

16.08.2024
Item No.81
Court No.11
Avijit Mitra

WP.CT 197 of 2023

In re: An application under Article 226 of the Constitution of India;

And

Suman Tiwari & Anr.

- versus -

Union of India & Ors.

Mr. Gokul Chandra Chakraborty,
...for the petitioners

Ms. Sarda Sha
...for the respondents

The present writ petition has been preferred challenging an order dated 17th November, 2022 passed by the learned Tribunal in the original application (in short, OA), being OA 950 of 2022. The operative part of the said order runs as follows:

‘In the present case, the applicants’ representation for compassionate appointment was duly considered as per the order passed by this Tribunal on 14.01.2021 (Annexure A/12). To get compassionate appointment under the Scheme one has to fulfill certain conditions under the rules. In the instant case, the applicants failed to fulfill the condition of being in ‘financial destitution’ or ‘penury’, therefore, the respondents have rightly rejected the claim of the applicants giving details of the reasons in the speaking order dated 25.06.2021 (Annexure A/14).

In view of the above factual matrix, it cannot be said that the impugned order suffers from any legal infirmities. Accordingly the O.A. lacks merit and stands dismissed. No costs.’

Sukhram Tiwari (in short, Sukhram) died in-harness on 23rd October, 2011 leaving behind his widow, namely, Asha Tiwari (in short, Asha), being the petitioner no.2

and her daughter, namely, Suman Tiwari (in short, Suman), being the petitioner no.1 herein. To tide over the financial distress, the petitioner no.2 submitted a representation on 22nd November, 2011 praying for compassionate appointment of the petitioner no.1. In response thereto, the application format was forwarded to the petitioner no.2 and the same was immediately filled up and submitted on 17th September, 2012. However, no steps were taken by the respondents thereafter and as such the petitioner submitted an application under Right to Information Act, 2005 (in short, RTI Act) to ascertain the status of her application for compassionate appointment. By a memo dated 29th July, 2015 it was intimated, *inter alia*, that consideration of the application for compassionate is under process. Aggrieved thereby an appeal was preferred under the RTI Act. Pursuant thereto, by a memo dated 11th September, 2015 it was, *inter alia*, intimated that a decision as regards the application for compassionate appointment 'is expected to be taken within a period of three months'. However, no further action was taken. Aggrieved thereby the petitioner preferred an original application being OA 1570 of 2016 which was disposed of by an order dated 14th January, 2021. The operative part of the said order runs as follows:

'Accordingly, without entering into the merits of the matter and, with the consent of the parties, the applicant is given liberty to prefer a comprehensive representation, and particularly, with reference to

disclosures at Annexure A-9 to the OA as well as the guidelines that governed the field (during expiry of the applicant's father) within 4 weeks from the date of receipt of a copy of this order.

In the event such representation is received, the addressee respondent authority/competent respondent authority shall examine the matter in accordance with law, to disclose as to whether the applicant's matter was ever placed before the committee empowered to decide on the applications for compassionate appointment, refer to applicability of guidelines that prevailed during expiry of the applicant's father, examine relevant judicial ratio particularly in the context of entitlement for compassionate appointment in the background of receipt of settlement benefits, and thereafter issue a reasoned and speaking order within a further period of 12 weeks thereafter.

If the applicant is found eligible for compassionate appointment consequent formalities should be finalised within a further period of 10 weeks.

With these directions, the O.A. is disposed of. There will be no orders on costs.'

After the said order was served upon the respondents, the petitioners were communicated a memo dated 25th June, 2021 issued by the respondent no.3. In the same it was observed *inter alia* that:

'NOW THEREFORE the undersigned after considering all the aspects has come to the conclusion that the recommendations made by the committee constituted for the purpose holds good and hence the case of Ms. Suman Kumari Tiwari for consideration of appointment is not a fit case in light of the elaborate recommendations as explained supra.'

Mr. Chakraborty, learned advocate appearing for the petitioners submits that an application for compassionate appointment submitted way back in the year 2012 was kept pending by the authorities without any reason for a long period of time. Ultimately, acting on the basis of a direction passed by the learned Tribunal, the impugned order dated 25th June, 2021 was

passed. The delay which had occurred towards purported disposal of the application is thus clearly attributable to the respondents.

