

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

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No. MA 350/00100/2015
OA 350/01510/2014

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member

SMT. JAMINI DEVI & ANR.

VS

UNION OF INDIA & ORS.

For the applicants : Mr.T.K.Biswas, counsel

For the respondents : Mr.A.K.Guha, counsel

Order on : 30.5.16.

O R D E R

This matter is taken up in the Single Bench in terms of Appendix VIII of Rule 154 of CAT Rules of Practice, as no complicated question of law is involved, and with the consent of both sides.

2. Heard ld. Counsels for the parties and perused the materials on record.

3. Admittedly and without any iota of doubt this is a case where the employment assistance to the applicant No.2 namely Rina Paswan, the daughter of the deceased employee Ram Prasad Rana, has been rejected on the ground that earlier the authority, by an order dated 28.1.02, had rejected the prayer of the widow Jamini Devi for employment assistance in favour of her son as the School Certificate produced by him was not a genuine one. Ld. Counsel for the applicant heavily relied upon a decision rendered by Hon'ble High Court at Calcutta in **WPCT 249/13 (Smt. Sushila Bauri & Anr. -vs- UOI & Ors.)**.

3. Per contra ld. counsel for the respondents relied upon the CPO circular dated 27.3.09 intimating that once a fake certificate is submitted no second chance would be given for the same child or for any other child. The circular would read as under :

"Sub : Appointment on compassionate grounds - Fake School Certificate

Of let it has been observed that some cases, at the time of submission of application for appointment on compassionate grounds 1st time for 1st child or other child or others with fake school certificates and

same detected during enquiry then the widow applied for 2nd child or 2nd time feigning ignorance. This only encourages the spirit of taking chances of submitting fraud certificate and escaping with it, if luck be. Accordingly, a written clarification may be obtained from the party concerned at the time of payment of settlement dues or at the time of enquiry by the W1/P1 through a written letter that if the documents submitted are found fake afterwards then no second chance will be given and said letter/undertaking may also be kept record in file.

In view of the above, competent authority has also decided that if once a fake certificate is submitted, no second chance will be given."

4. Further it was argued that the daughter was a married daughter and therefore in terms of Railway Board's Srl. Circular No. 224/01 she could not act as bread winner for the family.

5. Hon'ble High Court at Calcutta in **WPCT 249/13 (Smt. Sushila Bauri & Anr. -vs- UOI & Ors.)** had observed and ordered as under :

"The respondent authorities herein sought to punish the other members of the deceased family including the petitioner No.2 by refusing to grant employment on compassionate ground to the said petitioner No.2 upon considering the conduct of the elder brother of the petitioner No.2 herein. This is a misplaced punishment on an unerring person for the wrong committed by somebody else in which he had no role to play.

For the aforementioned reasons, we do not approve the decision of the Senior Divisional Personnel Officer, South Eastern Railway dated 13th June, 2012 and quash the same accordingly.

For the identical reasons, the impugned order passed by the learned Tribunal also cannot be affirmed and the same is set aside.

The respondent authorities, particularly the respondent No. 4 and 5 herein, are directed to take immediate appropriate decision with regard to the claim for re-employment of the petitioner No.2 herein on compassionate ground without any further delay but positively within a period of three weeks from the date of communication of this order without being influenced by the earlier decision of the Senior Divisional Personnel, Officer, South Eastern Railway in respect of the elder brother of the petitioner No.2."

(emphasis supplied)

6. Further in regard to "marriage" being a bar for consideration of daughters as bread winner of the family, the following decision would be useful to quote :

i) It has been held in **Shreejith G -vs- Director of Education [(2012) 7 SCC 248]** that marriage by itself cannot disqualify a person concerned from seeking compassionate appointment.

ii) In **W.P. 6056/2010, The State of Maharashtra & Ors. -vs- Medha Prashant Parkhe**, the Hon'ble High Court at Bombay held as under :

"Rule 3(A) which discriminates against unmarried women is arbitrary and, therefore, it cannot be said that the termination of service of the respondent was legal. An unfair labour practice has been established. It is impossible to accept in this day and age that assuming a woman gets married she will cut off her ties with the family she is born and will leave it to suffer the vagaries of life in penury. It was necessary for the petitioner in this case to establish on evidence that the respondent, after having secured the employment, was no longer connected with the family that she was born into and that the family was living without her financial support. The petitioner instead has chosen to dismiss the respondent, without holding an enquiry and has thereby committed an unfair labour practice. One of the eligibility criteria for applying for appointment on compassionate grounds is that the daughter must be unmarried. The respondent was unmarried when she applied for the post. She was selected as she fulfilled all the other criteria for appointment. Her name was included in the wait-list and she was issued an appointment order three years later. The petitioner cannot expect the life of the respondents to come to a grinding halt only because her name was included in the waitlist. The unreasonableness and arbitrariness of the petitioner is writ large. Does the respondent have to let life pass her by only because her name was included in the wait list? The answer must be emphatically in the negative. To suggest that because the respondent had not waited long enough to get married, she had committed a fraud, snacks of an unfair labour practice under item 1(b)."

(emphasis supplied)

(iii) Hon'ble High Court of Bombay in **WP 11987/12 Sou. Swara Sachin Kulkarni (Kumari Deepa Ashok -vs- Superintending Engineer, Pune Irrigation Project Circle & Anr.** Held as under :

"We cannot expect a Welfare State to take a stand that a married daughter is ineligible to apply for compassionate appointment simply because she becomes a member of her husband's family. She cannot be treated as not belonging to her father's family. The deceased was her father. In this case, the deceased has only daughters. Both are married. The wife of the deceased and the mother of the daughters has nobody else to look to for support, financially and otherwise in her old age. In such circumstances, the stand of the State that married daughter will not be eligible or cannot be considered for compassionate appointment violates the mandate of Article 14, 15 and 16 of the Constitution of India. No discrimination can be made in public employment on gender basis. If the object sought can be achieved is assisting the family in financial crisis by giving employment to one of the dependents, then, undisputedly in this case the daughter was dependent on the deceased and his income till her marriage. Even her marriage was solemnized from the income and the terminal benefits of the deceased. In such circumstances if after marriage she wishes to assist her family of which she continues to be a part despite her marriage, then, we do see how she is disentitled or ineligible for being considered for compassionate employment. This would create discrimination only on the basis of gender. We do not see any rationale for this classification and discrimination being made in matters of compassionate appointment and particularly when the employment is sought under the State. The State is obliged

to bear in mind the constitutional mandate and also directive principles of the State Policy."

Hon'ble Court ordered as under :

"The petitioner's name shall stand restored to the wait list maintained by respondent nos.1 and 2 for appointment on compassionate basis. However, we clarify that we have not issued any direction to appoint the petitioner. Let her case be considered in terms of the applicable policy of Compassionate Appointment or Employment together with others. Her name should not be deleted or omitted only because she is married and that is why we have restored her name in the wait list. Beyond that we have not issued any direction."

(emphasis supplied)

(iv) In **Usha Singh -vs- State of West Bengal [(2003) 2 LLN 554]**

Hon'ble Calcutta High Court observed as under :

"No authority need be cited for the proposition that right to marry is a necessary concomitant of right to life guaranteed under Art. 21 of the Constitution 'Right to life includes right to lead a healthy life so as to enjoy all the faculties of the human body in their prime condition.' (See in this regard Sr. X -vs- Hospital Z reported in (1998) 8 SCC 296.)"

7. In view of the legal propositions supra the rejection of prayer on the ground of marriage was highly improper. However, it could be noticed that the respondents have not yet decided the representation dated 28.6.14 as contained in Annexure A/2 to the OA. Therefore, in view of the pendency of the representation without disposal, the OA is disposed of with a direction upon the respondent authorities to consider the prayer in the light of the enumerations and observations and decisions referred to supra and pass an appropriate reasoned and speaking order in accordance with law within two months from the date of receipt of the copy of this order, untrammelled by their earlier decision.

8. Accordingly the MA and OA both stand disposed of. No order is passed as to costs.

Bidisha Banerjee
(BIDISHA BANERJEE)
MEMBER (J)

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