

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Tapabrata Chakraborty
&
The Hon'ble Justice Partha Sarathi Chatterjee

WPCT 114 of 2023

Pradip Kumar Pandit & Ors
-Versus-
Union of India & Ors.

For the petitioners : *Ms. Kedareshwar Chakraborty,*
Mr. Saptarshi Chakraborty.

For the respondents : *Mr. Pulakesh Bajpayee,*
Mr. Pradyat Saha.

Hearing is concluded on : *25th June, 2024.*

Judgment On : 1st August, 2024.

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred challenging an order dated 25.04.2023 passed in the original application (hereinafter referred to as OA), being OA 828 of 2020. By the said order the prayer of the petitioner

no. 1 towards grant of compassionate appointment was refused and the OA was dismissed.

2. Shorn of unnecessary details, the facts are that the petitioners' father, namely, Lalit Mohan Pandit (in short, Lalit), was decategorized on medical ground on 09.04.1999, when he was working as a khalasi helper. Claiming to be the son of Lalit and Anjali Pandit (in short, Anjali), one Alok Kumar Pandit (in short, Alok), submitted an application for compassionate appointment. Upon consideration of such claim, Alok was appointed on 16.06.2001. In the midst thereof, Lalit retired voluntarily on 09.04.1999 and expired thereafter on 15.09.2006. After Lalit's demise, Anjali was granted family pension. Subsequent thereto, a complaint dated 31.03.2011 was lodged by Anjali, who happens to be the mother of the petitioners herein, namely, Pradip Kumar Pandit (in short, Pradip), Manik Pandit (in short, Manik), Hiralal Pandit (in short, Hiralal), stating *inter alia* that Alok was not entitled to compassionate appointment since he was the son of one Gita Rani Pandit (in short, Gita), who was not the legally married wife of Lalit. On the same date, Anjali submitted a representation praying for Pradip's compassionate appointment. As the said representation was not being considered, the petitioners along with Anjali were constrained to prefer OA 933 of 2012. The same was disposed of by an order dated 26.06.2014 with a direction upon the respondents to conclude the disciplinary proceeding against Alok and to consider Pradip's claim for compassionate appointment based upon the outcome of the said proceedings. Pursuant thereto, the respondents concluded the proceeding against Alok and dismissed him from

service by an order dated 15.10.2014. Thereafter, by an order dated 24.10.2014 passed by the respondent no. 3, Pradip's prayer for compassionate appointment was turned down observing *inter alia* that in terms of Railway Board circular dated 07.04.1983 there cannot be more than one compassionate appointment against one death/medical incapacitation. The said order was again challenged by Anjali and the petitioners herein by filing OA 1650 of 2014 which was disposed of by an order dated 04.12.2015 directing the railway authorities to consider the candidature of Pradip for compassionate appointment if he is otherwise eligible under the terms and conditions of the railways. Pursuant to the said order, the respondent no. 4 passed an order on 04.04.2016 rejecting Pradip's prayer for compassionate appointment observing *inter alia* that there cannot be more than one appointment against one death/medical incapacitation and that the deceased's family had survived for a substantial period after Lalit's medical incapacitation. The said order was again challenged in OA 719 of 2016 which was disposed of by an order dated 03.11.2018 quashing the impugned order dated 04.04.2016 and directing the respondents to consider Pradip's claim afresh untrammelled by earlier consideration. Pursuant to such direction, the respondent no. 4 passed an order on 06.08.2019 again refusing Pradip's claim. In the midst thereof, Anjali expired on 24.06.2017. Challenging the order dated 06.08.2019, Pradip, Manik and Hiralal preferred OA 1358 of 2019 and the same was disposed of by an order dated 03.03.2020 directing the respondents to reconsider Pradip's prayer. In the midst thereof, Alok challenged the order of dismissal before the learned Tribunal in OA 701 of 2016. Upon contested hearing, the same was

dismissed by an order dated 07.05.2019. Thereafter pursuant to the order passed by the learned Tribunal in OA 1358 of 2019, the respondent no. 4 again refused Pradip's prayer by an order dated 07.07.2020. Challenging the said order the petitioners preferred the OA 828 of 2020 and the same was dismissed by an order dated 25.04.2023, which has been impugned in the present writ petition.

3. Mr. Chakraborty, learned advocate appearing for the petitioners submits that by orders dated 24.10.2014 and 04.04.2016 Pradip's claim was rejected. However, on every occasion the learned Tribunal set aside the orders passed and directed reconsideration. In the said conspectus, the learned Tribunal in its order dated 13.11.2018 was constrained to observe that the respondents have in fact refused to consider Pradip's case '*on weird, untenable and frivolous grounds*'. The learned Tribunal further observed that the tenor of the earlier order of the learned Tribunal '*was misread either deliberately or with total non-application of mind*' and quashed the impugned order dated 04.04.2016 and directed the respondents to consider Pradip's claim afresh exploring in accordance with law the possibility of relaxation of minimum educational qualification of Class-X passed or ITI for the post of Level-I in the case of compassionate appointment in the context of medical incapacitation. None of the orders dated 04.12.2015, 13.11.2018 and 03.03.2020 passed by the learned Tribunal were challenged by the respondents and as such the findings and directions contained in the said orders attained finality. Even thereafter, reiterating the same grounds, Pradip's claim was rejected by an order dated 07.07.2020 placing reliance

upon Railway Board's circulars dated 27.07.2017, 28.02.2018 and 22.08.2018 though the said circulars being prospective in nature had no manner of application since the initial application claiming compassionate appointment was submitted in the year 2011. Pradip's date of birth is 12th March, 1976 and initially in the year 1997, he failed to qualify the Madhyamik Examination. However, without considering the circular being RBE No. 56 of 1989 which provides for relaxation of minimum educational qualification, the respondent no. 4 illegally rejected Pradip's claim, more so when in the year 2022, Pradip ultimately qualified in the Madhyamik Examination. Such arguments, as advanced, were glossed over by the learned Tribunal and no finding was returned on the same.

