

Central Administrative Tribunal: Principal Bench

OA.1285/95

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New Delhi, the ~~7th~~ day of June, 1996.

Hon'ble Shri R.K. Ahooja, Member(A)

Kamlesh
W/o Late Sh. Panna Lal
Aua Ward No.12, New Wing
Dr. RML Hospital
New Delhi. .. Applicant
(Advocate: Sh. DD. Chaufla)

versus

1. The Secretary,
Govt. of India
Min. of Health and Family
Welfare, Nirman Bhawan,
New Delhi.
2. The Medical Superintendent,
Dr. RML Hospital,
New Delhi. .. Respondents
(Advocate: Shri J. Banerjee)

ORDER

Hon'ble Shri R.K. Ahooja, M(A)

The applicant is aggrieved that the respondents have failed to give terminal benefits including GPF, gratuity, insurance, family pension, encashment of leave and arrears of pay and allowances on account of her husband who died in harness while in service with the respondents. She also seeks direction for her regular appointment to Group 'D' post on compassionate

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ground.

2. The facts of the case are that the husband of the applicant who was working as 'Khidmatgar' in Dr. RML Hospital New Delhi died on 3.11.1984 leaving behind applicant and his four minor children.

The family was in acute financial distress and the applicant had to seek help from the welfare fund of the hospital to arrange for the funeral rites of her husband. The applicant was however engaged immediately as 'Aya' on daily wages but neither the payment of terminal benefits of her husband was paid to her nor was she offered a regular appointment because of ^a dispute regarding her status since another lady put-forth a claim to be ^{the} widow of the applicant's husband. The respondents thereafter asked the applicant to obtain a succession certificate in her favour which she finally succeeded in getting on 3.10.92 from the Court of Sub-Judge, Ist. Class Delhi.

Immediately thereafter she submitted a claim for the payment of the dues but the same was not done on the ground that she did not submit the claim in proper forms along with a certificate of 'No dues' from the various departments of the Hospital where her late husband had worked. The applicant alleges that she had submitted the papers in the prescribed

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form but it was the responsibility of the respondents to ascertain whether any dues were outstanding on account of her late husband. She further alleges that the respondents are now refusing to make the payment on the ground that a sum of over Rs.80,000/- is due from her by way of damage rent for the accommodation she has continuously been occupying, even after the cancellation of the allotment after four months of the death of her husband. As regards her regular appointment, her complaint is that the respondents are denying her this facility on one ground or the other even though as per directions of the Hon'ble Supreme Court ~~that~~ necessary compassionate appointment, ^{by} be made even/creating supernumerary posts.

3. The respondents while denying this allegation state that they had immediately appointed her w.e.f. 4.12.84 on daily wages basis and further that they had granted her temporary status w.e.f. 1.8.93 in the pay scale of Rs.750-940 plus allowances. They also claim that after intimation was given by the applicant regarding the succession certificate necessary orders for payment of dues were issued on 15.10.92 and it is on account of the failure of the applicant to submit the necessary claim papers to the Accounts Officer along with a no due certificate

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that the actual payment has not taken place.

As regards the over-stay in Govt. accommodation it is submitted by the respondents that the sum of Rs.83,696/- is due from the applicant on account of market rent.

4. I have heard the ld. counsel on both sides. Shri D.D. Chaufla, ld. counsel for the applicant has argued that the procedure for submitting the claim papers is that necessary entries are made by the office and the claimant is asked to sign at the required places. A form had accordingly been given to her and she had signed the form at whichever place she was asked to do so. He drew attention to the copies of the letters written by the applicant regarding the release of the dues in which it had been clearly mentioned that the requisite form had been submitted. Even a legal notice had been served on the respondents but due to their callousness and lethargy no action was taken. In regard to her appointment on compassionate ground he admitted that the applicant had been given a temporary status w.e.f. 1.8.1993 but the same did not change her status as daily wage worker. He vehemently argued that since the applicant had been entered in the records of the respondents as ^{the} lawful wife

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she
of the deceased Govt. servant/should not have been
made to run from pillar to post to obtain the
succession certificate. In fact he contended that
the succession certificate was finally given by
the Civil Judge on the basis of the records of
Dr. RML Hospital itself. He urged therefore that
the applicant may be regularised as 'Aya' from
the date of her initial appointment on daily
wages and the accommodation should be transferred in
her name from the/^{same}date and that if any relaxation
is required in terms of age or educational qualification
and
the same may be done by the respondents/in terms
of the Supreme Court directions supernumerary
post be created if no vacancy is available from that
date. In this respect he cited the following
cases.

