

(2014) 11 MAD CK 0356
In the Madras High Court

Case No : Writ Appeal (MD) No. 420 of 2013 and M.P. (MD) No. 1 of 2013

B. Ambika

APPELLANT

Vs

LIC of India

RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 11 MAD CK 0356

Hon'ble Judges : Sanjay Kishan Kaul, C.J;V. Dhanapalan, J

Bench : Division Bench

Judgement

Sanjay Kishan Kaul, C.J.—Admit.

2. Learned counsel for the respondent accepts notice.

3. At the request of the learned counsel for the parties, the appeal is taken up for final disposal.

4. The husband of the appellant was employed with the respondent Corporation and was dismissed from service on 16.04.1999. The matter was referred to the Industrial Tribunal. But, during the pendency of the matter, the petitioner's husband passed away on 07.04.2002. The Tribunal rendered an Award on 25.05.2004, in favour of the deceased employee. It may be noticed that the appellant, after the demise of her husband, sought to make a prayer before the Tribunal for compassionate employment for her son. But, the Tribunal opined that for the same, the appellant would have to approach the respondent Corporation, directly.

5. The appellant claims to have made an application on 15.11.2005 (Pages 15 and 16 of the typed-set) seeking appointment for her son on compassionate grounds but, to no avail. On the other hand, the respondent Corporation preferred a writ petition challenging the award of the Tribunal, which is only dismissed on 19.11.2010. Thereafter, the appellant filed a second application, dated 21.06.2011, followed by reminders. However, the respondent Corporation

vide its letter dated 12.01.2012, by referring to the reminders dated 15.10.2011 and 14.11.2011, rejected the request, as it could not be considered in view of the Award, dated 25.05.2004, of the Tribunal. This resulted in the petitioner preferring a writ petition under Article 226 of the Constitution of India before this Court, which has been dismissed by the impugned order, dated 03.10.2012, by a non-speaking order, only referring to the judicial pronouncements of the Hon'ble Supreme Court.

6. We refer to few judicial pronouncements germane to the issue in question. In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, , it has been held that compassionate appointments should not unduly interfere with the right of other persons who are eligible for appointment against posts which would have been available to them. The purpose of compassionate appointment is to provide succour to the family members at the relevant time and should not be claimed or offered after lapse of time when the crisis is over. It cannot be an alternative stream of employment Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, .

7. In the facts of the present case, it may be noticed that there could have been no occasion for any request for compassionate appointment to be considered, atleast till Award of the Tribunal was made, as the deceased employee had, in fact, been dismissed from service. It means, even the monetary benefits were not paid, on account of his dismissal, putting the family into hard times. This was cured only by the award of the Tribunal, dated 25.05.2004. The matter, however, did not end at that, as this award was further assailed before this Court and interim stay was operating till the writ petition was dismissed on 19.11.2010. Thus, there was no succour to the family from 2002 to 2010, for a period of eight years, on account of the aforesaid facts.

8. The applications for compassionate appointment was filed by the wife of the deceased in 2005 and 2011. Such an application cannot be stated to be belated or delayed. The reasoning for rejection cannot be sustained, as the Tribunal had not opined, one way or the other, on the issue of compassionate appointment, leaving that aspect to be examined by the respondent. The respondent Corporation has its own policy for compassionate appointment.

9. In view of the aforesaid peculiar facts of the present case, we are of the view that they entitle the application of the appellant to be considered, on merits on the material placed, along with it i.e. the application has to be considered one as within time and thus, we call upon the respondent to take a decision on the application, on merits, within a maximum period of three months from the date of receipt of the order.

10. The appeal is, accordingly, allowed, leaving the parties to bear their own costs. Connected miscellaneous petition is closed