
(2021) 11 TEL CK 0037
In the Telangana High Court
Case No : Writ Appeal No. 1627 Of 2017

APCPDC LTD. 2 Others

APPELLANT

Vs

Kodavath Kesi

RESPONDENT

Date of Decision : 16-11-2021

Acts Referred:

Citation : (2021) 11 TEL CK 0037

Hon'ble Judges : Satish Chandra Sharma, CJ;A. Rajasheker Reddy, J

Bench : Division Bench

Final Decision : Disposed Of

Judgement

The present writ appeal is arising out of the order dated 06.04.2017 passed by a learned Single Judge in W.P.No.6112 of 2004 directing the appellants to consider the case of the writ petitioner (respondent before this court) for grant of appointment (compassionate).

The undisputed facts of the case reveal that the writ petitioner (respondent before this court) is a widow and belongs to Scheduled Tribe. Her husband was employed in the services of the Central Power Distribution Company of Andhra Pradesh Limited, now known as Telangana State Southern Power Distribution Company Limited (TSSPDCL). Unfortunately on 19.04.2003, when her husband was working in the premises of the company, on account of non-functioning of circuit breaker at 33/11 KV SS Achampet, he was electrocuted and died on the spot. The young tribal widow, who was not having any other source of income and who was having a large family to support, as all were dependent upon her husband, submitted an application for grant of appointment on compassionate grounds. The application of the widow was rejected on 15.12.2003. She immediately came up before this court by filing a writ petition i.e., W.P.No.6112 of 2004. Unfortunately, it was only in the year 2017 that this court has decided the matter directing the employer to consider her case for grant of compassionate appointment, against which a writ appeal was preferred in the year 2017 and it was listed on 03.11.2017 for the first time. The present

appellants sought an adjournment in the matter as reflected from the order sheet and it was posted on 06.11.2017 at request. However, it was not listed on 06.11.2017 and it has been listed today on a request made by the widow.

The undisputed facts of the case make it very clear that the death of the husband of the writ petitioner (respondent before this court) took place on 19.04.2003. At the relevant point of time, a scheme was applicable and the same is also on record i.e., Circular dated 30.06.2003. The relevant paragraphs of the said Circular dated 30.06.2003, as contained in paragraphs (i), (ii) and (iii), read as under:-

"(i) For Regular Employees:

(A) In case of injuries:-

If an employee who receives injuries which arise out of and in the course of his employment, compensation is to be paid on the basis of loss of earning capacity as determined by a Medical Officer. In all Departmental cases where employees receive injuries in the course of their employment the concerned officer should investigate the accident and determine the cause of the accident, but if the victims concerned are guilty of negligence and have involved themselves in the accidents, discarding the safety instructions, no compensation need be paid. However, if on investigation the officers come to the conclusion that the victims sustained injuries that had really arose out of and in the course of their employment they would be suitably compensated depending upon the certificate of loss earning capacity certified by Medical Officer not below the rank of Civil Assistant Surgeon of a Government Hospital. It is decided to pay Hospital expenses incurred by the employee in full to the concerned Hospital towards treatment of the employee if he sustains injuries during the course of employment.

(B) In case of Deaths:

Employment is to be provided to one of the dependent of the deceased employee under Compassionate grounds in the event of candidate satisfying all the conditions in B.P.Ms.No.119, Dt.10-02-1982, B.P.Ms.No.247, Dt.17-03-1989 and Memo.No.DP/DM.II.Gr.I/983/89, Dt.21-02-1991 (in respect of minor).

In case of Departmental Fatal accidents, the Compensation has to be deposited with the Commissioner for Workmen Compensation.

(ii) Non-Departmental persons:

(A) In case of Fatal accidents to the Non-Departmental persons an amount of Rs.20,000/- in case of adults and Rs.10,000/- in case of children is to be paid to the legal heirs of the deceased who met with Non-Departmental Fatal accident.

(B) Contract Labours who are employed by a contractor in APCPDCL/Personnel appointed on Contract basis/Apprentices engaged as per Apprenticeship Act.

In case of Fatal accident to Contract labour who are employed by a contractor in APCPDCL/Personnel appointed on Contract basis and Apprentice engaged as per Apprenticeship Act an amount of Rs.50,000/- is to be paid to the legal heirs of the deceased and employment is to be provided to one of the dependents of the deceased, subject to fulfilling the following clauses:

(a) In respect of Contract Labour he has worked as Contract Labour in APCPDCL under a Contractor or different Contractors, who has executed the work of the Company duly certified by the Divisional Engineer.

(b) Contract labour covered under the Contract Labour Abolition Act of 1970 irrespective of the fact whether a contractor has obtained license or not and whether the Principal employer has registered under act or not.

iii) For Animals:

In case of Fatal accident to the animals, an amount of Rs.1,000/- is to be paid to the owner of animal in respect of cows, buffaloes, bullocks in each individual case."