1. Umesh Kumar Nagpal vs. State of Haryana
(S.C.) - 1994 (2) SLR -
 2. Phoolwati vs. Union of India -
1991 RLR 115 (SC)
 2. Rishalo and another vs. UOI and others -
19915 (5) SLR 31.
5. Ld. counsel for the respondents submitted
that the succession certificate had become necessary
in view of the claim put-forth by another lady
for the terminal benefits. The respondents
were ready to make the payments in accordance

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with the orders already issued in 1992 after completing the required formalities. She could however not ^{be} appointed as 'Aya' since no vacancy presently was available and also she did not fulfil the age and educational qualification but the respondents in good faith had offered her the post of Safaiwala on regular basis but the same had been declined by her. She was also in unauthorised occupation of Govt. accommodation and was liable to pay the market rent as calculated. For this it was necessary that she should submit a 'No dues' certificate for the release of the terminal benefits.

6. I have considered the contentions of learned counsel on both sides. The explanation given by the respondents for non-payment of the dues does not hold any ground. Since the deceased Govt. servant had admittedly left his widow and minor children in a state of abject penury, it was incumbent upon the respondents ^{immediately} to make the payment of all the dues. However, they did not do so and delayed the matter for eight years by forcing the applicant to seek ^a succession certificate regarding the right of the applicant which was already available in the records of the Hospital itself. However, the applicant is claiming payment from October, 1992 when she submitted the succession certificate obtained from the Civil Court to the respondents.

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In case there was any difficulty in completing the forms etc. the applicant was working in the Hospital itself as a daily wages 'Aya' and a little effort on the part of the respondents would have ensured the completion of any formality that remained in the papers submitted by the applicant. As regards obtaining 'No dues' certificate from various departments of the hospital, I entirely agree with the ld. counsel for the applicant that it was the duty of the Hospital authorities and not the applicant, to go around to get it done. Hence, the delay on the part of the respondents for not making the payment is entirely the negligence and inertia if not callousness of the respondents.

7. The respondents have raised the question of recovery of market rent from the applicant. The respondents themselves have annexed to their reply the order of the Estate Officer of the RML Hospital in regard to the cancellation of the allotment and calculation of the market rent due. The order of vacation at Annexure-1 dated 20.12.94 and order regarding the payment of penal/market rent dated 15.11.94 are also annexed. The respondents had not taken any action to cancel the allotment and to start eviction proceedings/as late as 12.9.94. They cannot now turn around and claim market rent from her. In

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any case the question of regularisation or cancellation of the accommodation is a separate matter and the respondents are entitled to withhold at best the part of the DEEG on account of the non-payment of the rent; they cannot withhold the payment of GPF or pension and other dues for recovery of rent dues from the applicant.

8. Finally coming to the question of compassionate appointment of the applicant, the respondents rightly gave her immediate succour by giving a job of 'Aya' on the death of her husband. They now claim that there is no post of 'Aya' available. In Umesh Kumar Nagpal vs. State of Haryana (supra) it was held that provision of employment in Class-III and IV by making an exception to the rule is justifiable and favourable treatment given to such dependent of the deceased employee has a rationale nexus with the object of relief against destitution. In case of Phoolwati vs. Union of India (Supra) it was held that such appointment should be provided immediately to redeem the family in ^{distress} and it is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant. The present case is even more deserving since the monetary benefits on account of service of her deceased husband were also denied to the applicant. The applicant was left in

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lurch because of some dubious claim of another person but more so, ^{even after} the applicant ^{had} obtained a succession certificate. Since the respondents did at least in part what was required by giving a daily wages job I consider that ends of justice would be met if her appointment is regularised, if necessary by creating a supernumerary post of 'Aya', from the date of her initial appointment though she will not be entitled to the difference in wages. but will ^{get} other benefits like seniority, fixation of pay and eligibility of house allotment.

9. In the light of the above discussion, I dispose of ^{this} application with the following directions:

- i) The respondents will pay within one month of the receipt of this order, to the applicant all the dues on account of GPF, Leave encashment, Insurance, family pension and arrears of pay and allowances of her late husband along with 18% interest from 4.10.1992 till the date of actual payment. They may however withhold such part of the DCRG as may be necessary in order to meet any dues outstanding against her late husband and release the rest to her within three months of date of this order along with interest of 18%.

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ii) The respondents will regularise her appointment as 'Aya' if necessary by creating a supernumerary post, from the date of initial appointment on daily wages. While she will not be entitled for any arrears of pay on that account/^{she}will be entitled to the benefit of seniority, pay fixation as well as eligibility for allotment of accommodation.

There will be no order as to costs.

R.K. Ahboja
(R.K. Ahboja)
Member (A)