He argues that the employee concerned expired on 23rd October, 2011 leaving behind his widow and two minor daughters. The younger daughter of the employee, namely, Sova expired on 14th May, 2020. The financial destitution of the family presently consisting of the widow and one unmarried daughter of the deceased can well be appreciated. However, though it was incumbent upon the respondents to consider such case with greater sympathy by applying relaxed standards, the claim was rejected by the respondent no.3 on the rudiments of a purported decision taken by a committee way back on 16th June, 2013.

Mr. Chakraborty contends that on the date of death of the deceased the scheme promulgated *vide* memo dated 9th October, 1998 was prevailing. The committee took a decision on 16th June, 2013 taking into account a hypothetical amount which could have been obtained by the family of the deceased had the terminal benefits been invested in an appropriate scheme. Such a procedure as followed by the respondents being derogatory to the provisions of the scheme is not sustainable in law. Such arguments, as advanced, were glossed over by the learned Tribunal and the OA was dismissed by a cryptic order observing that the petitioners failed to fulfil the

condition of being in financial destitution or penury. It is explicit from the records that no contemporaneous steps were taken by the respondents to determine such 'financial destitution' or 'penury'. In support of the arguments reliance has been placed upon a judgment delivered in the case of *Malaya Nanda Sethy Vs. State of Orissa & ors.*, reported in 2022 SCC Online SC 684 and a judgment delivered by a Coordinate Bench of this Court on 1st August, 2023 in WPCT 105 of 2023.

Ms. Sha, learned advocate appearing for the respondents denies and disputes the contention of the petitioners and submits that upon appropriate computation of the assets and liabilities of the family, it was ascertained that the per head income including DR of the family after the death of the deceased would be 6351/- which is more than the per head income including DR prior to death being Rs. 2029/- and it is thus not a case that the petitioners are in deep financial distress. The death occurred in the year 2011 and the family members had already survived for a long period of 13 years till date.

Answering our query as to whether the claim of the petitioner no.1 was considered on the basis of any point system she has placed before us a written instruction furnished by the Administrative Officer-III. The relevant portion of the said written instruction runs as follows:

'The question as to why the committee didn't considered the Relative Merit Points on a 100 point

scale for various parameters/attributes while considering the case of Ms. Suman Tiwari for appointment on compassionate grounds, does not come to the aid of the case, as the criteria for evaluating the various parameters/attributes on a 100 point scale for considering the candidature of the applicants for appointment on compassionate grounds, as devised by various user ministries/departments of Central/State governments at present, was not devised at that point of time in the Respondent's Department i.e. Department of Atomic Energy. The same was devised at a later stage by the Department. However, all the parameters of relative merit points was duly considered by the committee at the time of consideration of the application of the petitioner.'

She further argues that an application for compassionate appointment can only be considered in strict consonance with the policy prevalent at the time of death of the employee. The respondents cannot be asked to travel beyond the purview of such scheme. Applying the provisions of the scheme, the respondents had arrived at a finding and there is no infirmity in the same. The right towards compassionate appointment is not a vested right and the idea of compassionate appointment is not to provide for endless compassion.

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

The relevant portion of the 1998 scheme which was prevailing on the date of death of the deceased runs as follows:

'(c) The Scheme of compassionate appointments was conceived as far back as 1938. Since then a number of welfare measures have been introduced by the Government which have made a significant difference in the financial position of the families of the

Government servants dying in harness/retired on medical grounds. An application for compassionate appointment should, however, not be rejected merely on the ground that the family of the Government servant has received the benefits under the various welfare scheme's. While considering a request for appointment on compassionate ground a balanced and objective assessment of the financial condition of the family has to be made taking into account its assets and liabilities (including the benefits received under the various welfare schemes mentioned above) and all other relevant factors such as the presence of an earning member, size of the family, ages of the children and the essential needs of the family, etc.

(d) Compassionate appointment should not be denied or delayed merely on the ground that there is reorganisation in the Ministry/Department Office. It should be made available to the person concerned if there is a vacancy meant for Compassionate appointment and he or she is found eligible and suitable under the scheme.

