

(2008) 09 JH CK 0119
In the Jharkhand High Court

Smt. Siya Devi

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-09-2008

Acts Referred:

Citation : (2009) 2 JCR 389

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Ritlal Ram was appointed as a constable in the Boarder Security Force (BSF) on 30.8.1978. While posted in Dantiwada (Gujarat) he died in harness. The petitioner being his widow filed an application before the respondent authorities for grant of compassionate appointment to her. No considering her application, she was appointed as a sweeper in 100 Battalion Security Force at Dantiwada on a consolidated pay of Rs. 200/- per month. She joined the service pursuant to the appointment letter given to her on 15.7.1981. Such appointment, according to the petitioner was, though on temporary basis, but against a sanctioned vacant post.

After rendering continuous service since the date of her appointment, she filed a representation before the concerned authorities on 16.4.1992 for her confirmation in service, but no action was taken.

Subsequently, she was transferred from 47 Battalion of the BSF to the Training Centre School at Hazaribagh BSF on 30.6.1993 in the pay scale of Rs. 500/- -650/- against a newly created post. On appreciating her service, her superiors in the office had issued letter of commendation certifying that she had a good medical knowledge and was capable of taking emergency cases with ease and a recommendation was also made for her absorption in permanent service.

When her series of representations failed to yield any positive response, she moved this Court by filing WP(S) No. 5463 of 2001.

2. In the counter affidavit filed by the respondents in the aforesaid writ petition, the respondents had acknowledged the fact that the petitioner was granted compassionate appointment and she has been in service continuously since 1981. However, the stand taken was that the petitioner's appointment was on purely temporary basis as Aaya and her transfer to Hazaribagh Centre was at her own request.

The writ petition was disposed of on 3.7.2006 but without grant of any relief claimed by the petitioner though with an observation that the order shall not stand in the way of the respondents to post the petitioner against permanent post taking into consideration her long service period rendered by her.

The appeal vide LPA No. 351 of 2006 filed by the petitioner was dismissed by order dated 6.12.2007 upholding the observations of the learned Single Judge.

Thereafter the petitioner filed her representation for her absorption in permanent sanctioned post, but by the impugned order dated 27.2.2008 (Annexure 8) issued by the respondents her prayer was rejected and later, by the impugned order dated 5.3.2008 (Annexure 9) her services were terminated. Furthermore, by order dated 5.4.2008 issued by the DIG and Commandant, Training Centre and School. BSF, Hazaribagh, the petitioner was directed to vacate the residential accommodation allotted to her during the tenure of her service.

The present writ petition has been filed against the aforesaid impugned orders, inter alia, on the following grounds:

(i) The appointment of the petitioner made on compassionate ground cannot be cancelled after she has rendered more than 26 years of service;

(ii) Pursuant to the order of this Court by the Division Bench in the earlier writ petition. it was incumbent on the respondents to absorb the petitioner in a permanent sanctioned post;

Sri S.N. Prasad, learned Counsel for the petitioner, elaborating the grounds submits that the compassionate appointment of the petitioner was made on the basis of a scheme, which had constituted the conditions of service of the personnel of the BSF and it was pursuant to the scheme that the petitioner was appointed on compassionate ground. Even though the appointment was temporary, but it was against a sanctioned post and even on her transfer from Dantiwada (Gujarat) to Hazaribagh, she was given appointment on a sanctioned post on the salary applicable to such post. The petitioner had continuously worked for more than 26 years maintaining an unblemished service career and therefore, it was incumbent upon the respondents to regularize her in permanent employment against a sanctioned post on which she was already working. Reliance in this context has been placed on a judgment of the Supreme Court in the case of Roshni Devi and Others Vs. State of Haryana and Others, . Learned Counsel argues further that even assuming that there was no post during the relevant time, then also, the respondents were duty bound to employ a

dependent of a deceased employee on compassionate ground even by creating a supernumerary post. Reliance in this context has been placed on the judgment of the Supreme Court in the case of *Sushma Gosain v. Union of India* reported in 1989 (4) SLR 327 (SC). Learned Counsel adds further that the action of the respondents amounts to betrayal on the part of the respondents to its employee.

3. Counter affidavit has been filed on behalf of the respondents denying and disputing the entire claim of the petitioner.

Raising the initial objection on the ground of maintainability of the writ petition, the stand taken by the respondents is that in the earlier writ petition, the petitioner had made similar prayer for a direction to the respondents to absorb her in a permanent post by way of confirmation of her service. By the decision of this Court in the earlier writ petition, this prayer was rejected. The present writ petition containing the same prayer is therefore barred by the principles of *res judicata*.

Further stand taken by the respondents is that the petitioner's appointment as sweeper was purely on temporary basis under the Special Relief Fund. Such fund is created with the contribution by the members of the BSF and is designed to help widows of the BSF personnel, who cannot be accommodated in regular appointment due to paucity of vacancies, under compassionate appointment. Such temporary appointment is for one year and is renewable every year by taking into account the facts pertaining to each case. The last renewal of the petitioner's engagement was for a period of 89 days from 23rd March, 1993 to 19th June, 1993. Thereafter, at her own request she was posted as Aaya out of the same Special Relief Fund In the Training Centre at Hazaribagh.

