

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 183 of 2024

Steel Authority of India Ltd. & Ors.
-Versus-
Gayatri Mondal & Ors.

For the petitioners : *Mr. Lakshmi Gupta, Sr. Adv,*
Mr. L.K. Pal,
Mr. N.C. Bhattacharyya,
Mr. Sauvik Nandy.

For the respondents : *Mr. Saumya Majumder,*
Mr. Biswarup Biswas,
Mr. Barun Chatterjee,
Mr. P. Rej.

For the UoI : *Mr. Arabindo Sen,*
Mr. Partha Chakraborty.

Hearing is concluded on : *24th July, 2024.*

Judgment On : **6th August, 2024.**

Tapabrata Chakraborty, J.

1. The present writ petition has been preferred by Steel Authority of India (in short, SAIL) and its functionaries challenging an order dated

28.06.2023 passed by the learned Tribunal in the original application (hereinafter referred to as OA), being OA 865 of 2016.

2. The issue which arises for consideration is as to whether the death in harness of an employee of Durgapur Steel Plant (in short, DSP), a unit of SAIL, suffering from a debilitating disease, would be treated as death on medical invalidation or natural death in view of the provisions contained in the circulars being Sl. No. 02/2012 dated 31.01.2012 and Sl. No. 29/2012 dated 10.05.2012 before being certified as medically invalid by the competent medical board.

3. For adjudication of the *lis*, the following dates would be necessary:

a) July, 2011 - Dilip Kumar Mondal (in short, Dilip), met with an accident and was admitted at DSP main hospital;

b) 16.8.2011 – Memo issued by the Director I/C (Medical and HS) DSP to the Clinical Director, Tata Memorial Hospital referring Dilip for admission in the said hospital;

c) 31.01.2012 - Circular containing guidelines and procedure for dealing with compassionate cases;

d) 24.04.2012 - Dilip submitted a representation for grant of compassionate employment to his son, namely, Chanchal Mondal (in short, Chanchal);

e) 10.05.2012 – Circular detailing procedure for implementation of the guidelines;

f) 16.05.2012 - Dilip submitted the *proforma* application as prescribed under the Scheme to avail compassionate benefit on the ground of medical invalidation;

g) 15.06.2012 - Dilip expired;

h) 16.06.2012 - Date fixed for examination before the Medical Disability cum Invalidation Board (in short, MDB);

i) 28.07.2012 - Gayatri Mondal (in short, Gayatri), widow of Dilip submitted a representation for grant of compassionate employment to Chanchal on medical invalidation ground and death of Dilip;

j) 23.12.2014 – Reminder submitted by Gayatri;

k) 31.03.2015 – Date of normal retirement of Dilip;

l) 8.06.2015 - Order passed by the learned Tribunal in OA 387 of 2015;

m) 14.11.2015 - Order passed by the petitioner no.5 herein;

n) 28.06.2023 - Order passed by the learned Tribunal in OA 865 of 2016 preferred by Gayatri and Chanchal challenging the order dated 14.11.2005 passed by the petitioner no.5.

4. Mr. Gupta learned senior advocate appearing for SAIL and its functionaries, the petitioners herein submits that even after arriving at a specific finding that the petitioners were within their rights to deny compassionate employment to Chanchal, the learned Tribunal erred in law in directing the petitioners to review their decision dated 14.11.2015 and

consider the employment of Chanchal on compassionate ground. The order impugned is thus self-contradictory and is unsustainable in law.

5. He would urge that the petitioners cannot be directed to act contrary to the circulars dated 31.01.2012 and 10.05.2012 (hereinafter referred to as the Scheme) laying down the provisions towards grant of employment on compassionate grounds. The Scheme which had been framed with good intent and purpose cannot be bypassed. The Scheme does not contemplate compassionate employment on medical invalidation ground of the concerned employee in the absence of certification by MDB that a debilitating disease was the cause of the employee's death. Where the petitioners have acted *bona fide* and declined to appoint Chanchal, such exercise of authority cannot be interfered with. Shortly put, the petitioners cannot be directed in exercise of the authority of judicial review to do something which is beyond the Scheme and *per se* illegal. A result flowing from a Scheme is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. The Scheme must of course be given effect to whether a Court likes the result or not.

