

(2011) 12 CAL CK 0105
In the Calcutta High Court
Case No : Writ Petition No. 19565 (W) of 2009

Goutam Samanta and Others

APPELLANT

Vs

Garden Reach Shipbuilders and Engineers Ltd. and Others

RESPONDENT

Date of Decision : 13-12-2011

Acts Referred:

Citation : (2011) 12 CAL CK 0105

Hon'ble Judges : Tapen Sen, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharya, Mr. Soumya Majumder and Mr. Sunny Nandy, for the Appellant; Dipak Kr. Ghosh and Mr. Ranajay De for the Respondent Nos. 1 to 5 and Mr. R.N. Das and Mr. Biswaranjan Bhakat for the Respondent Nos. 6 to 8, for the Respondent

Judgement

Tapen Sen, J.—In this Writ Petition 153 Petitioners are before this Court with a prayer that the Respondents be directed to appoint 151 of them (Petitioners 1 to 151) on a valid Scheme for compassionate appointment against the 4th Phase of recruitment advertised in the Employment News dated 8-14.12.2007 (Annexure P-9). They have further prayed that they be directed to act in accordance with the Minutes of the Meeting held on 23.4.2006 and 11.5.2006 between the Petitioner Union (GRSE Ltd. Workmen's Union) and the Management of Garden Reach Ship Builders & Engineers Ltd. (hereinafter referred to as the GRSE).

2. The Petitioners have further prayed that the Respondents be directed to complete the enquiry in relation to the Notice dated 9.3.2009 as contained in Annexure P-11 whereby and whereunder the decision of the Management of GRSE in relation to the various demands of the Workmen have been replied to and which, according to the Petitioners, have stalled the process of recruitment in the 4th Phase.

3. According to the Petitioners, the employees of the GRSE Ltd. on whom the Petitioner Nos. 1 to 151 and their family members had been dependent, had died during the course of employment while in harness and as such they have been

subjected to sudden penury and financial hardships. The Petitioners had given details of their predecessors-in-interest vide Annexure P-1 which indicates their dates of death being 1996, 1998, 1999 and so on and so forth.

4. On 11th January, 1997, an agreement was entered into between the Management and the Trade Union of which the deceased relatives of these Petitioners were Members. This agreement related to the claim of compassionate appointment in GRSE Ltd. and with regard to the appointment of dependents of persons dying in harness subject to available vacancies. The said agreement provided for training and employment to be given to the dependents within 15 months of their application to the GRSE and pursuant to the said agreement, the Respondent Company initially recruited 29 persons who were dependents of the deceased employees. They were initially recruited as casual workers but subsequently, absorbed as regular employees. The Petitioners have relied upon the Minutes of the Meeting referred to above and which is contained in Annexure P-2.

5. The Petitioners have stated that several vacancies had arising not only naturally but also on account of death in harness cases over a period of time but the Authorities did not take any steps to give compassionate appointment to any of the dependents of the deceased employees, being the Petitioners. It is the further case of the Petitioners that since 1997, at least 1000 posts had fallen vacant in various units of the GRSE Ltd. and these vacancies had arisen on account of both the cases referred to above.

6. Since the respondents were not taking any action, 56 dependents filed a writ petition before this Court in 1999 being WP No. 13992 (w) of 1999. The said Writ Petition was dismissed on 26.4.2001 but it was, however, made clear that the respondents must consider the case of the petitioners as and when the ban of employment was lifted by the Board of Directors and as and when the respondents decided to fill up any vacancy. In such an event, the respondents were not to appoint any persons without first considering the case of the petitioners and other successful trainees in such die-in-harness category. It was further observed that in such an eventuality, the age eligibility bar would stand in the way of getting employment.

7. It is the grievance of the Petitioners that in spite of the aforementioned order, the Respondents gave employment to a number of persons without considering the case of dependents of the deceased employees and also engaged others in the regular work of the Establishment. On 29th March, 2004, a Notice was issued by the Director (Personnel) informing that with regard to the employment of the dependents of the died-in-harness category cases, the matter was being looked into in the light of the observations of the order passed by the High Court on 26.4.2001.

