

WP.CT. 161 of 2023

(Smt. Minati Bej & Anr. Vs. Bharat Sanchar
Nigam Limited & Ors.)

**Mr. Kushal Chatterjee
Mr. Debrup Choudhury**

..... For the petitioners

Mr. Agniv Sinha

..... For the respondent nos. 1 to 3

By this writ petition, the petitioners have questioned the sustainability of the order dated 20th July, 2023 passed in the original application being OA No. 350/01389/2021.

Shortly put, the facts leading to this writ petition are that the husband of the petitioner no. 1, Panchu Gopa Bej, since deceased, who happened to be employee of the respondent no. 1, died in-harness on 22nd February, 2008 leaving behind his widow and the only son being the petitioner nos.1 and 2 respectively. The petitioner no. 1 by making an application dated 24th March, 2023 prayed for appointment of the petitioner no. 2 on compassionate ground. Such prayer was rejected by an order dated 21st May, 2015. The order dated 21st May, 2015 was assailed by filing the original application being OA No. 1224 of 2017 which was dismissed as withdrawn with liberty to file afresh. Accordingly, a fresh original application being O.A. no. 350/1818/2018 was filed which was disposed of by an order dated 04.03.2021 holding, *inter alia*, that the order dated 21.05.2015 was

not a reasoned order and accordingly, the order dated 21.05.2015 was set aside and the matter was remitted to the Chief General Manager or any other competent authority with a direction to consider the same afresh and pass a reasoned order within a specified time frame. Pursuant thereto, the respondent no. 2 passed a reasoned order dated 28.04.2021 holding that the net weightage point secured by the petitioner no. 2 was 27 which was much below the bench mark being 55 and hence, his case was not recommended for appointment on compassionate ground.

Being aggrieved by the order dated, 28.04.2021, the petitioners preferred another original application being O.A. no. 350/01389 of 2021 which was dismissed by an order dated 20th July, 2023. The order dated 20th July, 2023 is under challenge in this writ petition.

Mr. Chatterjee, learned advocate appearing for the petitioners submits that from the reasoned order passed by the respondent no. 2 on 28th April, 2021, it is explicit that the respondents followed the guidelines of the Government of India issued under its Office Memorandum dated 09.10.1998 while deciding the prayer of the petitioner no. 2 for appointment on compassionate ground. Drawing our attention to Clause 10(a) of the Circular dated 9th October, 1998 he contends that as per this clause, even in case of existence of an earning member in the family, a dependent family

member may be considered for compassionate appointment. He argues that the weightage point system is not in consonance with the circular dated 09.10.1998. In elaboration of his such contention, he submits that while assessing the indigent condition under the heading '*family pension*', no mark was awarded to the petitioner no.2 claiming that the petitioner no. 1 received basic family pension of Rs.4250/-. He contends that as per the instruction contained in 10(a) of the circular dated 09.10.1998 the authorities should have considered as to whether such amount was sufficient to maintain the entire family of the deceased employee but this aspect had not been taken into account by the concerned respondent. He further contends that the petitioner no. 1 herself is an ailing lady and a major portion of her family pension is utilized for her on-going medical treatment. He asserts that the learned Tribunal glossed over the issue and no findings have been returned on this issue.

Mr. Sinha, learned advocate appearing for the respondents riposted the claim of the Mr. Chatterjee. He asserts that by passing a reasoned order, the prayer of the petitioner no.2 has been negated. He contends that the order passed by the learned tribunal needs no interference and in his view, both the orders passed by the Chief General Manager and the learned Tribunal deserve to be affirmed.

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

There is consistent line of authority of the Hon'ble Apex Court on the proposition of law that appointment on compassionate ground is not a source of employment nor is it a vested right. Such appointment is given only to enable the family of the deceased employee to tide over the sudden financial crisis in which the family has befallen on account of untimely demise of its sole earning member. Mere death in harness will not automatically enable a member of the family of the deceased employee to get such employment. The employer has to examine the financial condition of such family. Now, question is what would be parameters behind such consideration and hence, the respondents adopted weightage point system in bringing transparency in assessment of the indigent condition of the family.

According to various parameters of such weightage point system, marks were awarded to the petitioners. No different yardstick had been followed while considering the case at hand.

Such weightage system has not been assailed by the petitioners before the learned tribunal being the first available fora. Record reveals that before the learned Tribunal, the petitioners took the stand that weightage point system was not applied in proper manner and

before this court, the petitioners have attempted to challenge the validity of the entire weightage point system. In this manner, petitioners cannot be allowed to change their stand and challenge the validity and authenticity of the weightage point system.

The order passed by the Chief General Manager is a reasoned one. 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 in the order impugned. The order impugned does not suffer from any jurisdictional error warranting interference of this court.

In view thereof, the writ petition being **WP.CT. 161 of 2023** is dismissed.

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

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Court.

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