6. He contends that a claim for compassionate employment is required to be considered strictly in terms of the Scheme. It is given solely on humanitarian grounds with sole object to provide immediate relief to the employee's family to tide over the sudden financial crisis. It is not a vested right and cannot be claimed as a matter of right. Ordinarily public employment must be strictly on the basis of open invitation of applications

and comparative merit, in consonance with Articles 14 and 16 of the Constitution of India. No other mode of employment is permissible. Nevertheless, the concept of compassionate employment has been recognized as an exception to the general rule, carved out in the interest of justice, in certain exigencies, by way of a policy of employment, which partakes the character of the service rules. The Scheme of compassionate employment is thus binding both on the employer and the employee. Being an exception, the Scheme has to be strictly construed and confined only to the purpose it seeks to achieve. In support of such contention reliance has been placed upon the judgments delivered in the cases of *V. Sivamurthy – versus– State of Andhra Pradesh and Others*, reported in (2008) 13 SCC 730, *State Bank of India and Another –versus– Raj Kumar*, reported in (2010) 11 SCC 661 and *Steel Authority of India Ltd. –versus– Sukanta Sen*, reported in 2014 (2) CHN (CAL) 214. Further referring to a judgment delivered in the case of *Mgb Gramin Bank –versus– Chakrawarti Singh*, reported in (2014) 13 SCC 583, Mr. Gupta points out that even the Hon'ble Supreme Court should not exercise the extra ordinary jurisdiction under Article 142 of the Constitution of India for issuing any direction for compassionate employment in contravention of the provisions of the Scheme.

7. Drawing our attention to the contents of the circular dated 31.01.2012, particularly clauses 3, 5.3.3, 9 and 10 (c), Mr. Gupta submits that an employee who dies due to '*disease or otherwise*' including an employee who dies due to debilitating disease cannot come within the purview of medical invalidation in the absence of any declaration by the MDB and the competent Committee constituted for such purpose. Under the

Scheme the authorities are under an obligation to convene meeting of the MDB once in a month. In the instant case, on the basis of Dilip's *proforma* application dated 16.05.2012, MDB for medical examination was scheduled within a month on 16.06.2012. Unfortunately, before such medical examination Dilip expired on 15.06.2012.

8. Mr. Gupta further argues that as Dilip expired prior to such medical examination, his death, strictly in terms of the Scheme, is to be considered as natural death and not a death due to medical invalidation. Keeping in mind the object of the Scheme the dependents of the employees suffering natural death have not been left with no remedy. In case natural death, the Scheme provides for grant of benefits under the Employee Family Benefit Scheme.

9. Mr. Majumder, learned advocate appearing for the original applicants/respondents herein denies and dispute the contention of Mr. Gupta and submits that it would be explicit from the circular dated 31.01.2012 that guidelines and procedure were prescribed to bring uniformity in dealing with compassionate cases and to regulate various practices prevailing in Plants/Units. The said circular has thus been issued to streamline the process towards grant of compassionate employment. The Scheme cannot be considered in a pedantic manner. Its provisions need to be considered together and not in isolation. A particular clause cannot be taken up and highlighted. The argument as advanced on behalf of the petitioners that in the absence of a declaration by the MDB, the dependant of even an employee, who died in harness due to a debilitating disease,

cannot be considered for compassionate employment is fallacious and is not in consonance with the object of the Scheme.

10. He argues that there is nothing under the Scheme debarring the death in harness of an employee suffering from a debilitating disease from being treated as a medical invalidation case in the eventuality such death occurs prior to the date fixed for medical examination. The phrase '*disease or otherwise*' used in the fourth sentence in clause 5.3.3 includes normal diseases and not a debilitating disease as incorporated in the list of diseases in Annexure I of the Scheme. The words '*disease or otherwise*' do not include a debilitating disease. The generic expression '*or otherwise*' is to be interpreted keeping in mind the object of the Scheme and the context in which it is used.

11. Mr. Majumder denies that the directions in the order impugned are self-contradictory. Even non-preference of an appeal against the impugned order by the respondent does not stop them from challenging the findings of the learned Tribunal. A respondent in an appeal can, without filing cross objections attack an adverse finding upon which an order has been passed. Filing of cross objection is purely optional and not mandatory.

12. 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 for returning a finding on the primary issue urged by the parties as regards entitlement of Dilip under the Scheme to avail compassionate benefit on medical invalidation ground.

