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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 15/95
Transfer Application No.

Date of Decision : 20-02-96

Smt. Rambhābai Govind Awarkar & Another

Petitioners

Ms. Neeta P. Karnik.

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Shri R.K. Shetty.

Advocate for the
respondents

C O R A M :

The Hon'ble Shri M.R. Kolhatkar, Member(A)

The Hon'ble Shri -

- (1) To be referred to the Reporter or not ? ✓
- (2) Whether it needs to be circulated to X
other Benches of the Tribunal?

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A).

(8)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY.

ORIGINAL APPLICATION NO.15/95.

Proounced, this the 20th day of February 1996.

Coram: Hon'ble Shri M.R.Kolhatkar, Member(A).

1. Smt.Rambhabai Govind Awarkar and
2. Ravi Govind Awarkar.

... Applicants.

(By Advocate Ms. Neeta P.Karnik)

V/s.

Union of India & Ors.

... Respondents

(By Shri R.K.Shetty, Govt. Counsel.)

O R D E R

(Per Shri M.R.Kolhatkar, Member(A))

In this Original Application under Section 19 of the Administrative Tribunals Act the wife of the incapacitated employee of the respondents has impugned the order dt. 27.9.1994 at page 29 of the O.A. which reads as below:

"With reference to your application dt.16.7.93 on the subject cited above, the Directorate of Printing, New Delhi has intimated that you have been discharged from service on 5.2.82 and the proposal for employment of your son has been received in the Directorate on 11.11.1993. Thus your family has been able to pull on without employment on compassionate grounds for more than 11½ years. The criterion for employment on compassionate grounds is that the family should be in need of immediate assistance. This criterion is not satisfied in your case. Keeping these facts in view, your case has not been found to be deserving one for employment on compassionate grounds."

2. The ~~late~~ husband of the applicant No.1 was medically invalidated for further service on the basis of medical certificate dt. 2.2.1982. The employee was stated to be suffering from mental

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depression. It is not in dispute that the husband of the applicant is clinically insane. She made representations for compassionate appointment, but the same were earlier disposed of by a letter dt. 30.1.1986 from Respondent No.2 at page No.13 of which English translation is as below :

"As per your letter dt. 24.12.1985 for appointment once again it is stated that your husband Shri G.E.Awarkar order us that his consent (consent dt. 8.8.1984) treated as cancelled. You are hereby intimated that without your husband's consent (declaration/ Undertaking) your compassionate appointment have not fitted as per Govt. Rules. Therefore, Your Hunger Strike is not correct."

The counsel for the applicant has contended that the impugned letter dt. 27.9.1994 rejecting her request for compassionate appointment of her son is highly unjust in the facts and circumstances of the case. The conduct of department is not free from blemish and the department has shifted its stand from time to time. Thus in January, 1986 the compassionate appointment was rejected on the ground that her husband had withdrawn the consent given to her employment on compassionate grounds. Since in law, a lunatic cannot give a valid consent and the department was perfectly aware that the husband was medically incapacitated on the ground of mental illness, it was illegal for the department to have refused employment to her on the ground of alleged withdrawal of consent by the husband.

...3.

3. It is the case of the applicant that she was a helpless wife with a handicapped husband who was required to support a family consisting of three children who at the time of incapacitation of the husband were in the age range 3 to 5 consisting of two daughters and one son, in addition to the mentally ill husband. She had, somehow, carried on by working as a maid servant in a charitable institution (Chatusapradaya Akhada, Panchvati, Nasik). Simultaneously she has been pursuing the case with the Department vigorously through various fora. A perusal of documents on record shows following chronology : Page 14 shows that on 4.7.1991 Mahila Hakka Samrashana Samity, Nasik (Womens' Rights Protection Committee, Nasik) took up the matter with Assistant Labour Commissioner, Pune. Page 17 shows that the Assistant Labour Commissioner held a joint discussion with the employer and the workman and found it fit to close the case on 25.9.1991. On 31.1.1992 (page 20) the Regional Labour Commissioner on receipt of the representation of the latter, directed the Assistant Labour Commissioner to again intervene in the matter. On 14.12.1992 the applicant obtained a Guardianship Certificate from the competent Court in respect of her husband and three minor children. On 19.4.1993, the applicant sent a legal notice claiming retirement dues of her husband and compassionate appointment for her son who had passed XIIth Standard and compensation for negligence and carelessness. On 10.5.1993 the

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applicant's son attained majority (18 years of age). On 1.6.1993, the Respondent No.2 replied to the legal notice reiterating the earlier stand (withdrawal of consent by her husband) and further stating that the matter has become time barred. On 8.7.1993, the Assistant Labour Commissioner rendered his Conciliation Report. The stand of the Management at that time was that the Management are in favour of granting the compassionate appointment either to complainant or her son, but because more than 5 years have lapsed, the approval of the Ministry of Urban Development will be required. It has come on record that her son has passed XIIth standard and also obtained proficiency certificate of the Department of Vocational Education & Training in the trade of "OFFSET MACHINE OPERATOR". He has also got a national trade certificate in Letter Press M/C Minder. It appears that it was in pursuance of the assurance before the Assistant Labour Commissioner on 8.7.1993 that the matter was taken up with the Government and the impugned letter dt.27.9.94 appears to be the result of the further action taken by Respondent No.2 to obtain orders of higher authorities.