(e) Requests for Compassionate appointment consequent on death or retirement on medical grounds of Group 'D' staff may be considered with greater sympathy by applying relaxed standards depending on the facts and circumstances of the case.

(f) Compassionate appointment will have precedence over absorption of surplus employees and regularisation of daily wage/casual workers with/without temporary status.'

A perusal of the order dated 25th June, 2021 would reveal that the claim of the petitioner no.1 was turned down with the following observation:

'W.e.f. 24.10.2011, Smt. Tiwari has been in receipt of enhanced monthly pension of Rs. 5720+DR @ Rs. 3318 (as per rate of DA in October, 2011 i.e., 58%). In case, Smt. Tiwari invested the entire amount of net financial benefits in a safe scheme with a regular monthly return (e.g. MIS of Post Office), the monthly interest @ 8% per annum) received by her would be Rs. 10045. In that case, her total monthly income (including DR) was Rs. (5720+3318+10045)=19,083 and her total monthly income (excluding DR) was Rs. (5720+10045)=15,765.'

It is surprising to note that the above calculation was made on the basis of a hypothesis observing that in case, Smt. Tiwari had invested the entire amount of net financial benefits in a safe scheme with a regular monthly return (e.g. MIS of Post Office), the monthly interest @ 8% per annum) received by her would be Rs. 10045/-. The decision is based on extraneous consideration. There is no such provision under the scheme permitting the authorities to consider a claim for compassionate appointment on mere assumption. In the first appeal under the RTI Act, the authorities on 11th September, 2015 intimated that a decision on the application for compassionate appointment *'is expected to be taken within a period of three months'* but prior to that the committee allegedly constituted for the purpose adopted a decision on 16th June, 2013 and said decision was confirmed by the memo dated 25th June, 2021 issued by the respondent no.3. From such sequence of facts, it is explicit that the respondents while replying to the query under the RTI Act were themselves not aware about the fate of the application for compassionate appointment of the petitioner no.1. It is only after the order dated 17th November, 2022 was passed by the learned Tribunal in OA 950 of 2022, the respondents found that a committee decision was allegedly adopted about nine years earlier on 16th June, 2013 and the respondent no.3 confirmed the said decision *vide* memo

dated 25th June, 2021. Therefore, the delay which had occurred is totally attributable to the respondents. There was absolute callousness on the part of the respondents and for such inaction, the petitioners, who are the widow and one unmarried daughter of the deceased, cannot be made to suffer. The grant of family pension or payment of terminal benefits cannot be treated as a substitute for providing employment assistance [See the judgment delivered in the of *Balbir Kaur Vs. Steel Authority of India Ltd.* reported in (2000) 6 SCC 493]. The calculation in the impugned order dated 25th June, 2021 would reveal that taking into consideration a hypothetical amount of Rs. 10045/-, the per-head family income including DR was calculated to be Rs.6361/-. However, it appears that the learned Tribunal proceeded on the basis of a presumption that as the petitioners have survived since the death of the bread-earner there was no necessity towards grant of compassionate appointment. It ought to have been appreciated that life indicates something more than mere animal existence. It includes the right to live with human dignity. Such inalienable human right has been held hostage by litigation and callousness on the part of the respondents. The vagaries of life suffered by the petitioner for a long period ought not to have been construed to be prejudicial to her claim. A model employer must conduct itself with high probity and candour and ensure that the dependants of the deceased

employee do not succumb to the procedural rigmarole moreso when the claim pertains to the very survival of the dependants.

In these circumstances, we find that the family is in dire financial straits and the respondents have not acted justly and in accordance with law while rejecting the claim. The scheme does not in any way indicate that an applicant whose family draws family pension on the death of the employee is not entitled to compassionate appointment. The family is living in penury and as such question of relegation of the matter for further consideration does not occasion.

For the reasons discussed above, the impugned order passed by the respondent no.3 *vide* memo dated 25th June, 2021 and the order dated 17th November, 2022 passed in the OA 950 of 2022 are set aside and the respondents are directed to grant compassionate appointment to the petitioner no.1 within a period of four weeks from the date of communication of this order.

Accordingly, the present writ petition is disposed of.

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

Urgent photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.

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