13. The argument of Mr. Gupta that the impugned order passed by the learned Tribunal is self-contradictory is not acceptable to us. The learned Tribunal made the observation that '*on a strict application of the Circular No. PERS / Rectt. / Comp.Empl / NGL / 2012 / 130 dated 10.05.2012, the respondents were well within their rights to deny compassionate appointment to the applicant no. 2*' on the basis of the fact that Dilip could not undergo the medical examination. The learned Tribunal also observed that '*it is also true that the respondents have not acted in accordance with the spirit of the Circular No. PERS / Rectt. / Comp.Empl / NGL / 2012 / 130 dated 10.05.2012*' since the object of the Scheme was to treat the case of Dilip as a '*medical invalidation*' case since admittedly Dilip was suffering from a debilitating disease. In the said conspectus, the learned Tribunal rightly directed the petitioners to review their decision and consider appointing Chanchal on compassionate ground.

14. Medical Invalidation cases have been defined under the Scheme to be cases where the employee concerned was suffering from a specified '*debilitating disease*' as described in the annexure to the Scheme. By way of abundant caution and to prevent misuse it has been stated in para 5.3.3 that '*Cases of sudden death, where the employee was continuing with his normal job and was not under treatment for the above diseases shall not be governed under these guidelines*'. Indisputably, Dilip did not come under the said clause and his claim was not rejected upon application of the said clause. He was under treatment of a debilitating disease. The beneficent Scheme would be thrown out of gear in the event, a restrictive meaning is applied and benefits are not extended to an employee who expires prior to

the date fixed for medical examination. Such an interpretation, would be contrary to the object of the Scheme and cannot be construed to be an instance of misplaced sympathy or to be based upon a pretentious pulpit of morality.

15. It is well settled that a decision is an authority for what it decides and not what can logically be deduced therefrom. Even a slight distinction in fact or an additional fact may make a lot of difference in the decision-making process. The judgment is a precedent for the issue of law that is raised and decided and not observations made in the facts of any particular case. There is no dispute as regards the proposition of law as laid down in the judgments upon which reliance has been placed by Mr. Gupta, however, the same are distinguishable on facts. In the case of *V. Sivamurithy (supra)* the Court did not interfere with a clarificatory order of the Government specifying the date of commencement of the leftover period of five years from retirement on medical invalidation. In the cases of *Raj Kumar (supra)* and *Mgb Gramin Bank (supra)* the issue was as regards application of the scheme towards compassionate employment in force on the date of submission of the application. In the case of *Sukanta Sen (supra)* the widow of the deceased submitted an application for grant of compassionate employment to her son without disclosing that she was in employment of Durgapur Steel Plant and that she took voluntary retirement.

16. The fact that Dilip was suffering from a debilitating disease had not been disputed by the petitioners in the reply filed on their behalf in the learned Tribunal. It would be explicit from the memo dated 16.08.2011 that

the Director I.C (Medical & HS) has himself certified that Dilip was suffering from '*Malignant perianal deposit*' while referring him to Tata Memorial Hospital at Mumbai. It cannot be said in such circumstances that Dilip's application deserved no consideration and ought to have been rejected at the threshold. Dilip was suffering from a debilitating disease recognised under the Scheme for compassionate employment. While under treatment, he applied for medical examination and prayed for compassionate employment of his dependant. The employer fixed a date for medical examination within the period prescribed under the Scheme but Dilip expired prior to the said date. It is not a case that Dilip was unwilling to undergo the medical examination. He was prevented due to an eventuality which was not in his control. Even in the absence of certification it cannot be ruled out that he was suffering from a debilitating disease prescribed in the Scheme itself and as such his representation deserved consideration and the learned Tribunal has rightly directed to that effect without straightway directing the employment.

17. The fell clutch of circumstance and bludgeoning of fate made it impossible for Dilip to appear in the medical examination since he died prior to the date fixed and as such his eligibility and entitlement to avail compassionate benefit cannot be turned down due to lack of declaration of medical invalidation and his dependant cannot be deprived of his entitlement in terms of the Scheme on the ground of his father's medical invalidation.

18. For the reasons discussed above, no interference is called for in the present writ petition. However, it is made clear that while reviewing their earlier decision, the petitioners shall not reject the claim of Chanchal on the ground that his father died before declaration of medical invalidation by the concerned Committee.

19. The writ petition being WPCT 183 of 2024 is, accordingly, disposed of.

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

21. 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.)