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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 19.09.2001

O.A. No. 197/2001

Kum Kaneej Gauri daughter of late Shri Samsudeen Gauri, aged about 30 years, resident of Hathion Ki Baori, Rasala Road, Paota, Jodhpur - At present LDC, in the office of CGWD, Div. XI, Jodhpur.

... Applicant.

v e r s u s

1. Union of India through the Secretary, Ministry of Water Resources (Ground Water Desk), Shram Shakti Bhawan, Government of India, New Delhi.
 2. The Director (Adm.), Central Ground Water Board, Government of India, N.H. IV, Faridabad (Haryana).
 3. Central Ground Water Board, Division No. VI, Takli House, Opposite Z.P. Girls High School, Kantol Road, Nagpur : 440 013 (Maharashtra)
- ... Respondents.

Mr. Kuldeep Mathur, Brief holder for Mr. Vinod Purohit, Counsel for the applicant.


CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed by Kum. Kaneej Gouri under Section 19 of the Administrative Tribunals Act, 1985, for quashing Annexure A/1 dated 19.12.2000, Annexure A/2 dated 20.08.98 and Annexure A/3 dated 14.09.98.



2. The learned counsel appearing for the applicant contended that the impugned order vide Annexure A/1, directing the applicant to appear in the (open competitive) examination to be conducted by Staff Selection Commission by giving age relaxation for the purpose of regularisation, is illegal and contrary to the judgement of Hon'ble the High Court of Rajasthan dated 10.03.98 passed in S.B. Civil Writ Petition No. 2112/1992. He placed before us a copy of the said judgement. He further contended that as per the direction of Hon'ble High Court, the applicant should have been regularised as Lower Division Clerk (LDC, for short) without the applicant being subjected to any examination. He contended that when Hon'ble the High Court in its final order dated 10.03.98 directed to regularise the applicant as LDC, the applicant should have been regularised without asking her to appear in any examination. He also stated that her appointment was made on compassionate grounds, but not against the physical handicapped quota. Thus, he contended that the applicant is entitled to the relief, as prayed for.

3. We have perused the judgement of Hon'ble the High Court dated 10.03.98 passed in S.B. Civil Writ Petition No. 2112/92. From the reading of the said judgement, it is clear that the present applicant filed a Writ Petition before Hon'ble the High Court, seeking compassionate appointment on the ground that her father died in harness on 14.05.77. At the time of death of the father, she was six years, and after attaining the majority, she filed an application for compassionate appointment. But her application was rejected vide order dated 02.04.92 on the ground of delay, a copy of which was filed at Annexure A/22 in the Writ Petition. But Hon'ble High Court, by following the judgements of Hon'ble the Supreme Court in (i) 1994 (4) SCC 138 (Umesh Kumar Nagpal vs. State of Haryana and Others,

(ii) 1996 (1) SCC 301 (Jagdish Prasad vs. State of Bihar) and (iii) 1996 (2) JT 542 (Haryana State Electricity Board vs. Narerash Tanwar & Anr.), rejected the prayer of the applicant for compassionate appointment, on the ground that the petitioner applied for compassionate appointment after twelve years, and the mother of the petitioner was still in service with the respondents and in those circumstances, it cannot be said that the applicant's case was such a hard case that the employment must be given to her, and accordingly it further held that, the impugned order cannot be said to have been passed wrongly in not giving employment to the applicant on compassionate ground. However, Hon'ble the High Court further observed that since the applicant has been working as LDC on the basis of the interim order of the High Court in that case for the last six years, the respondents could be directed to consider her case against the physically handicapped quota and regularise the appointment strictly in accordance with law. We think it appropriate to extract the relevant part of the judgement, as under :-

" After considering all these judgements, the Supreme Court again, in Haryana State Electricity Board versus Naresh Tanwar and another, 1996 (2) JT 542, has held that under the Dying in Harness Rules the dependant of the deceased cannot claim the employment as a vested right and such employment cannot be given after expiry of the period provided under the statutory rules and where the rules do not provide for any limit, after the lapse of a reasonable period.

Clause 7 of the instructions applicable in the case provides for considering the belated requests for compassionate appointment after 5 years or so. However, it provides that authority shall, also, consider the fact that the family has been able to manage somehow all these years and it should normally be adequate proof to show that the family had some dependable means of subsistence. Moreover, clause (11) provides that if the dependant was a minor and who alone is available for employment, he should apply for the job as soon as he attains the age of 18 years.

