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O.A. No.222/2008

ORDER DATED 8th JULY, 2009

Coram:

Hon'ble Mr. Justice K. Thankappan, Member (J)

1. Mrs. A. Jagamma Patra and
2. Sri A. Trinath Patra Aplicants.

V.

Union of India & Ors. Respondents.

Heard Mr. D.K. Mohanty, Ld. Counsel for the applicant and Mr. S.K. Ojha, Ld. Standing Counsel for the Respondents.

2. The widow and the son of Late A. Jagannath Patra, Ex. Khalasi Helper working under Sr. Divisional Engineer (Coordination), Khurda Road have filed this Original Application with the following prayers:-

“(i) To quash the letter under Annexure-A/5 dated 12.03.2007;
(ii) To direct the Respondents to provide the Applicant No.2 employment on compassionate ground commensurate with his qualification retrospectively;
(iii) To direct the Respondents to pay the Applicant No.2 all his consequential service and financial benefits retrospectively i.e. from the date of illegal rejection of the grievance of the Applicant;
(iv) To allow this O.A with exemplary costs;
(v) To pass any other order/orders as deemed fit and proper.”

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3. The short factual matrix leading to filing of this application is as follows:-

"The father of applicant No.2 and the husband of applicant No.1 died in harness on 18.11.2005 leaving behind the widow, two sons and two daughters. As per the provision of the compassionate appointment scheme, the applicants had filed an application with all necessary documents including Class-VIII pass certificate/mark sheet in time. However, by order dated 12.03.07 (Annexure-A/5) the application of the applicants has been rejected on the grounds that the Class-VIII pass certificate produced in support of educational qualification of the candidate does not appear to be genuine as despite less than 20% marks and failing in 4/5 subjects the candidate has been declared passed. Even on receipt of the said letter the applicants continued to represent the matter before the authorities, and finally they filed the present O.A with the prayers as stated above.

4. This O.A has been admitted and notice has been ordered and the Respondents have been directed to file counter in this matter. Consequently a reply statement has been filed for and on behalf of the Respondents and the stand taken therein is that the rejection of the application is correct and the certificate showing the applicant No.2 to have passed Class-VIII appears to be not genuine. In the counter it is stated as under:-

"...that the applicant has submitted a certificate issued by the Dy. Director, Correspondence

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Course, BSE, Orissa (BAM Zone) has been issued and it was further clarified that the same was genuine. But, the said certificate was verified by this Office and in the said letter, no where it was mentioned that what class the candidate has passed. Hence, the said certificate was not accepted by the Competent Authority. So, he was advised by this Office to submit class-VIII pass certificate/Mark sheet showing the year of passing of Class-VIII vide this Office letter dated 30.08.06 (Annexure-A/2)'

5. On receipt of the counter, the applicants have already filed their rejoinder. In addition to the averments contained in the O.A. it is stated in the rejoinder that even if providing for employment in Group 'D' post passing of Class-VIII is necessary, the Dy. Director, Board of Secondary Education, Orissa, on verification of the records has intimated that the applicant No.2 has passed Class-VIII. Further, it is stated in the rejoinder that the marksheets of Class-VIII was also produced before the concerned authority.

6. Mr. Mohanty, Ld. Counsel for the applicant confined his arguments only to the question of the reason debated by the authorities vide Annexure-A/5 and subsequent request and answers given by the Respondents. It would show that only because the Respondents want to reject the claim of the applicant for compassionate appointment, the answer now given by the Respondents cannot be justified on any ground. Further, the counsel submits that even if there is any doubt entertained by the Department, the applicants have produced the

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the marksheets of Class-VIII of the applicant No.2. The Counsel now submits that the rejection of the request for offering for appointment under compassionate appointment scheme to the applicant No.2 is malafide.

7. In the counter the Respondents have submitted that the Department had considered all the documents produced by the applicants and entertained a genuine doubt regarding passing of Class-VIII by the applicant No.2 and as the minimum educational qualification of Class-VIII pass is required for appointment to Group 'D' post even under compassionate appointment scheme, the rejection of the claim of the applicants is justifiable.

8. On considering the rival contentions of the parties, the question to be decided is whether the Respondents are justified in rejecting the claim for compassionate appointment of the applicant No.2 as per Annexure-A/5.

9. The facts that the father of the applicant No.2 was working in the Railway as a Khalasi Helper and died on 18.11.05 and that the applicants have filed the O.A. for compassionate appointment in time are not disputed before this Tribunal. The only dispute now raised by the Railways is that the document or the certificate showing the passing of Class-VIII of the applicant No.2 appears to be not genuine. A bare perusal of the certificate produced before the authorities clearly shows that the applicant No.2 already appeared in Class-VIII & IX and reading in Class -X at the time of filing of the application. As per the rules, the passing of Class VIII is only

required for giving an appointment to Group 'D' post under compassionate appointment scheme. There is no case for the Respondent that the family of the applicants is not in indigent condition so as to reject the claim of the applicants on that ground. It is also not the case of the Respondents that the applicants have not submitted the application in time. In the above circumstances, this Tribunal is of the view that Annexure-A/5 is not sustainable in the eye of law. Accordingly, Annexure-A/5 is quashed and Respondents No.3 & 4 are hereby directed to consider the application of the applicants for offering an appointment to applicant No.2 as per the scheme of compassionate appointment, if applicant No.2 is otherwise qualified for appointment under the scheme. This exercise shall be completed within a reasonable time, at any rate within 60 days of the receipt of the copy of this order.

10. The O.A. is allowed to the extent indicated above. Ordered accordingly. No order as to costs.

A. K. APPA

(K. Thankappan)
Judicial Member