

(2013) 09 KL CK 0078

In the High Court Of Kerala

Case No : W.A. No's. 947, 948 and 949 of 2012

Indian Rare Earths Ltd. and Another

APPELLANT

Vs

Jayabindu, K.V.

RESPONDENT

Date of Decision : 04-09-2013

Acts Referred:

Citation : (2013) 4 ILR (Ker) 234 : (2014) LabIC 452 : (2014) 1 LLJ 75 : (2014) 2 LLN 199

Hon'ble Judges : Manjula Chellur, C.J;K. Vinod Chandran, J

Bench : Division Bench

Advocate : E.K. Nandakumar, Sri P. Gopinath, Sri P. Benny Thomas and Sri K. John Mathai, for the Appellant; P.K. Santhamma, for the Respondent

Judgement

Manjula Chellur, C.J.—It is not in dispute that respondents who were writ petitioners before the learned Single Judge are the dependents of former employees of the appellant-company who died in harness. According to the writ petitioners, as per Memorandum of Settlement (produced as Ext. P-1 in W.A. Nos. 948 & 949 of 2012), a scheme was in existence providing compassionate appointment and at the relevant point of time, seniority based on the date of death of the employee was the preliminary criteria. It is not in dispute that applications seeking compassionate appointment were presented after the death of the employees, but they were asked to wait as the dependents of the employees who died earlier were already in queue. It is also not in dispute that as per the scheme that existed, only 5% of vacancies arising out of death, retirement and resignation could be considered for compassionate appointments. It is also not in dispute that the writ petitioners were taken as casual employees, though compassionate appointment was not given having regard to the plight of the dependents and their families. When the writ petitioners were waiting with fond hope that they would be accommodated in the permanent rolls as and when their turn comes, a new scheme came to be introduced which became the ground for rejecting the claim of the writ petitioners, i.e., time limit of appointment within three years from the date of death of the employee. This

gave a jolt to the writ petitioners who were waiting in the queue and according to them, even after this new scheme, many others who were much juniors in the queue were appointed by applying new scheme.

2. So far as the stand of the respondents before the learned Single Judge, the appellant-company never changed its policy regarding compassionate appointment. From time to time based on changes introduced by the Government of India, they have changed their stand or the scheme. According to the appellant-company, when new scheme of compassionate appointment came to be introduced with a time limit of three years, all those applications which could be considered based on that condition, came to be considered, therefore, the writ petitioners whose applications were beyond three years could not be considered.

3. In the above context, some of the party respondents before the learned Single Judge were also made parties who secured appointment on the basis of new scheme. The learned Single Judge after referring to the stand of the appellant-company as per clause 1.4 of Ext. P-1, on what basis they modified the scheme from time to time and so also clause 3.1(c) of Ext. P-1, ultimately placing reliance on the Division Bench decision of this Court in *Bharat Sanchar Nigam Limited v. Tittin* 2011 (4) KLT 409 as well as the decision of the Apex Court in *Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others*, proceeded to allow the writ petitions opining that the policy of the Government of India in Ext. P-9 (in W.A. No. 948/12) has to be given effect to in terms of clause 1.4 of Ext. P-1 as rights accrued to the writ petitioners when the policy was in existence as on the date of submitting the applications. Aggrieved by the same, the appellant-company is before us contending that the case of the writ petitioners could not be considered only on account of change of policy of the Government of India for no fault of appellant-company.

4. The appellant-company subsequent to filing the appeal has placed on record several new facts which came into existence after disposal of the writ petitions by the learned Single Judge by way of affidavits as per the directions of the Court. All these indicate, O.M. No. 14014/3/2011-Estt.(D) dated 26-7-2012 was placed for consideration of the Board of Directors and the same came to be approved withdrawing the time limit of three years. However, it authorised the C.M.D. to take a decision regarding effective date of implementation of the new policy removing the time limit of three years. In other words, except deleting the time limit of three years, all other conditions remained as such, especially, allocating 5% of vacancies arising out of death, retirement and resignation available for compassionate appointments. It is also not in dispute that on account of change of policy from time to time having regard to the plight of the dependents of the deceased employees, financial assistance in lieu of compassionate appointment came to be introduced by the appellant-company depending upon the years of service put in. Now the proposed financial assistance offered is Rs. 6 lakhs for services upto 10 years, Rs. 7 lakhs for

services between 10 to 20 years and Rs. 8 lakhs for services above 20 years in addition to Rs. 75,000 offered earlier. This is subject to a note that either the amounts mentioned above or an amount equivalent to total pay the deceased would have drawn had he/she been alive and in service till date of recruitment, whichever is less. So far as this financial assistance offered in lieu of compassionate appointments, it is still in existence, according to the appellant-company. Therefore, it is open to the writ petitioners who were successful before the learned Single Judge to take benefit of this offer made by the appellant-company.

5. Now, the question is whether they are entitled to compassionate appointment as directed by the learned Single Judge? If we look at the factual situation right from the date of submission of their application till date, we note that the policy came to be changed from time to time so far as time limit is concerned. There was no time limit at the time of submission of their applications. In between, three years time limit came in the way of writ petitioners securing any compassionate appointment, though other respondents were fortunate enough to secure compassionate appointments on account of vacancies arising within three years immediately after the death of the employee. Whatever be the reason, the writ petitioners seem to have been put to disadvantageous position for no fault of anyone, but, on account of circumstances that came in their way from time to time. The fact remains, as on today, there is no restriction of three years time limit to consider their application, but, meanwhile they are in service as casual employees. They are continuing as casual employees for more than 10 years in some cases. So far as consideration of the cases of the writ petitioners for compassionate appointment, it is settled that their cases have to be considered as per the scheme available as on the date of submission of applications. In view of the fact that the present scheme also is almost similar to such scheme which was applicable at the time of submission of their applications, we find no good ground to interfere with the judgment of the learned Single Judge. So far as the financial assistance offered in lieu of compassionate appointment, it is always open to the writ petitioners to opt for the same if it is beneficial to them, however, we grant three months time for them to claim such option from the appellant-company from the date of receipt of copy of the judgment. If they do not opt for such financial assistance in place of compassionate appointment, the appellant-company shall proceed with consideration of their applications in accordance with the scheme applicable. We make it clear that till consideration of their applications or exercise of option by the writ petitioners as stated above, they shall be entitled to continue to discharge the duties of casual employees, if there is casual employment. It is needless to say, the appellant-company shall engage the services of the writ petitioners on a priority, if any occasion arises for employing casual employees.

The Writ Appeals are disposed of as indicated above.