
(2011) 11 KL CK 0001

In the High Court Of Kerala

Case No : Writ Petition (C) No. 26445 of 2009

Sherly Idikula

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 10-11-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 ILR (Ker) 36 : (2012) 1 KLJ 126

Hon'ble Judges : P.S. Gopinathan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : D. Somasundaram, for the Appellant; P. Parameswaran Nair (ASG of India) and Sri Cyriac Kurian (CGSC), for the Respondent

Final Decision : Allowed

Judgement

1. The Judgment of the Court was delivered by P. S. Gopinathan, J.--Petitioner is the applicant in O.A. 487 of 2008 on the file of the Central Administrative Tribunal, Ernakulam Bench. She is one among the legal heirs of her father who died-in-harness on 28-9-1998 while working as HSG II Supervisor, RMS SRO, Thiruvalla. Her application for appointment on compassionate ground was declined by the respondent. Assailing the said order, the petitioner moved the Tribunal. The Tribunal, by the impugned order, arrived at a conclusion that there is delay in approaching the Tribunal and that the respondent had considered the application of the petitioner along with the application from various candidates and assessed them in terms of their comparative contingency and most deserving persons were given appointment. Consequently, the application was dismissed. Now this petition under Article 226 of the Constitution.

2. We have heard either side and perused the records. It is seen that the petitioner had made her first request on 9-10-1998 i.e. within two weeks after the death of her father. The application was rejected by order dated 15-1-2000. Again the petitioner approached the respondents and on 21-9-2000 by Annexure A-7, petitioner was assured that her case would be considered against future

vacancies. Later, by Annexure 10, the request was again rejected by the respondents. The order impugned itself would show that thereafter a number of representations were made by the petitioner; but without any response. It is thereupon the petitioner approached the Tribunal. Of course, if Annexure A10 is taken into account, there is delay of more than seven years. It is for that reason that petitioner filed M.A. 622 of 2008 for condonation of delay of 2209 days. The Tribunal failed to find bona fide in seeking condonation of delay. In our opinion, in the circumstances stated, the Tribunal failed to appreciate the facts and circumstances in its correct perspective. It cannot be ignored that the very case of the petitioner is that she had been time and again representing before the respondents. That plea is not denied by the respondents. In the event an earlier application was rejected, that is not at all a bar for the petitioner again approaching the respondents to persuade them for appointment on compassionate ground. We fail to find any mala fides in such attempt. Petitioner bona fide believed that she would get a relief on repeated representations and that persuaded her to wait for a favourable reply from respondents. It is not in dispute that petitioner, a rural lady, has got only the minimum education. In the event she thought of again representing and waiting for favourable response instead of resorting to litigation, in the absence of any material to come to a conclusion that there was total lack of bona fides, especially in the light of Annexure A-7, it cannot be said that the delay was deliberate. In this view of the matter, we find that the claim of the petitioner cannot be rejected on the ground of delay. The Tribunal went wrong in non suiting the petitioner on the ground of delay and requires to be interfered.

3. The petitioner's mother is getting only a sum of Rs. 4,390 as family pension and a sum of Rs. 500 per month from the property. No doubt, the income of the petitioner is too low. There is no case for the respondents that petitioner is having income exceeding the limit disentitling her to get appointment under compassionate ground. It is also not in dispute that petitioner has got no other avocation to fill up the vacuum created by the death of her father. Therefore, it cannot be disputed that the petitioner is entitled to get appointment under compassionate ground, provided reserved vacancies are there. The entitlement of the petitioner is not only not disputed by the respondent, but also she was considered. But her claim was declined by assessing comparative contingency and most deserving person was given appointment.

4. The Tribunal, in non suiting the petitioner, believed the case of the respondents that the application of the petitioner was assessed in terms of comparative contingency and most deserving persons were given appointment. How many persons were given appointment and what was the criteria adopted for determining the comparative contingency or priority or on what ground the petitioner's claim was rejected are not at all disclosed. No head or tail can be made out of the order assailed. In the event it is revealed that the petitioner is entitled to get compassionate appointment and in a particular year there is no sufficient number of vacancies to give such appointment, it is just and

appropriate to carry forward the claim of the petitioner and to give appointment in the following year in preference to the subsequent applicants. In this view of the matter, we find that the respondents erred in denying appointment on plea of comparative contingency. Once it is found that the petitioner is entitled to get appointment, she Would be given in the order of preference, if necessary, by carrying over the claim to the following year. The mere fact that there is no sufficient vacancy in the particular year would"nt lapse the right of the petitioner.

She is entitled to have her claim considered in the following year as against new applicants, if any. The Tribunal below has not at all considered this aspect As a result, the order of the Tribunal is erred and we find that the order of the Tribunal is to be rectified at our hands.

In the result, this petition is allowed. While setting aside the order impugned, the application before the Tribunal would stand allowed directing the respondents to reconsider the application submitted by the petitioner at the earliest. There will be no order as to costs.