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W.P.No.11500 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.12.2023
Pronounced on	12.01.2024

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

W.P.No.11500 of 2021
and
WMP.Nos.12240 & 15088 of 2021

L.Jasmine Reka

...

Petitioner

Vs.

1. Bharat Heavy Electricals Ltd.
Rep. by its Managing Director,
2nd Floor, Siri Fort,
Asiad, New Delhi-110049.
2. Director (Human Resources),
Bharat Heavy Electricals Ltd.,
2nd Floor, Siri Fort,
Asiad, New Delhi-110049.
3. Executive Director,
BHEL, BAP, Indira Gandhi Industrial
complex Ranipet-632406
4. General Manager,
Human Resources BHEL,
BAP, IndraGandhi Industrial
complex Ranipet-632406

...

Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Certiorarified Mandamus Calling for the records of the 1st Respondent in connection with the impugned communication dated 26.07.2022 issued on its behalf and quash the same and direct the respondents herein to accord appointment to the Petitioner on a compassionate basis.

For Petitioner : Mr.V.Prakash, Senior Counsel for
M/s.Raman & Associates

For Respondents : Mr.A.V.Arun

ORDER

This Writ Petition has been filed seeking issuance of Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in connection with the impugned communication dated 26.07.2022 issued on its behalf and quash the same and direct the respondents herein to accord appointment to the Petitioner on a compassionate basis.

2. The petitioner is the wife of the deceased employee of BHEL, Ranipet who died on 22.10.2020. The Petitioner's family is living in BHEL quarters allotted to her husband subsequent to his death and they



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do not have any alternate place to settle down. The petitioner's husband was the sole breadwinner of the family. The petitioner has got nursing experience along with required qualification. The petitioner gave a representation to the respondents company on 21.12.2020 seeking employment on compassionate grounds, but the same was not considered. Hence the petitioner has filed this Writ Petition seeking a direction to call for the records of 1st Respondent in connection with the impugned communication dated 26.07.2022 issued on its behalf and quash the same and direct the respondents to accord appointment to the Petitioner on compassionate basis and issue appropriate orders.

3. Heard, Mr.V.Prakash, learned Senior Counsel for petitioner and Mr.A.V.Arun, learned standing counsel for the respondents and perused the materials available on records.

4. Mr.V.Prakash, learned Senior Counsel for the petitioner submitted that Clause 6.2. of the BHEL Recruitment Rules and guidelines provides the scope for compassionate appointment if an employee dies in



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harness. Despite the petitioner having given a representation immediately after the death of her husband, it was not considered. Instead she was asked to vacate the quarters by stating that the grace time is over and that she will have to pay the rent with penalty. In the impugned communication dated 26.07.2022, it is stated by the respondents 3 and 4 that compassionate appointment can be considered only in the event of an employee dies due to accident during the course of and arising out of employment but not in other case of death, where the employees dies due to natural causes.

4.1. It is further stated that in other case of death only 25% of the vacancies are reserved for dependants of the deceased employees. However, no notification has been issued so far by the respondents and hence, the petitioner cannot apply to any of the jobs. As stated when the number of vacancies is too low, it is difficult to adopt the above criteria by reserving the vacancies. The decision in this regard should be taken by the unit in-charge, in case the children or the spouse of the deceased employee is not employed in any other employment. But the respondents,



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without considering the representation and taking a decision as to the employment as per the guidelines had passed the impugned order which is not legal.

4.2. In support of the above contention, the learned counsel for the petitioner cited the following decisions:

Sl. No	Citations submitted by the learned counsel for the petitioner	Reported in
1	Reliance Airport Developers Pvt.Ltd. Vs. Airports Authority of India and Ors.	2006 (10) SCC 1
2	U.P.State Road Transport Corporation and Ors. Vs. Mohd.Ismail and Ors	AIR 1991 SC 1099
3	Union of India (UOI) and Ors Vs. Raj Grow Impex LLP and Ors.	AIR 2021 SC 2993

5. Mr.A.V.Arun, learned standing counsel for the respondents submitted that the appointment of compassionate grounds can be considered only if the employee dies due to accident “during the course of” and “ arising out of employment”. The petitioner's husband died not due to accident during the course of employment. If an employee dies due to some other reasons, no vacancy can be created for compassionate appointment. However, as per the recruitment policy Clause 6.2 [2] whenever employment notifications are released for recruitment for



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sanctioned vacancies in respect of unskilled / semi skilled / Artisans and clerk cadre, 25% of such vacancies will be reserved for the dependants of the deceased employees, if they are found eligible and suitable for job specifications.

