so and was paid the leave salary strictly on the basis of the rules.

He argues that without appreciating the said sequence of facts and the steps taken by the authorities,

the learned Tribunal erroneously directed payment of full salary and even directed the General Manager, South Eastern Railway for providing employment assistance to the respondent no.2. The impugned order is thus an instance of misplaced sympathy and is unsustainable in law.

Per contra, Mr. Das, learned advocate appearing for the respondents submits that Motilal's prayer for re-medical examination was not considered and such prayer was simply kept in abeyance and he was not even paid fully salary, as a consequence thereof, his family was on the brink of starvation. For survival and to tide over the financial distress, Motilal also made a prayer for grant of employment assistance to his son but in vain and in the midst thereof, Motilal expired. In the said conspectus, the learned Tribunal exercised discretion in favour of the respondents and there is no infirmity in the same and as such, no interference is called for.

In reply, Mr. Chattopadhyay denies and disputes the contention of Mr. Das and drawing our attention to a circular dated 3rd July, 2000, he submits that the claim for employment assistance of the respondent no.2 is not sustainable moreso when he continued in service till his superannuation.

Heard the learned advocates appearing for the respective parties and considered the materials on record.

The learned Tribunal placing reliance upon the judgments delivered in the cases of *Kunal Singh Vs. Union of India*, reported in 2003 (4) SCC 524 and *Bhagwan Das Vs. Punjab State Electricity Board*, reported in 2008 (2) SLR 32 observed *inter alia* that it was the duty of senior officials of the Railways to rescue a low paid employee, who served the railways for long years and suffered the disability at the fag end of his service life but they failed to discharge their obligations. It was incumbent upon the petitioners to explain to Motilal the correct legal position. The insurmountable inconvenience faced by Motilal could well be appreciated by the petitioners but still they maintained a deceptive silence. Motilal's representations were not attended to and he was not even paid his full salary.

Judiciary has a very strong sense of justice and it works to maintain social justice and fairness. As a model employer the State must conduct itself with high probity and candour and ensure that its employees do not succumb to any discriminatory practice in the procedural rigmarole.

In the said conspectus and considering the facts and circumstances of the case, the learned Tribunal rightly exercised discretion in favour of the respondents

and we are not inclined to interfere with the same, moreso when the order impugned does not suffer from any patent error of law.

Accordingly, 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.

(Partha Sarathi Chatterjee,J.) (Tapabrata Chakraborty, J.)