4. He contends that service jurisprudence evolved by this Court from time to time postulates that all persons similarly situated should be treated similarly. The respondents have granted compassionate appointment to one Kamal Kumar Barman and one Mukesh Harijan, who were non-matric, subject to a condition that they would have to acquire the minimum qualification within a specified period. However, a different yardstick has been applied by the respondents in respect of the petitioner and such arbitrary and *mala fide* act ought to have been interfered with by the learned Tribunal.

5. He argues that the order impugned would reveal that the learned Tribunal had only paraphrased different orders passed by the Hon'ble Supreme Court and abruptly rejected the petitioner's claim observing that 'a

considerable period of time elapsed since Sri. Pradip Kumar Pandit had filed an application for compassionate appointment’.

6. Mr. Bajpayee, learned advocate appearing for the respondents, however, denies and disputes the contention of Mr. Chakraborty and submits that Pradip’s father was medically decategorized on 09.04.1999. In his place and stead Alok was given compassionate appointment but he was subsequently dismissed from his service on the basis of Anjali’s complaint that Alok was the son of Lalit and Gita, who was not the legally married wife of Lalit. Such complaint was lodged by Anjali in the year 2011 after Alok had discharged service for a substantial time. The petitioners had survived since the year 1999 and there existed no element of immediacy.

7. He further submits that Pradip was a non-matric when application was submitted for compassionate appointment. The circular being RBE No. 56 of 1989 stands superseded by the subsequent circulars which mandates that for compassionate appointment, the wards of the deceased/medically unfit must possess the minimum educational qualification of Class X pass or ITI or equivalent.

8. Mr. Bajpayee further argues that by its very nature, in compassionate appointment cases, the facts cannot be similar. What is the extent of penury depends on several factors. Thus, relaxation of the minimum qualification in the cases of Kamal Kumar Barman and Mukesh Harijan cannot automatically entitle Pradip to claim parity and compassionate appointment.

9. We have heard the learned advocates appearing for the parties at length and we have given our anxious consideration to the facts and circumstances of the case.

10. The argument of Mr. Chakraborty that on the basis of the RBE No. 56 of 1989 the respondents ought to have exercised discretion in favour of Pradip is not acceptable to us. The conditions, as incorporated in RBE No. 56 of 1989, need to be considered together and not in isolation. A particular clause cannot be picked up and highlighted. The said circular *inter alia* provides that the required educational qualification can be relaxed only if on the merits of an individual case such relaxation is absolutely necessary. Pradip's claim in the backdrop of the admitted facts was not found to be meritorious. In view thereof, the learned Tribunal rightly refused to exercise discretion in favour of Pradip and the order impugned does not suffer from any patent error of law.

11. The rudiments on which such relaxation is granted vary from case to case. Parity cannot be established only on the basis of a simplistic assessment. Discretion is exercised considering the fact situation in individual cases. Relaxation of qualification given in a particular case cannot automatically be applied in all cases. In view thereof, the relaxation of qualification in favour of Kamal Kumar Barman and Mukesh Harijan does not confer any right upon Pradip to avail the same benefits.

12. The argument of Mr. Chakraborty that the order dated 07.07.2020 passed by the respondent no. 4 is derogatory to the directions contained in the order dated 25.04.2023 is also not acceptable to this Court. The learned

Tribunal directed the respondents to explore in accordance with law, the possibilities of relaxation of minimum education qualification of Clause 10 pass or ITI for the post of Level-I. Indisputably, Lalit was medically decategorized on 09.04.1999. In his place and stead and on the basis of nomination exercised by Lalit, Alok obtained compassionate appointment fraudulently on 16.06.2001. About ten years thereafter Anjali submitted a representation praying for grant of compassionate appointment to Pradip in the year 2011. In such circumstances it cannot be ruled out that Anjali had no knowledge about Alok's appointment on and from 16.06.2001. Claim towards compassionate appointment cannot be said to be a continuing process. Pradip's claim was directed to be decided on merits. The need of the family towards compassionate appointment, the financial status of the family, the qualification of the incumbent, the grant of no objection by the other heirs of the deceased/medically unfit, the period within which the application for compassionate appointment was submitted are all necessary factors inextricably bound and are required to be taken into consideration for determining the merit of the claim. Considering such factors, the learned Tribunal refused to exercise discretion in favour of Pradip and we do not find any infirmity in such decision.

13. 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 order impugned. The scope of judicial review is very narrow and limited and such jurisdiction should be exercised sparingly and only in appropriate cases where the judicial conscience of the Court dictates.

The impugned order does not suffer from any jurisdictional error or any substantial failure of justice or any manifest injustice warranting interference of this Court.

14. Accordingly, the writ petition being WPCT 114 of 2023 is dismissed.

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

16. Urgent Photostat certified copy of this judgment, if applied for, shall be granted to the parties as expeditiously as possible, upon compliance of all formalities.

(Partha Sarathi Chatterjee, J.)

(Tapabrata Chakraborty, J.)