
(1994) 06 GAU CK 0021
In the Gauhati High Court
Case No : Civil Rule No. 1071 of 1994

Labanya Khangia

APPELLANT

Vs

Assam State Electricity Board and Others

RESPONDENT

Date of Decision : 14-06-1994

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1994) 2 GLR 161

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : C. Baruah and S.K. Kejriwal, for the Appellant; N.N. Saikia and G. Deka, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This application under Article 226 of the Constitutional India has been filed by one Smti. Labanya Khangia. She is the wife of late Brnou Khangia who was an employee under Digbol Electrical Division of the Assam State Electricity Board. The Petitioner's husband died in an accident on 1st Sept., 1989 while he was doing duty of the said Board. The Assam State Electricity Board has its own regulation to provide any employment opportunity to the children of the Board's employee dying in harness which are quoted below:

One of the children of Class III or Claw IV employees; of the Board who die in harness may be provided with employment under the Board subject to availability of posts and suitability of the person concerned. In such cases, the vacancy may not be advertised, but the legal formality as required under the Compulsory Notification on Vacancies Act should be duly complied with.

Clarifications:

(i) The order will apply to past cases also.

(ii) Suitability will be judged by going through the normal procedure of selection

followed by the Board.

Instructions:

(i) The benefit of employment opportunity should not be extended to brothers and cousins. However, cases of widows may be considered.

(ii) In cases, the children/widows, as the case may be, while being treated along with others whose names are forwarded by the Employment Exchange, are not found to be wholly unsuitable, they should be given preference at the time of appointment.

(iii) If sufficient number of posts are not available for the purpose, additional posts may be created temporarily to provide immediate relief. The suitability of the person as regards age, job requirement etc. should not, however, be overlooked. The Petitioner was appointed under this scheme for a period of three months w.e.f. the date of her joining against the vacant post of MRT Sub-Divn. Tinsukia.

It was also stated in the order as follows:

I request you not to approve appointment in that post as Smti. Labanya Khangia has already been allowed provisionally for appointment. She will be regularised after getting further clarification from your end.

This is Annexure "B" to the writ application.

2. Thereafter she was appointed as a peon against the vacant post under the establishment of MRT Sub-Dvn., ASEB, Tinsukia. This appointment was for a period of three months with effect from the date of her joining. This was extended from time to time. But on 31.3.93 Annexure "F" was issued by the authority which States as follows:

As instructed by the Superintending Engineer, Jorhat Electrical Circle vide the above mentioned letter I am to request you not to engage any contract labour w.e.f. 1.4.93 until further order.

3. After this order was passed considering the Petitioner as a contract labour. Her service was terminated, as I indicated above, the Petitioner was not a contract labour but she was appointed temporarily against the permanent vacant post. It is this order of termination which is challenged in this writ application. From the instruction, which are already quoted, it will be clear that the Petitioner has a right to be appointed on compassionate ground and considering her case on compassionate ground she was appointed as peon against the vacant post. Thereafter taking a clue from the letter dt. 31.3.93 and holding her to be a contract labour her service was terminated. The termination order of the Petitioner on this ground treating her as a contract labour is illegal, liable to be set aside and quashed which I hereby do. The Petitioner shall be taken back in service as office peon in MRT Sub-Dvn. Tinsukia.

4. Mr. C. Barua, learned Advocate appearing for the Petitioner in this connection places reliance on Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, and he relies on paragraph 9 which is quoted below:

We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

5. On the other hand, Shri Saikia, learned Advocate appearing for the Respondents relies on 1994 of SCC p 718 (Life Insurance Corporation of India v. Asha Ramchandra Amhekar where the Supreme Court approved the earlier decision in Martin Burn Ltd. Vs. The Corporation of Calcutta, which held as follows:

A result flowing from a statutory provision is never an evil. A Court has no power to ignore that provision to relieve what it considers a distress resulting from its operation, A statute must of course be given effect to whether a court likes the result or not.

6. In the 1994 case (Supra) the Supreme Court pointed out that the court should endeavour to find on whether a particular case in which sympathetic scope of law. Disregardful of law, however, hard the case may be, it should never be done.

7. In paragraph 12 the Supreme Court pointed out that it is well-settled in law that no mandamus will be issued directing to do a thing forbidden by law, The Supreme (Joint further pointed out that there may be pitiable situations but on that score, the statutory provisions cannot be put aside.

8. In the facts and circumstances, the Supreme Court found that direction as to appointment on compassionate ground was against the statutory provision, As such, the Supreme Court set aside the judgment of High Court holding the High Court had no right to issue the mandamus directing appointment on compassionate ground. As such a direction would place the Corporation in a piquant situation. The Supreme Court found that in the facts of that case the appointment was not warranted and accordingly the law was laid down that the Court should not direct the appointment on compassionate ground where there is statutory bar, but it can merely direct the concerned person to be appointed on compassionate ground. In this particular case it will be found that executive instructions which have been quoted above provide for appointment on compassionate ground. Further the Petitioner was appointed but later on her appointment was terminated and in the last order dt. 31.1.92 she was asked to work as office peon on daily wage basis at the rate of Rs. 35/- only for working days w.e.f. 21.2.91. This is really illegal in view of the fact that she was

appointed against a regular post and it is not the case of Respondent that she was not qualified and/or not eligible to hold the post in MRT Sub. Dvn. Tinsukia. So I direct to the Respondents to appoint the Petitioner as a peon or in any other equivalent post within a period of three months from today.

The writ application is allowed.