In the instant case the petitioner had applied after twelve years. It is an admitted fact that the mother of the petitioner is still in service with the respondents and, thus, it cannot be said that it is such a hard case that the employment must be given to the petitioner for the survival of the family. Thus, in view of the above, it cannot be said that she has wrongly been denied the employment on compassionate ground.

However, this Court, vide its interim order dated 26.05.92, issued directions to appoint the petitioner on provisional basis on the post of Lower Division Clerk against the Handicapped Quota and it appears that the petitioner is working on that post for the last six years under the order of this Court. If it is so, then the respondents are requested to consider her case under the said quota and regularise her appointment strictly in accordance with law as it is not desirable to throw her out of employment after such a long time.

With these observations, the writ petition stands disposed of."

4. From the reading of the entire judgement, it is clear that the contention of the applicant that she was not given appointment against physically handicapped quota, is not correct. It appears from the last part of the High Court's order that by interim order of the High Court, the applicant was directed to be appointed on provisional basis on the post of LDC against physically handicapped quota. Therefore, the averment made in the application in Para (f) "..... It may be submitted that the authority issuing such letter has mis- construed the initial appointment of the applicant inasmuch as the applicant was appointed on compassionate ground and not on the ground of her being physically handicapped person.....", is totally incorrect. The applicant also has not placed on record the said interim order of Hon'ble the High Court, obviously, with an attempt to mislead this Tribunal. The contention of the applicant that she was given appointment on compassionate ground by virtue of interim order of Hon'ble High Court also, is not correct. In fact, her case for appointment on compassionate ground has been rejected by Hon'ble the High Court. However, considering her case sympathetically that she has been working as LDC for the last six years as per interim order, Hon'ble the High Court directed the respondents to consider her case under physically handicapped quota for regularisation in accordance with law, since throwing her out of employment after such a long time, would not be desirable. But the applicant's counsel submitted that Hon'ble the High Court did not direct for conducting such examination

for regularisation, overlooking the directions of Hon'ble the High Court that the respondents were directed to regularise her appointment "strictly in accordance with law", meaning thereby "by following the prescribed procedure" for regularisation. It is pointed out in the letter dated 20.08.98 (Annexure A/2) issued by the Government of India, Ministry of Water Resources, New Delhi, as under:-

" I am directed to refer to CGWB's letter No. 20-35/90-Estt.(M) dated 10.06.98 on the subject mentioned above and to say that the matter has been examined in consultation with the Department of Personnel and Training regarding regularising the services of Kum. Kaneej Gauri in the post of LDC against the handicapped quota which she is holding since 1992 on provisional basis. The DOPT have now observed that it may not be possible to regularise her as per the instructions in vogue as her appointment (initial) was not after fulfilling the required procedure. However, in view of the observation of the Court that it may not be desirable to throw her out of employment after such a long time, we may allow her to appear in the exam. to be conducted by SSC (open competitive) by giving age relaxation to the extent required so that she can be considered against any of the post reserved for PH candidates."

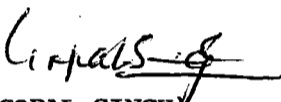
The same is reiterated in the impugned order at Annexure A/1 dated 19.12.2000. From the reading of the Annexures A/1 and A/2, it is clear that since the applicant was appointed as LDC only by virtue of the interim order of Hon'ble the High Court and not in accordance with the prescribed procedure, she was directed to take the examination prescribed for regularisation of her services in physically handicapped quota. In fact, Hon'ble the High Court directed her regularisation strictly in accordance with law, meaning thereby according to the procedure prescribed by law and such procedure is that she should take necessary examination. Therefore, the contention of the learned counsel for the applicant that the applicant's services should have been regularised without taking any examination, is not acceptable.

5. Many times, the litigants misuse the sympathy of the Court. This case is one such instance. Having refused the applicant's claim for appointment on compassionate ground, Hon'ble the High Court was please

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to direct, on sympathetic ground, that the applicant's case could be considered under physically handicapped quota for regularisation, since she had been working as LDC on provisional basis for the last six years as per the interim order of the High Court. Therefore, the applicant should have taken the examination prescribed under the Rules honourably instead of issuing a legal notice to the respondents, asking to regularise her services without conducting any prescribed examination. Thus, we find that there is neither law nor equity in favour of the applicant for the relief, as prayed for in the application. Accordingly, we pass the order as under:-

"The application is dismissed at the stage of admission."


(GOPAL SINGH)
Adm. Member


(JUSTICE B.S. RAIKOTE)
Vice Chairman

cvr.