
(2009) 05 JH CK 0069
In the Jharkhand High Court

Anita Sinha

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-05-2009

Acts Referred:

Citation : (2009) 05 JH CK 0069

Hon'ble Judges : D.N. Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred against an order passed by the Respondent No. 3 dated 29th June, 2002 at an Annexure - C to the counter-affidavit, whereby, an application for compassionate appointment of the petitioner was dismissed on the ground that the husband of the present petitioner was appointed illegally and, therefore, widow of the deceased employee i.e. the present petitioner is not entitled for compassionate appointment.

2. Learned Counsel appearing for the petitioner has submitted that the husband of the present petitioner has served the respondents for a much longer period who expired on 15th September, 1997, and thereafter an application was preferred by the widow of the deceased employee i.e. by the present petitioner for getting employment on compassionate ground, in pursuance of the scheme, floated by the respondents. This application was dismissed by the Respondent No. 3 vide order dated 29th June, 2002 on the ground that service of the petitioner's husband was declared illegal, because he was appointed illegally, on the basis of some circular issued after the death of the husband of the present petitioner. Petitioner's husband expired in September 1997 and the services of the husband of the petitioner was declared illegal on the ground of a circular issued on 23rd October, 1998. This reason is not a reason in the eyes of law. A circular issued after the death of the petitioner's husband cannot be a basis for declaring the appointment of her husband as illegal. In fact, after the death of an

employee, management cannot declare that the deceased employee was appointed illegally. This reason is not permissible in the eyes of law, even as per the decision rendered by this Court at Annexures -5 & 6. Learned Counsel appearing for the petitioner has relied upon in a decision rendered by this Court reported in Seema Devi Vs. State of Jharkhand and Others, On the basis of the aforesaid decision it has also been contended that compassionate appointment cannot be denied on the ground that the deceased employee was illegally appointed. This declaration cannot be made by the Management after the death of an employee. This aspect of the matter has not been appreciated at all by Respondent No. 3 while passing the order dated 29th June, 2002 at Annexure - C to the counter-affidavit filed by the respondents and hence the same deserves to be quashed and set aside.

3. I have heard learned Counsel appearing for the respondents, who has vehemently submitted that if the husband of the petitioner was illegally appointed, no benefit can be extended to the legal heirs of such employees and hence the order passed by the Respondent No. 3 is true and no illegality has been committed by the respondents and hence, the petition deserves to be dismissed.

4. Having heard learned Counsel for both the sides and looking to the facts & circumstances, I hereby quash and set aside the order passed by the Respondent No. 3 dated 29th June, 2002 at Annexure -C to the counter-affidavit, filed by the respondents mainly for the following fact and reasons:

I. It appears from the fact of the case that the husband of the petitioner was serving as a Technical Assistant for the period running from 4th February, 1989 to 15* September, 1997. Thereafter her husband expired on 15th September, 1997, while in services with the respondents.

II. It appears that an application was preferred by the petitioner's widow for getting compassionate appointment with the respondents, in pursuance of the scheme floated by the respondents. The said application was brushed aside by Respondent No. 3 vide order dated 29th June, 2002 mainly for the reason that because of one departmental letter/circular bearing No. 5530 dated 23rd October, 1998 by which the appointment of the husband of the present petitioner was illegal and, therefore, petitioner is not entitled for the compassionate appointment. This reason is absolutely false and frivolous and de hors the law.

(a) firstly for the reason that before declaring appointment of the deceased employee, illegal, neither any opportunity of being heard was given to the petitioner (or his legal heir) nor any notice was given to the petitioner (or to his legal heir);

(b) secondly for the reason that the basis on which decision has been taken for declaring the appointment of the deceased employee as illegal, is a letter dated 23 October, 1998. This letter was issued after the death of husband of the present petitioner. The husband of petitioner expired on 15th September, 1997

and the circular bearing No. 5530 was issued on 23rd October, 1998, and, therefore, also the same is not applicable to the deceased husband of the present petitioner.

(c) thirdly for the reason that before passing the impugned order dated 29th June, 2002 no opportunity of being heard was given to the petitioner. An application was preferred by the petitioner for compassionate appointment, but, the respondents ought to have taken care of following at least the principles of natural justice so that petitioner could have pointed out the decisions which are now annexed at Annexures -5 and 6.

(d) forthly for the reason that looking to the ratio laid down by this Court in a decision Seema Devi Vs. State of Jharkhand and Others, , the order passed by Respondent No. 3 dated 29th June, 2002, deserve to be quashed and set aside. It has been held by this Court in a decision Seema Devi Vs. State of Jharkhand and Others, in Paragraph 35 to 37 as under:

35. So far as petitioner "Seema Devi of W. P.(S) No. 94 of 2002 is concerned, there is no dispute that her husband Late Navin Kumar was in the services of the State Government. In his case also, it was alleged that he was appointed as a Constable without following the procedure, but that issue cannot be determined in absence of Late Navin Kumar.

36. So far as petitioner Seema Devi is concerned, she was appointed on compassionate ground and the Respondent-State has nowhere alleged that in the matter of appointment of petitioner Seema Devi, the procedure of compassionate appointment was not followed. In such circumstances, in absence of such finding and she having been appointed on compassionate ground, it was not open for the respondents to terminate her service on the ground of illegal appointment of her husband.

37. I, accordingly, set aside the order of her terminating being Order No. 1146/2001 issued by the S.P., Special Branch, Jharkhand, Ranchi, as contained in Memo No. 1582, dated 22nd October, 2001. She stands reinstated to the post with all consequential benefits. But she will get 50% of the back wages for the period, she was forced to remain out of service. Thus the writ petition, W.P. (S) No. 94 of 2002, as preferred by petitioner Seema Devi is allowed.

(Emphasis supplied)

5. Thus, in view of the aforesaid ratio decidendi propounded by this Court, compassionate appointment cannot be denied on the ground that the deceased employee was not appointed in accordance with law. This aspect of the matter has also not been appreciated by Respondent No. 3.

6. It appears that respondents are not quickly deciding the application, preferred by such type of employees for compassionate appointment. Whenever an application for compassionate appointment is preferred, it ought to be decided without any loss of time so that goal to be achieved by the compassionate

appointment scheme, may not be frustrated. Perhaps, those who are employed as high ranking officers of the respondents, they are not knowing that "you cannot do kindness, too soon, for, you do not know how soon it will be too late" When quick relief is required and the delay is caused perhaps, the remedy will lose its effect. It appears that earlier also this present petitioner had preferred a writ petition. An order was passed by this Court compelling the respondents to take a decision. This is how the decision is taken and again an error apparent on face of record, has been committed by the respondents and again this Court will have to remand the matter and, therefore, instead of remanding the matter to respondent No. 3, I hereby direct Respondent No. 2 to take a decision afresh, considering Annexures 5 & 6 and also the order passed by this Court as well as aforesaid decision reported in Seema Devi Vs. State of Jharkhand and Others, and after giving an opportunity of being heard to her or to her representative in accordance with law, rules, regulations policies and enforceable Government orders, applicable to the petitioner, as expeditiously as possible, but, not later than four weeks from the date of receipt of a copy of the order of this Court.

7. This writ petition is allowed to the aforesaid extent with a cost of Rs. 500/- (Five Hundred), which the State will pay to the petitioner within a period of four weeks from today.