5.1. After the death of petitioner's husband, the petitioners family continues to reside in the employees quarters. As per the rules of allotment of residence at Boiler Auxiliaries Township at Ranipet, a family of the deceased employee can stay only up to 6 months on the basis of the normal rent. As intimated by the company from time to time after the death of the employee, if the occupant does not vacate within six months, twenty times of the normal rent will be imposed for the next two months and if the occupant does not vacate within the extended two months, the rent will be levied at ten times of commercial rent and twenty times of normal rent whichever is higher. The terminal benefits of the deceased have been settled to the tune of Rs.35,78,779/-.

5.2. Apart from that, the required Forms have been submitted to the



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Provident Fund Commissioner to enable the petitioner's family to receive monthly pension. As per the BHEL Pension Scheme, upon vacating the company occupied quarters the petitioner is entitled to apply for contribution made by BHEL to approved pension schemes of insurance companies and that will also provide a monthly pension to the petitioner.

5.3. The petitioner is not entitled to continue to occupy the employer's quarters after six months on the death of the deceased. Since the petitioner continues to live in the staff quarters, she is liable to pay monthly rent at the rate of 20 times of the license fee. There are many employees waiting without allotment of quarters and hence, the petitioner has to vacate the quarters. It is not fair on the part of the petitioner to state that she would occupy the quarters till she is provided with an employment. Since the petitioner's claim cannot be considered, by virtue of Order 26.07.2022, the petitioner was informed about the reason for not considering her request for an alternate appointment. The staff accommodation is meant for serving employees and it cannot be utilised by some families of the deceased staff indefinitely. The petitioner can only apply for employment as and when notifications are given.



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5.4. In respect of his above submission the learned counsel for the

4th respondent would rely on the following citations.

Sl. No	Citations submitted by the learned counsel for the petitioner	Reported in
1	Union of India and another Vs. Omkar Nath (dead) through Legal representatives	(2022) 1 Supreme Court Cases 40
2	Secretary,ONGC Ltd andanother Vs. V.U.Warrier	(2005) 5 supreme Court Cases 245

6. As per the recruitment policy of the BHEL, compassionate appointments are given only if the employee dies due to accident “during the course of” and “arising out of the course of employment”. In the case of the petitioner's husband, he died due to illness. As per the revised recruitment policy 13, in Clause 13.0 employment to the dependants of the deceased employees, the following guidelines have been given.

“13.0 EMPLOYMENT TO DEPENDENTS OF DECEASED EMPLOYEES

General guidelines to be followed for direct employment on compassionate grounds are as under:

13.1. Employee dying due to accident "during the course of" and "arising out of employment" -

In such eventualities, existing practice of consideration on case to case basis for sanction of vacancy (USW/ SSW/ Artisan or Clerk) will continue keeping in view that none of the children or the spouse of such employees is already employed in Govt./ Semi Govt./ Autonomous Body/ PSU/ Organisations listed on Stock Exchange. Such appointment will, however, be subject to



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assessment of suitability.

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13.2. In other cases of death

i) In other cases, whenever Units are sanctioned vacancies of USW/ SSW/ Artisans and Clerk, upto 25% vacancies may be earmarked for being filled-up from dependants of deceased employees (spouse/ son/ unmarried daughter) subject to their meeting the job- specifications and consideration for suitability. If number of vacancies sanctioned are so low that it is difficult to adopt above criteria for reserving vacancies, decision in this regard may be taken by the Unit Incharge. In addition, this consideration is available provided none of the children or the spouse of such employees is already employed in Govt./ Semi-Govt./ Autonomous Body/ PSU/ Organisations listed on Stock Exchange.

ii) Age relaxation may be allowed as under:

a) Employees dying due to accident "during the course of and "arising out of Employment" - on merit of each case.

b) In other cases - Age relaxation upto a maximum of 5 years.

iii) The reservation for various categories like SC/ST/OBC etc. may be worked-out for the total number of vacancies sanctioned and accordingly filled-up. However, it should be an endeavour to fill-up vacancies kept reserved for dependants of deceased employees, to the extent possible, from such candidates on pro-rata basis.

iv) A separate written test may be conducted for dependants of deceased employees in case written examination is being conducted for remaining vacancies also.

v) A separate panel may be prepared for dependants of deceased employees.

13.3 Notification of vacancies to Employment Exchange

It is obligatory to concerned indicating notify such vacancies to



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Employment Exchange are proposed to ting in the requ dependants of the deceased employees In requisition that the vacancy (ies) in question and that the submissiond by the Employment Exchange are not required.

13.4 General

In case, some of the vacancies kept reserved for dependants of deceased employees remain unfilled due to non-availability of suitable candidates, Units are vested with the powers to fill-up these vacancies from other candidates.

Note: For purpose of this concession 'dependent' means only son, daughter or spouse of the employee. 'Deceased employee' means an employee who dies while in company service.)”