4. The Respondents have opposed the Original Application. According to the Respondents the wife's application for compassionate appointment could not be considered because her husband did not give his consent and the son's application could not be considered for reasons which are given in the impugned letter. It is contended that compassionate appointment

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is entirely within the executive discretion, that the department has not committed any illegality and that the O.A. deserves to be dismissed. The counsel for the respondents also relied on the Supreme Court Judgment in the case of L.I.C. V/s. Mrs. Asha Ramchandra Ambekar (JT 1994 (2) SC 183) where the Supreme Court held that the High Courts and Administrative Tribunals ought not to confer benediction impelled by sympathetic consideration and disregardful of law. In that case the High Court had issued a writ of mandamus directing the L.I.C. to grant appointment, even though statutory regulation provided that where any member of the family is employed, no appointment may be made on compassionate grounds.

5. In my view, the case of Mrs. Asha Ramchandra Ambekar does not apply to the facts of the case. This appears to be one of the hard cases in which the department has indulged in patent illegality and sought cover of technicalities of rules to finally deny relief. There is no doubt that the letter dt. 30.1.86 refusing employment to the applicant/wife on the ground of withdrawal of consent by her lunatic husband is vitiated. It is surprising that the department has not taken note of this aspect while issuing the letter of rejection dt. 27.9.1994 where the department has blandly stated that since the family has been able to pull on without employment for more than 11½ years, the case has not been found to be a deserving one.

...6.

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6. In Auditor General of India V/s. G. Anantha Rajeswara Rao (1994 SC (L&S 500)) the Supreme Court has upheld the Government of India O.M. dt. 25.11.1978 to the extent it provides for compassionate appointment to son, daughter or widow of government servants who died in harness. The Supreme Court has also observed that appointment on compassionate grounds in exceptional circumstances is justified. The relevant Government Memorandum discourages belated requests for compassionate appointment. But in this particular case, we have to keep in view the whole background in which great injustice was done to the helpless wife who was illegally denied compassionate appointment in 1986 and who continued to fight the case till her son became major and qualified.

7. It appears to me that it is necessary to read the Government instructions which are printed at page 347 of Swamy's Establishment And Administration Manual, 5th Edition, 1994 harmoniously ^{with other instructions} I have two sets of instructions which are prima facie conflicting and it is required to read them harmoniously. Para 7 under the heading "Belated requests for compassionate appointments" reads as below:

"Ministries/Departments can also consider the requests for compassionate appointment even where the death took place long ago, say, five years or so. While considering such belated requests it should be kept in view that the concept of compassionate appointment is largely related to the need for immediate assistance to the family on the passing away of the Government servant in harness. The very fact that the family has been able to manage somehow all these years should normally be adequate proof to show that the family had some dependable means of subsistence. Therefore,

examination of such cases calls for a great deal of circumspection. The decision in those cases may be taken at the level of Secretary only."

It may be noted in regard to this paragraph that the reference to 5 years' limit is merely a Rule of thumb and does not have any particular sanctity. The period of 5 years is required to be read flexibly in the light of facts and circumstances of the case and the circular itself says that a great deal of circumspection is required and a decision in the matter has ^{to} be taken at the level of the Secretary. On the other hand, we have a provision in the Rules relating to an employee who is survived by ^{1 or who has} a ward below 18 years of age, these instructions are vide Department of Personnel & Training, O.M. No.F.14014/23/87-Estt.(D) dt. 17.2.1988, which reads as below : (p.351 Swamy's)

"It has been decided that if an employee dies while in service or is retired on invalid pension and there is a ward below 18 years of age and who alone is available for employment, he should apply for a job as soon as he attains the age of 18 years. The persons below the age of 18 years should not be considered for appointment on compassionate grounds. The general instructions referred to in O.M. No.14014/6/86-Estt.(D), dt.30.6.87, may be treated as amended to this extent. The upper age-limit may, however, be relaxed as hitherto as per the orders already existing on this subject."

8. In my view, this is a fit case in which the above instructions should come into play by relaxing the General Rule against considering compassionate appointment after 5 years of the incapacitation of the government employee. In other words, what needs to be observed is that the Government's action in 1986

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in rejecting the request for employment of the applicant was highly unjust and keeping^{in view} the condition of a woman in a traditional society like ours especially who had a mentally incapacitated husband with three children to support, who was uneducated and was not in a position to have access to proper legal advice but still continued to fight for justice are all relevant considerations and the impugned order dt. 27.9.1994 needs to be re-considered at the level of Secretary of the concerned department. I, therefore, dispose of the O.A. by passing the following order.

O R D E R

The Department's letter dt. 27.9.1994 is hereby quashed and set aside. The Secretary of the concerned department is directed to re-consider the matter of grant of compassionate appointment to the son of the applicant No.1 in the light of this Judgment subject to availability of vacancy in the organisation. If an appointment is offered, the matter ends there. If appointment is not offered, Secretary to Government should pass a speaking order and if the applicants feel aggrieved thereby, they are at liberty to file fresh O.A. if so advised.

M.R. Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)