The aforesaid scheme makes it clear that in case of regular employees as well as in case of employees appointed through contractor, compassionate appointment was to be given to one of the dependants and the scheme came into force with effect from 01.04.2002. It is not in dispute that the widow did apply in time. However, her case was rejected on account of the subsequent order issued by the Chairman and Managing Director dated 10.10.2003.

The order dated 10.10.2003 passed by the Chairman and Managing Director is reproduced as under:-

"The orders issued in C.O.O.DS(Per)Ms.No.239, dt.30.06.2003, in respect of providing employment to dependents of the deceased contract labour who met with fatal accident and who were employed by a Contractor in APCPDCL/Personnel appointed on contract basis/Apprentices engaged as per Apprenticeship Act are hereby cancelled in view of administrative exigencies.

2. The other terms and conditions of the C.O.O. are unaltered."

Meaning thereby, by passing the aforesaid order, the Chairman and Managing Director excluded the dependants of the deceased employees, who were employed through contractor. Other persons were still eligible to be appointed on compassionate grounds. The learned Single Judge has allowed the writ petition and the order passed by the learned Single Judge reads as under:-

"I have perused the Corporate, Comprehensive, Compensatory, Compassionate, Considerate, Reimbursery Scheme of 2003 operated by respondents between 01-04-2002 and 10-10-2003. It is not in dispute that the deceased comes under the category of 'Non-Departmental Persons'. The Scheme has been in force with effect from 01-04-2002. The 1st respondent through Memo dated 10-10-2003 cancelled the order dt.30-06-2003. While cancelling the order, nothing has stated

about the cases of death happened in the interregnum and how those cases have to be considered by the respondents.

On the other hand, the expression used in Memo dated 10-10-2003 viz., 'the orders are hereby cancelled'. Therefore, it is relevant for appreciating the legality of impugned order. In Webster dictionary, the meaning of word 'hereby' reads thus :-

"by this or the present declaration, action, document etc., by means of this or as a result of this".

The plain and literal meaning of these words, can be that the Scheme ceases to be in operation with effect from 10-10-2003. The husband of petitioner died on 19-04-2003 i.e., when the scheme is in operation and when the petitioner has a right for consideration under a Scheme operated by the respondents. The death, if had happened subsequent to 10-10-2003, the respondents are justified in saying the Scheme is not in operation, therefore, the request for employment of a dependant cannot be considered. The respondents in the absence of any further order issued by the 1st respondent on the cases which have arisen in the interregnum i.e., between 01-04-2002 and 10-10-2003, issuing a direction through order dated 15-12-2003 not to consider the request of dependant of deceased K.Narayana ITI apprentice for employment is arbitrary, illegal and unsustainable. The interpretation and understanding of Memo dated 10-10-2003 by respondents is unsustainable. For the Memo uses the word hereby cancelled, meaning thereby that through order dated 10-10-2003, the benefits are withdrawn. In other words, Memo dated 10-10-2003, does not in any way affect the benefit conferred on dependants of a deceased during the interregnum. The direction issued in para '4' viz.,

"The Superintending Engineer/Opn./ Mahabubnagar is directed not to consider the request of the dependent of the deceased Sri K.Narayana (I.T.I.Apprentice) for providing employment as per the orders issued in Memo.No.CGM (IR)/AS (IR)/PO(IR)/362-J2/2003, dated 10-10-2003"

of the office order dated 15-12-2003, for the above reasons, is set aside. Respondents 1 and 2 are directed to consider the case of petitioner for employment subject to petitioner satisfying the conditions stipulated in para '(ii)' of order C.O.O.DS(Per.)Ms.No.239, dated 30-06-2003, within three months from the date of receipt of a copy of this order.

The writ petition is ordered as indicated above. There shall be no order as to costs."

In the considered opinion of this court, the death has taken place on 19.04.2003, the scheme was very much in force for granting compassionate appointment and the widow also applied in time. Therefore, the subsequent order will not come in the way of the widow in the matter of grant of compassionate appointment.

The object of the scheme of compassionate appointment is to help the family in

case of sole breadwinner and it has been informed by learned counsel for the writ petitioner (respondent before this court) that the widow is surviving with great difficulties. She is an illiterate lady, she has a large family to support and she is running from pillar to post to get an appointment, as the sole breadwinner in the family was electrocuted while on job.

Resultantly, keeping in view the totality of circumstances of the case, this court does not find any reason to interfere with the order passed by the learned Single Judge. The appellants are directed to consider the case of the writ petitioner (respondent before this court), keeping in view the Circular dated 30.06.2003 and to pass consequential orders within a period of thirty days from today.

With the aforesaid, the writ appeal stands disposed of.

Pending miscellaneous applications, if any, shall stand closed.