8. It is the further grievance of the Petitioners that the Management continued depriving the dependents of the employees who had died in harness by ignoring

their applications and as a result, the Union sought the intervention of different Officers of the Government including the Chief Minister, the Governor of West Bengal & Ors. Thereafter, in 2004, 34 dependents applied for compassionate appointment but no training was given to them nor were their applications considered on the ground that there was ban on employment. However, in the same year, several appointments were made in the Security Department but none of the applications of the dependents of the died-in harness category were even considered. Challenging such an action, some of the dependents filed WP 23614(w) of 2005 but the same was withdrawn.

Meanwhile, the Respondents, ignoring the case of the dependents of the died-in-harness category employees, recruited more persons as permanent employees and also initiated a special drive to recruit workmen from the SC/ST category. Surprisingly, none of the applications of those dependents that belonged to the SC/ST category were considered for employment. Further, grievance of the petitioners is, that time and again, the Union which represented the dependents wrote several letters to the Company and in response to one such letter, the General Manager replied by letter dated 31.3.2005 (Annexure P-6), wherein, while appreciating the hardships and financial difficulties of the families of employees who had died-in-harness, requested that since there was a ban on recruitment, a Scheme for compassionate appointment can only be brought into force when vacancies arise and, therefore, this would take some time and patience but it would be subjected to lifting of the ban on recruitment and formulation of a viable policy in that regard. The said letter reads as follows:

The General Secretary GRSE Ltd. Workmen's Union G-100, Battikal, Garden Reach Kolkata-700 024.

COMPASSIONATE APPOINTMENT

Dear Sir,

1. Please refer to the Union's letter dated 19 Mar 05 and the discussions between Shri Kamal Tewary, President of the Union and the Chairman & Managing Director, GRSE Ltd., on 30 March 05.
2. The Company is aware of the hardships and financial difficulties of the families of employees who have died-in-harness. The concerns of the Union on the subject have been noted. The Company, on its part, has the issue under active consideration.
3. The issue was also discussed during the Board Meeting held on 29 Mar 05. The Board has directed to examine the issue in detail and place a suitable proposal on the subject for the consideration of the Board.
4. You would appreciate that there is a ban on recruitment, imposed on the Company. The Scheme for Compassionate Appointment can only be brought into force when the vacancies arise. The solution to the issue may require time and patience subject to lifting of ban on the recruitment and formulation of a viable

policy in this regard.

5. Any further development on this issue will be informed to you from time to time.

Thanking you,

Yours faithfully, For Garden Reach Shipbuilders & Engineers Ltd.

(HK Verma) Commodore (IN) General Manager (HR & A)

(Quoted)

9. According to the Petitioners and as has been stated in paragraph 13 of the Writ Petition, there was, in fact, no ban on recruitment and it was open to the Company to recruit the dependents of the deceased employees who had died-in-harness on compassionate grounds. This part of the statement made in paragraph 13 of the Writ Petition has not been denied by any of the Respondents in their different Affidavits.

10. The Petitioners have further stated that the Union (Petitioner No. 152) had sought the intervention of other Authorities also by representation marked Annexure P-7 collectively. Sometime in January 2006, the Management held a bipartite Meeting with the Union for resolving the issue and, during the course of discussions, the Management declared that pending decision of a comprehensive Policy, recruitment would be open to all. The Union partially agreed to the said decision of general recruitment with regard to the cases of dependents including the Writ Petitioners. The issue of compassionate appointment was discussed at length and finally, on 11.5.2006, a settlement was arrived at between the parties in which the Company assured that 50 claimants of the died-in-harness category employees of GRSE, would be provided compassionate appointment in the second phase which would be completed by 31.12.2006 and the dependents of those who had died-in-harness till 31.3.2006, would be provided compassionate appointment subject to the conditions stipulated in the Minutes of Settlement and that fresh cases of died-in-harness category of dependents who had died after 31.3.2006, would be governed by a comprehensive Policy on compassionate appointment which would be formulated at the earliest but not later than 31.12.2006. Annexure P-8 are the Minutes of the Meeting. In paragraph 15 of the Opposition it has been stated that the said Memorandum of Agreement cannot be treated as an agreement because the same does not have the approval of the Board and as such, it is not enforceable.

11. It is further stated that pursuant to the terms of settlement, which is Annexure P-8 to the Writ Petition, the Management made recruitments, in the first three phases and thereafter, issued an Advertisement in the Employment News Weekly for recruitment of 105 casual workers for recruitment in the 4th Phase. The dependents of those deceased employees who had died-in-harness were also called to submit applications for recruitment. The said advertisement was published on 8-14.12.2007 (impugned in the Writ Petition and as contained

in Annexure P-9). The said advertisement declared that preference would be given to eligible dependents of the GRSE employees of all units who had died-in-harness and that the age and qualification to deserving heirs of the deceased employees who had died-in-harness would be considered with the approval of the competent authority of the Company. According to the Petitioners, the Petitioner Nos. 1-70, 144 and 150 (total 72) applied in the 4th Phase of employment in the prescribed manner as specified in the advertisement and appeared for interview held on 17th and 18th October, 2008. The Petitioner Nos. 71-81, 86, 88-92, 94, 95, 99, 100, 103, 104, 107-110, 114-117, 119, 124, 128-132, 135-142, 146-148 and 151 (total 50) applied for the 4th Phase of recruitment. Similarly, Petitioner Nos. 82-85, 87, 93, 96-98, 101, 102, 105, 106, 111-113, 118, 120-123, 125-127, 133, 134, 143, 145 and 149 (total 29) applied to the Company for compassionate appointment after death of their predecessors in interest. Their cases, however, have not been considered by the Respondent Company without any valid reason. It is stated that pursuant to the applications made by the Petitioners, the Company issued notices asking them to appear both in the written as well as oral interviews. The Petitioners appeared and did well in all the Phases of the interview held on 16-18th October, 2008 and they passed all tests. It is their grievance that although they passed, the Management suddenly stopped the process of recruitment. About 2588 Workmen then jointly represented through their Unions and protested to the Chairman whereafter the Director (Personnel) HRD issued a Notice dated 9.3.2009 by which, it was revealed that the 4th Phase of recruitment had been held in abeyance pending an enquiry ordered by the Government on the advise of the Central Vigilance Commission. The notice further declared that the 4th Phase of recruitment shall be reactivated on the basis of the enquiry report.

12. The Petitioners have stated that from the notice itself, it would appear that some enquiry concerning compassionate appointment made in the first three Phases had been initiated on the direction and/or advice of the Central Vigilance Commission with regard to some allegations or complaints of corruption, irregularities and malpractices but no details had been intimated by the Company to the Petitioners. The Petitioners have a grievance that they are unnecessarily being victimized by certain extraneous reasons outside the process of recruitment in the 4th Phase. They have also stated that there is no basis for stalling the recruitment of the Petitioners in the 4th Phase for an enquiry in respect of the previous three Phases and that so far as the first three Phases are concerned, there is no information with regard to any malpractice. The Petitioners are totally unaware of the purport of the enquiry. They are living in penury and gradually sinking towards starvation and the Respondents cannot be allowed to go back upon their promise as stated in the terms of settlement in providing compassionate appointment.

13. It is on the basis of the aforementioned set of facts that this Writ Petition has been filed.

14. Let it be recorded that this case has been pending before this Court since 2009. On 14.1.2010 another Single Judge of this Court directed the Central Vigilance Commission, which was being represented by Mr. Biswaranjan Bhakat, to file an Affidavit stating the nature of the violations of subsisting Government Orders which had been alleged to have been committed by GRSE. They have filed an Affidavit-in-Opposition dated 24.2.2010 wherein they have stated in paragraph 8 that the Commission's advice is not binding as it is just an advice and that appropriate Authorities should take final decision after application of their own mind. In paragraph 9, they have stated that they received information regarding large-scale irregularities and corruption in the GRSE in connection with the ongoing recruitment of casual labour proposed to be made permanent in a short period of time.

15. They have further stated that the Sramik Sangram Committee (SSC) as well as the Officers of the Human Resources Department has made a long panel of died-in-harness cases but Government guidelines have not been followed. The information that was received by them in October 2008 was sent vide Annexure R/8-1 to the Department of Defence Corruption requesting them to send a report within one month. Thereafter, on 11.10.2008, another complaint was received in the Commission regarding irregularities in violation of Government orders. Thereafter, on 10.11.2009, a letter was sent to the Secretary, Central Vigilance Commission informing that the Ministry has already constituted a Board of enquiry to investigate the matter and the said Board had recently submitted its report but it had not pinpointed any responsibility and, therefore, the Board had been requested to examine the fixation of responsibility, if any, and submit a further report in this regard.

16. In paragraph 12, it has been stated that since nothing concrete has been received from the Ministry of Defence, the Vigilance Commissioner decided to hold a Meeting with the CVO, MOD, Department of Defence Production as well as the CMD, GRSE to discuss the issue and upon discussions it was observed that there were no recruitment Rules for recruitment of unskilled workers in the GRSE and, therefore, without laying down Rules and Procedure, recruitment was being done in the GRSE following misuse of discretion and favouritism. Accordingly, the Vigilance Commissioner had advised the CMD, GRSE to frame recruitment Rules. These Respondents have annexed the Minutes of the Meeting dated 25.11.2009 in support of such a contention. The Union of India (Respondent No. 6) has also filed an Opposition wherein they have stated that a joint Writ Petition is not maintainable inasmuch as each Writ Petitioner has a separate cause of action. They have further stated that the Petitioners are put to strict proof in support of their contention that they are major dependents of the deceased employees of GRSE.

17. They have stated that the list furnished vide Annexure P-1 contains the names of several employees who died more than 10 years ago. They have further stated that from the note dated 13.5.2008 (Annexure R/6-1) it would

appear that the retention period of service records of separated employees is 10 years. Therefore, dossiers of employees separated more than 10 years ago are not available. In most cases where dossiers are available, they are limited to the extent of the name of the wife only who is the principal nominee for Provident Fund and Gratuity and the names of the sons and daughters are not available from these dossiers.

18. They have further stated that from the list, it appears that even the sons and daughters have applied for employment under the died-in-harness category and whose predecessors in interest had died long-long ago in the years 1965, 1972, 1974 and so on.

19. Upon a perusal of the aforementioned facts and circumstances, it is undoubtedly clear that an Advertisement was published in the Employment News weekly for recruitment of 105 workers in the 4th Phase. This publication was made on 14th December, 2007 and it also did advertise that preference would be given to eligible dependents of the GRSE employees of all units who died-in-harness and that the age and qualification to deserving heirs of the deceased employees who died-in-harness would be considered subject to approval of the competent authority of the Company. It is also evident that a large number of Petitioners applied and they did well in the interview and passed all tests. Consequently, the stand of the Respondents to the effect that dossiers of employees who had separated more than 10 years ago are not available, is a statement and/or stand that is contradictory to the transparent method that the Respondents had resorted to while issuing/publishing the Advertisement.

20. If the dossiers are not available then there is no explanation as to why did the Management give out an assurance that the cases of the heirs of the deceased employees who had died-in-harness, would be considered. It was obviously on the basis of such a stand/assurance that the Petitioners applied and subjected themselves to tests. It is, therefore, not at all reasonable on the part of the Respondents now to come forward and say that the dossiers are not available. The other aspect is that even the Central Vigilance Commission has filed an affidavit in which, in Paragraph 8, they have stated that the advice of the Commission is not binding because it is just an advice and that the appropriate Authority should take a final decision after application of their own mind.

21. Let it further be recorded that even M/s. Garden Reach have taken a stand on different dates before this Court that they supported the contentions of the Petitioners. The Order dated 30.6.2010 would bear testimony to this effect. The said Order reads as follows:

W.P. No. 19565 (W) of 2009

30.6.2010

Mr. Soumya Majumder Mr. S. M. Obaidullah

... For the Petitioner

Mr. P. K. Mallick Mr. Dipak Kr. Ghosh Mr. Ranjan De

... For the Respondent Nos. 1 to 5

Nobody appears for the Union of India.

However, Mr. Soumya Majumder, learned Counsel for the Petitioners has made submissions.

Mr. P. K. Mallick, learned Senior Counsel is present in Court representing the Garden Reach Shipbuilders and Engineers Limited.

One of the points argued by Mr. Soumya Majumder is that this is not one of those cases where the Petitioners claim compassionate appointment simpliciter. He submits that the claim of the Petitioners is backed by a Memorandum of Understanding/Agreement in substitution of a "Scheme". His further contention is that 3/4th of the said Agreement has already been given effect to by recruiting persons but when it came to giving recruitment to the remaining persons, the Central Government, for oblique/mysterious reasons, fell back and took shelter of a Guideline of 1998 saying, that the Agreement/Memorandum of Understanding is at loggerhead with the same. Mr. Soumya Majumder points out, with reference to an Affidavit-in-Reply filed by the Petitioners today in Court, that the Under Secretary to the Government of India, by his letter dated 16th April, 2010, has stated that the said Scheme of 1988 is applicable only to Central Government employees and not to an autonomous body. According to Mr. Soumya Majumder, the Garden Reach Shipbuilders and Engineers Limited is an undertaking of a Central Government and therefore, the Petitioners are not Central Government employees, strickto sensu.

Such a point raised by Mr. Soumya Majumder cannot be ignored and specially when Mr. P. K. Mallick, learned Senior Counsel appearing on behalf of the Garden Reach Shipbuilders and Engineers Limited supports the contention of Mr. Soumya Majumder.

In fact Mr. P. K. Mallick goes a step further and draws the attention of this Court to a judgment of the Hon'ble Supreme Court passed in the case of Sureshchandra Singh and Others Vs. Fertilizer Corpn. of India Ltd. and Others, Referring to paragraph 4 therein, he submits that the Guidelines of 1998 is neither a Directive issued in the name of the President of India nor is it a Guideline of a Directive issued by the Administrative Ministry and therefore, such a Guideline is only advisory in nature.

Considering the aforementioned facts and circumstances and also considering that there is no representation on behalf of the Government of India today, this Court is of the view that the matter be placed under the same heading on 21st July, 2010 as a "part-heard" matter for further arguments and disposal, if possible.

The Affidavit-in-Reply of the Writ Petitioners to the Affidavit-in-Opposition of the

Respondent No. 6 as well as two Supplementary Affidavits dated 17th June, 2010 filed on behalf of the Respondent Nos. 1 to 5 are taken on record.

Subject to an application for certified copy being made and proof in support thereof being produced, let a plain photocopy of this Order, duly countersigned by the Assistant Registrar (Court), be handed over to the parties.

(Tapen Sen, J.)

(Quoted)

22. Similar stand was again taken on 21.7.2010. The order dated 21.7.2010 reads as follows:

W.P. No. 19565 (W) of 2009

21.7.2010

Mr. Bikash Ranjan Bhattacharyya Mr. Soumya Mazumder Mr. S. M. Obaidullah

... For the Petitioners

Mr. P. K. Mallick Mr. Dipak Kr. Ghosh Mr. R. De

... For the Respondent Nos. 1 to 5

Reference be made to the Order dated 30.6.2010. At Page 2, line 2 of the said Order the word "loggerhead" should be read as "loggerheads". Similarly in the thirteenth line at page 2, the words "strickto sensu" should be read as "stricto sensu".

Reference be made to the said Order dated 30.6.2010 which was passed after considering the submissions of both the learned Counsel for the Petitioners as well as the learned Counsel for the Respondent Nos. 1 to 5. It is further evident therefrom that the Respondent Nos. 1 to 5 have supported the case of the Petitioners and even today, Mr. P. K. Mallick along with Mr. Dipak Kr. Ghosh and Mr. Ranjay De, learned Counsel appearing on their behalf, has once again reiterated that the Respondent Nos. 1 to 5 support the case of the Petitioners.

The Respondent Nos. 6 to 8 have chosen not to appear. Even on the earlier date, i.e., 30.6.2010 they had not appeared.

Under such circumstances, this Court directs Mr. S. M. Obaidullah, learned Advocate-on-Record for the Petitioners to serve a copy of today's Order along with a copy of the Order dated 30.6.2010 upon the learned Counsel, who was appearing for the Respondent Nos. 6 to 8 with a communication that on the next date if they do not appear, the matter shall be taken up and decided in their absence.

Let the matter be listed under the same heading on 26.7.2010.

Let a plain photocopy of both the Orders referred to above, duly countersigned

by the Assistant Registrar (Court), be given to Mr. Obaidullah for doing the needful.

(Tapen Sen, J.)

(Quoted)

23. However, during the course of submissions, a letter was produced by the Respondents being letter dated 20.8.2010 which was issued by the Under Secretary (Vigilance) and addressed to Mr. Biswaranjan Bhakat, learned Counsel appearing for the Central Vigilance Commission. In the said letter it was mentioned that the recruitment Rules pertaining to appointment of casual workers was under consideration of the Ministry in consultation with the Department of Public Enterprise but the same was yet to be approved by the competent authority in the Ministry. The said letter reads as follows:

No. 1397/Vig.I/2009/D(Vig)/Part. Government of India Ministry of Defence New Delhi, dated 20th August 2010

To Shri Biswaranjan Bhakat Senior Government Advocate High Court Calcutta Bar Association Room No. 4, Kolkata

Subject :

Civil Writ Petition No. 19565(W) of 2009, Gautam Samanta & Ors. vs. Garden Reach Shipbuilders & Engrs. Ltd. & Others, before Hon"ble High Court at Calcutta. Sir,

1. Kindly refer to your letter dated NIL received through FAX on 4.8.2010 in regard to above subject.

2. The recruitment rules pertaining to appointment of casual workers in Death-in-Harness category framed by GRSE, are under consideration of the Ministry in consultation with Department of Public Enterprises/DOP & T and the same are yet to be approved by the Competent Authority in the Ministry. Since the resolution of the issue may take some time, Hon"ble High Court may please be requested to grant atleast two months time on the next date of hearing (26.8.2010).

This issues with the approval of AS & CVO.

(Sunil Uniyal) Under Secretary (Vig) Tel : 23012581

(Quoted)

24. Under these circumstances, it is thus evident that the consideration of the Petitioners should not be kept in limbo ad infinitum. It is high time that the procedure resorted to for their recruitment through Advertisement sees a logical conclusion. Therefore, this court is not in a position to go on giving time after time to the concerned Officials to frame Rules. Under the circumstances, this Court directs the Authorities to start the process of consideration of the case of

the Petitioners for their recruitment subject to eligibility and other requirements being fulfilled by them. However, in view of the allegations made by the Central Vigilance Commission to the effect that they had received complaints regarding irregularities, this Court directs that when the cases of the Petitioners are being considered and on each such occasion, a Senior Officer of the Central Vigilance Commission must be present to oversee each and every case individually. Thereafter and subject to the satisfaction recorded in writing by both the Officers of GRSE as well by such a Senior Officer of the Central Vigilance Commission, the Respondent authority shall conclude the matter in accordance with law and within a period of six months from the date of receipt of a copy of this Order.

With the aforesaid observations and directions, this Writ Petition stands disposed of.

Upon appropriate Application(s) being made, urgent Photostat Certified copy of this Judgment, be given/issued expeditiously subject to usual terms and conditions.