7. So the above guidelines will make it clear that if the employees die not “due to accident during the course of employment”, 25% of the vacancies earmarked for being filled up from the dependants of those deceased employees subject to their meeting of the job specifications and consideration for suitability. But the petitioner claims that such vacancies have not been notified so far.

8. It is further submitted by the learned counsel for the petitioner that if number of vacancies sanctioned are so low, the unit in-charge has to take a decision and hence, direction should be given to the unit in-charge for reserving vacancies to the petitioner by exercising their

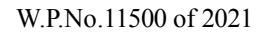


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discretion. The guideline 13.2 [1] cannot be understood in that manner.

What clause 13.2 implies is that in case vacancies are notified and in the said notification if 25% is found to be too low, then the unit in-charge has to take a decision as to what amount of vacancies should be reserved for the dependants of the deceased employees.

9. No doubt, compassionate appointments are provided for the immediate financial assistance to the family of the deceased government servant and to save them from starving due to death of the employee. In the case of the petitioner, the 4th respondent has settled all Terminal Benefits totalling to a sum of Rs.35,78,779/- and the said fact was not denied by the petitioner. Forms have been submitted by the petitioner and her children for receiving the family Pension also. It is further submitted that the petitioner is entitled to get the contribution made by BHEL to approved pension schemes of insurance companies and that will also provide a monthly pension to the petitioner. But the petitioner continues to remain in the occupation of the employees quarters.



11. Had there been any notification given and the petitioner applied the same, but the respondents, without exercising their due discretion, rejected the petitioner's application then, the petitioner can have a So, the citations relied on by the petitioner does not apply to the nt situation where there was no notification issued as there was no cies. So, the petitioner cannot demand that the employer should



create vacancy for the purpose of accommodating her.

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12. Even in the judgement cited by the learned counsel for the petitioner reported in AIR 2021 SC 2993 [Union of India (UOI) and ors Vs Raj Grow Impex LLP and Ors] it is held as under:

“70.3. In the case of U.P. State Road Transport Corporation (supra), while dealing with the case of non-exercise of discretion by the authority, this Court expounded on the contours of discretion as also on limitations on the powers of the Courts when the matter is of the discretion of the competent authority, in the following terms: -

*“12. The High Court was equally in error in directing the Corporation to offer alternative job to drivers who are found to be medically unfit before dispensing with their services. **The court cannot dictate the decision of the statutory authority that ought to be made in the exercise of discretion in a given case. The court cannot direct the statutory authority to exercise the discretion in a particular manner not expressly required by law.** The court could only command the statutory authority by a writ of mandamus to perform its duty by exercising the discretion according to law. Whether alternative job is to be offered or not is a matter left to the discretion of the competent authority of the Corporation and the Corporation has to exercise the discretion in individual cases. The court cannot command the Corporation to exercise discretion in a particular manner and in favour of a particular person. That would be beyond the jurisdiction of the court.*

13. In the instant case, the Corporation has denied itself the discretion to offer an alternative job which the regulation requires it to exercise in individual cases of retrenchment.It may be stated that the statutory discretion cannot be fettered by self-created rules or policy. Although it is open to an authority to which discretion has been entrusted to lay down the norms or rules to regulate exercise of discretion it cannot, however, deny itself the discretion which the statute requires it to exercise in individual cases.



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*“15.....Every discretion conferred by statute on a holder of public office must be exercised in furtherance of accomplishment of purpose of the power. The purpose of discretionary decision making under Regulation 17(3) was intended to rehabilitate the disabled drivers to the extent possible and within the abovesaid constraints. The Corporation therefore, cannot act mechanically. **The discretion should not be exercised according to whim, caprice or ritual.** The discretion should be exercised reasonably and rationally. It should be exercised faithfully and impartially. There should be proper value judgment with fairness and equity.....” (emphasis in bold supplied)”*

13. The petitioner cannot understand Clause 6.2.[1] in such a manner that in the absence of any notification for want of vacancy, the unit in-charge has to exercise his discretion and create a vacancy and issue orders accordingly. Since the respondents recruitment policy does not provide any scope for compassionate appointment in the event of the death of employee due to some other reason other than the accident occurred during the course of employment or arising out of employment, the direction as sought for by the petitioner cannot be issued.

14. Since the respondents had rightly passed the impugned order in accordance with the existing guidelines, I don't find any illegality or arbitrariness attached to the same in order to make any interference.



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When the petitioner vacates the quarters that will enable the petitioner to apply for further family pension that would be available to her in view of the contribution made by BHEL in any of the approved pension insurance scheme.

In view of the above stated reasons, this Writ petition stands **dismissed**. No costs. Consequently connected miscellaneous petitions are closed.

12.01.2024

Index : Yes

Internet : Yes

Speaking

Neutral Citation : Yes

jrs



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R.N.MANJULA, J.

jrs

To

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