It is further stated that the petitioner has now been removed from service because many candidates are in need of assistance, whereas the Special Relief Fund being a voluntary fund has a limited scope. Nevertheless, the petitioner was asked to submit her application for compassionate appointment which, if made, could be considered in accordance with the DOPT Rules of the Government of India, but the petitioner refused to submit any such application.

It is further explained that recruitment in the SFB is done under the BSF Rules and compassionate appointment is made against 5% of the existing vacancies by direct recruitment each year and therefore the case of the petitioner cannot be looked into for her regularizable in the Boarder Security Force.

Sri Faizur Rahman, learned Counsel for the respondents, submits that the claim of the petitioner for her regularization cannot be allowed even as per the observation of the Supreme Court in the case of *Secretary, State of Karnataka and Others Vs. Umadevi and Others*, . Learned Counsel explains further that the observation recorded by this Court in the earlier writ application did not mandate the respondents to regularize the petitioner's service and it was left to the discretion of the respondents and it was only pursuant to such observation that the petitioner was asked to submit her application for her compassionate

appointment, which could be considered under the DOPT Rules of the Government of India, but she refused to submit any such application.

4. On hearing the learned Counsel for the parties, the admitted facts which emerge are:

(i) The petitioner's appointment made in 1981 was purely on temporary basis for one year and the period used to be extended by way of renewal every year. The petitioner was aware of the nature of her appointment as being temporary and renewable from year to year;

(ii) The petitioner had put in continuous service of 26 years part of which she had rendered at Dantiwada (Gujarat) and the other part at Hazaribagh Training Centre;

(iii) Against refusal of the respondents to regularize her services, on permanent sanctioned post, the petitioner had filed a writ petition before this Court with a prayer for direction to the respondents to regularize her service, but the same was dismissed, not only by the Single Judge, but also by the Division Bench in the appeal preferred by her.

(iv) While disposing of the earlier writ petition, an observation was recorded that the order of dismissal of the writ petition would not cause any hindrance to the respondents in the matter of regularization of the petitioner's service, if so desired.

(v) On the basis of the observation made by this Court in the earlier writ petition, the petitioner submitted her representation before the respondents reiterating the prayer for her regularization in service, but the same was refused by the impugned order and later her services were terminated by the subsequent impugned orders.

5. It has not been disputed by the respondents that the scheme was adopted by the BSF for providing employment on compassionate grounds under which 5% of the existing vacancies were to be absorbed by direct recruitment. It has, however, been explained by the respondents that that the time when the petitioner had filed application initially for her compassionate appointment after the death of her husband, there was no available vacancy in the 5% quota for direct appointment and therefore considering the nature of the petitioner's requirement, she was given option of appointment on temporary basis under the Special Relief Fund, which she had accepted and she was allowed to continue with the benefit thereof as a temporary appointee.

6. The issue relating to the petitioner's claim for regularization of her service was considered in the earlier writ petition being WP(S) No. 5463 of 2001. Regard having been taken to the fact that the petitioner's appointment was purely on temporary post created under the separate scheme created under the SRF scheme, the petitioner's prayer for directing the respondents to regularize her service in permanent post was rejected. The appeal preferred by the petitioner

against the judgment of the learned Single Judge was also dismissed. Thus, the preliminary issue as raised by the petitioner for her regularization on the basis of her 26 years continuous service has been finally resolved and, as rightly pointed out by the learned Counsel for the respondents, the petitioner cannot reagitate the same issue by filing the instant writ petition.

7. Even other wise, none of the Judgments referred to by the learned Counsel for the petitioner would apply to the facts of the present case.

In the case of Susma Gosain (*supra*), the question which arose for determination was based on the delay in granting appointment to the petitioner therein on compassionate appointment which was declared as arbitrary action and denial of appointment. Such is not the fact in the present case since the petitioner was promptly granted appointment, though temporary, on compassionate appointment without any delay.

Similar is the fact in the case of Bharat Coking Coal Limited v. Basant Bhuiyan 2004 (4) JCR 112 (Jhr).

In the case of Roshni Devi, facts were entirely in a different context relating to the validity of the recruitment process for appointment on regular vacancies. The Division Bench of the High Court upheld the validity but later the Full Bench of the High Court over ruled the judgment of the Division Bench. However, by the time the judgment of the Division Bench could be overruled persons who were appointed had, already put in more than nine years" service. Considering the demand of equity, the Supreme Court had allowed all such persons having nine years of service to continue in their respective services.

The facts of the petitioner"s case are totally distinguishable from the facts in the case of Roshni Devi (*supra*).

8. In the light of the above discussions, I do not find any merit in this writ petition. Accordingly, this writ petition is dismissed.

9. The interim order dated 2.5.2008 whereby the respondents were restrained to take coercive action for evicting the petitioner from the quarter, is hereby vacated: