

(2012) 06 KAR CK 0112

In the Karnataka High Court

Case No : Writ Appeal No. 15465 of 2011 (S-KSRTC)

Kalyanamma

APPELLANT

Vs

The Chief Personal Manager, BMTC Central Office, K.H. Road,
Bangalore

RESPONDENT

Date of Decision : 13-06-2012

Acts Referred:

Citation : (2012) 06 KAR CK 0112

Hon'ble Judges : V. Suri Appa Rao, J;K.L. Manjunath, J

Bench : Division Bench

Advocate : L. Shekhar, for the Appellant; H.R. Renuka, for the Respondent

Final Decision : Allowed

Judgement

1. The legality and correctness of the order passed by the learned single Judge in WP No. 13107/2011 present appeal is filed. Appellant is the widow of one Ramaiah who was working as a driver under respondent-corporation. On the ground that he was unauthorized absent, he was terminated from service w.e.f. 28.5.1999. It appears, Ramaiah was unwell, therefore he could not attend the office. Since his illness was continued, he died on 9.7.2000. Thereafter appellant raised a dispute challenging the order of dismissal. Labour Court after holding an enquiry held that the dismissal was bad in law and his L. Rs. are entitled for 50% back-wages from the date of dismissal till his death along with other service benefits. Award of the Labour Court was questioned by the Corporation by filing a writ petition in WP No. 9959/2006 which petition came to be dismissed on 21.2.2007. Aggrieved by the dismissal of writ petition, respondent-corporation had filed an appeal in WA No. 903/2007 and at the instance of the respondent, matter was referred to the Lok Adalat. In the Lok Adalat appellant agreed to forego 40% of the back-wages awarded to her and agreed to receive 10% of the back wages with all other benefits. Accordingly, writ appeal was disposed of on 22.2.2009.

2. Appellant relying upon the order in the writ appeal contending that she is

entitled for all service benefits which is inclusive of appointment on compassionate ground, an application was filed by her son. The said application has been rejected on 3.2.2011 as per Annexure-A on the ground that in view of the settlement in the writ appeal, appellant was entitled only for 10% of back-wages and retirement benefits and there is no provision to consider the case of the appellant for appointment on compassionate grounds. The endorsement dated 3.2.2011 was questioned by the appellant before the learned single Judge. Learned single Judge has dismissed the writ petition. Therefore, the present appeal is filed.

3. Learned Counsel for the appellant contends that the learned single Judge has mis-directed himself in not considering the ground of rejection of the appellant's claim for appointment on compassionate ground by the respondent. Learned single Judge has proceeded based on the judgment of the Supreme Court which judgment has no relevance to the facts of the present case. According to him, learned single Judge has proceeded as if the application is filed belatedly and therefore appellant is not entitled for the relief.

4. Counsel for the appellant contends that the appellant's son could have filed an application for appointment on compassionate ground only when the appellant succeeded in the writ appeal in 2009. Immediately the application was filed by her son for appointment but the respondent has rejected the application on the ground that in view of the settlement in Lok Adalat such benefit cannot be extended to her. Therefore, counsel for the appellant requests the court to allow the appeal by holding her an error is committed in dismissing the writ petition. Counsel appearing for the respondent supporting the order of the learned single Judge contends that as the deceased was dismissed from service in the year 1999, the application filed by his son in 2009 could not be entertained. Therefore, she requests the court to dismiss the appeal.

5. Having heard the counsel for the parties, we are of the view that the learned single Judge has committed an error in dismissing the writ petition for the following reasons:

It is not in dispute that immediately after the death of Ramaiah, appellant's son could not have filed an application for appointment on compassionate grounds because the services of Ramaiah were terminated on account of his unauthorized absence and he could not attend the office due to his illness and died due to illness subsequently. Respondent-corporation having lost the case before the Labour Court and the learned single Judge in the earlier round of litigation has settled the dispute with the appellant to give all benefits to the appellant along with 10% back-wages only on 22.2.2009, it goes without saying that a right has been accrued to appellant's son to file an application for appointment on compassionate ground only from that date and not earlier. In addition to that, appellant's son has made an application for appointment on 2.7.2009 within a reasonable time from the date of disposal of writ appeal. The corporation has not rejected the application of the appellant's son on the ground of delay and latches

it has rejected the application on the ground that such benefit cannot be extended to him due to the dismissal of his father. But the learned single Judge has dismissed the writ petition relying upon the judgment of the Supreme Court which facts are not applicable to the facts and circumstances of this case. If it had been brought to the notice of the learned single Judge about the facts of this case, we are sure that the order would be in other way.

Accordingly, we allow this appeal. We direct the respondent to consider the application of appellant's son to appoint him on compassionate ground within three months from today without raising the question of delay or limitation.