

13
19.09.2024
Ct. No. 11
Jayanta

WP.CT 240 of 2024

Maya Lall
Vs.
Union of India & Ors.

Mr. Dipanjan Datta
Mr. Chitra Bhanu Gupta
Mr. Subjait Chowdhury
..... For the Petitioner
Mr. Bipul Kumkar Mondal
Mr. Atanu Basu
.... For the UoI.

The present writ petition has been preferred challenging an order dated 12.09.2023 passed by the learned Tribunal in a review application being RA 27 of 2022 filed by the petitioner, namely Maya Lall (in short, Maya) in connection with the original application (in short, OA), being OA 1049 of 2019.

Record reveals that the husband of Maya, namely, Chandra Bhusan Lall was an employee under the Railways, who died in harness on 21st June, 2007. Maya nominated her daughter Kriti Lall (in short, Kriti) for grant of compassionate appointment. Considering the financial status of the deceased's family, Kriti was granted compassionate appointment. Subsequent thereto, as Kriti was not maintaining her mother, Maya lodged a complaint before the competent authority. As no steps were taken Maya was constrained to prefer an OA 1049 of 2019 primarily praying for the following relief:

'The applicant begs before the Hon'ble Tribunal to issue an order of termination of service of the private respondent Kriti Lal Singh (Employee id 475794), as per Railway Boards Rule RBE 153/2000, RBE 44/2022 and to grant a compassionate appointment to the applicant's unemployed son Abhishek Kumar Lal, in lieu of the private respondent.'

The OA was finally disposed of by an order dated 14.03.2022 observing *inter alia* as follows:

'7. Learned Counsel for the applicant would submit that either the authorities be directed to terminate the services of the daughter and consider the son instead, or, issue a direction upon the daughter to pay a percentage of her salary to the mother and allow the mother and her son to reside in the quarters.'

Learned Counsel for the private respondent did not raise any objection to that. It further transpires at hearing that, the daughter of the applicant was removed from service by punishment "Removal from Railway Service w.e.f. 05.04.2021" was set aside and reduced to that of reduction from pay Rs. 43,600/- In Level-6 Cell-8 to Rs. 41,100/- In Level-6 Cell-6 for a period of three years without cumulative effect and not adversely affecting her pension.

8. Suffice it to say that the imposition of penalty as the daughter has rendered complete justice to the complainant, the OA is disposed of, with consent of the

parties, with direction upon the respondents to deduct 25% of the salary of Kriti Lal Singh, and deposit the same in the account of the present applicant, for the purpose the applicant shall share her account number with the authorities.

The respondents shall also ensure that the present applicant along with her son is not driven out of quarters of her daughter namely Kriti Lal Singh. The respondents shall issue an appropriate order within a period of 2 months from the date of receipt of a copy of this order.'

Aggrieved by the said order, Maya preferred a writ petition being WPCT 95 of 2022 which was dismissed as withdrawn by an order dated 21.11.2022. Thereafter Maya preferred a review application stating *inter alia* as follows:

'That the petitioner states that the Hon'ble Tribunal, issued aforesaid direction vide order dated 14.03.2022 without being satisfied that whether the applicant herself issued any written instruction to her advocate on record to that regard and/or recording the submission of the applicant herself which is highly prejudiced for petitioner. While giving consent, such advocate on record never took prior permission from his client, i.e., the petitioner herein. Here it is specifically mentioned that the advocate on record was never competent to give such consent without

taking prior permission from the applicant herein. After such consent was given by such advocate on record before the Hon'ble tribunal and after order dated 14.03.2022 was passed, the applicant came to know from her advocate on record that such consent was given on behalf of her by her advocate on record. The petitioner herein was never inclined to give any such consent rather she was eager to contest such original application before the Hon'ble Tribunal on merit.'

The review application was, however, dismissed by the order impugned in the present writ petition.

Mr. Datta, learned advocate appearing for Maya submits that the learned Tribunal dismissed the review application without taking into consideration the fact that Maya did not issue any written instruction to her learned advocate to give any consent on her behalf as recorded in paragraph 8 of the order dated 14.03.2022.

He argues that the learned Tribunal ought to have appreciated that the petitioner is not bound by the learned advocate's submissions and she cannot be made to suffer for the laches on the part of her learned advocate. The impugned order was passed also being oblivious of the fact that Maya affirmed an affidavit before the Oath Commissioner declaring that she never gave any instruction to her learned advocate to give any consent.

He contends that the learned Tribunal dismissed the review application by a cryptic order without even considering the primary relief claimed by Maya in the OA for grant of compassionate appointment to her *‘unemployed son Abhishek Kumar Lal, in lieu of the private respondent’*.

Mr. Mondal, learned advocate appearing for the respondents submits that even after modification of the penalty of removal from service to reduction of pay, Kriti did not join her duties and as such a fresh disciplinary proceeding was initiated and a final order of removal from service was passed *vide* memo dated 20th May, 2024. Let the written instruction, as produced, be kept on record.

He argues that that there is no patent error apparent on the face of the records and the parameters prescribed for review do not postulate a rehearing of the dispute.

We have heard the learned advocates appearing for the respective parties and considering the materials on record.

Indisputably, the OA was filed with a prayer to terminate the service of Kriti, as she was not maintaining her mother. Fact remains that even after modification of the penalty of removal from service to reduction of pay, Kriti did not join her duties and for such unauthorized absence a fresh disciplinary proceeding was initiated and

a final order of removal from service was passed *vide* memo dated 20th May, 2024.

The petitioner initially nominated Kriti for grant of compassionate appointment. Such prayer was considered and employment was granted. Now after removal of Kriti from service, Maya cannot again seek compassionate appointment for her son. There cannot be more than one appointment against one death. There exists no element of immediacy today as the death occurred in the year 2007 and Maya is also receiving family pension.

In the said conspectus, we do not find any infirmity in the order impugned warranting interference of this Court.

The writ petition is, accordingly, dismissed.

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

Urgent certified photocopy of this order, if applied for, be supplied as expeditiously as possible

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