

14

ORIGINAL APPLICATION NO.484 OF 2005

ORDER DATED 24.3.3006

Heard learned counsel appearing for both the sides and perused the materials placed on record.

2. Shorn of unnecessary details, it would suffice to mention herein that the husband of the applicant, while working as Technical Helper (Gr.D) under the Respondent-organization died prematurely on 4.11.1996 leaving behind the widow (the present Applicant) and a college going son. In order to alleviate the distressed condition, the Applicant was also engaged as casual worker under the Respondent No.3. It is the case of the Applicant that despite her repeated representations to the Respondents, she has not been favoured with a compassionate appointment.

3. It is the case of the Respondents that the Applicant had been asked to exercise her option against the post of Safaiwala at Gangtok. But she having failed to exercise her option she could not be provided with a compassionate appointment. Respondents have also submitted that in view of order dated 19.11.2004 (Annexure-A/13) issued by the Government of India the cases of compassionate appointments which were not considered due to lack of vacancies should be closed after three years and this being the situation, no action on the appeal preferred by the applicant for the purpose of compassionate could be taken.

4. It has been submitted by the learned counsel for the applicant although the Respondents had asked the applicant to exercise her option against the post of Safaiwala at Gangtok under Annexure-A/8 dated 14.3.2002, they had put a Decocles' sword on the head of the Applicant by stating that in case she was appointed at Gangtok, she could not be transferred either to Calcutta or any other places in future as post belongs to Sikkim office. This insertion of the clause in the Annexure-A/8 by the Respondents put a threat on the Applicant, who is an widow to proceed to distant place at Gangtok to take the assignment of Safaiwala and therefore, she had prayed, while exercise her option to appoint her against a Group D post in and around her home State, Orissa. Moreover, it is the case of the applicant that although the Respondents had made their mind open not to transfer the applicant either to Calcutta or any other place in Orissa in case of appointment at Gangtok, they

15

13
have deviated from this principle by transferring Res. No.4 to Orissa Region.

5. I have considered the rival submissions advanced at the Bar. The Respondents have themselves also admitted that they have transferred Res. No.4 to Orissa Region in place of one Smt. Shanti Mahali, contingent(temporary status) on mutual basis. From this it is clear that the Respondents have not come to the Tribunal with a clean approach. They have not thrown any light as to how Res.4 could be mutually transferred vice one Smt. Shanti Mahali, contingent(temporary status) worker. This being the position, the only inference that can be derived that the Respondents are not amenable to the rules and regulations of the organization and they are suzerain to do whatever they like. This type of approach of the Respondents is nothing but arbitrary and whimsical. Apart from drawing sympathy to the facts and circumstances of the applicant who is a widow, they ought to have acted within the four corners of the Rules. The imposition of condition not to be transferred to Calcutta or any other place in case the applicant accepted her posting at Gangtok is purportedly to create a hesitation in the mind of the applicant. Therefore, this action of the Respondents is hereby deprecated.

6. With regard to applicability of Rules under Annexure-A/13 dated 19.11.2004, it is to be held that the said rule cannot be made applicable to the case of the applicant and it will have only prospective application with effect from the date it was issued.

7. Having regard to the facts and circumstances of the case, the inescapable conclusion that only could be drawn is that more than hiding the Respondents have revealed. In the circumstances, it is ordered that the applicant's engagement as casual worker should not be dispensed with till she is suitably appointed against a post commensurate with her qualification in and around Orissa Region since the whole object of her casual engagement is to mitigate the hardship of the family caused due to sudden demise of the sole bread winner. In any case, if not later, sooner the applicant's case should be considered for a compassionate appointment as indicated above.

8. With the above observations and directions, the O.A. is disposed of, leaving the parties to bear their own costs.

(M.R. MOHANTY)
MEMBER(JUDICIAL)

24/02/06