

(2016) 10 GAU CK 0003

In the Gauhati High Court

Case No : Writ Petition (C) No. 403 (AP) of 2014

Smti. Tai Yaniang

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 16, Article 21, Article 226

Citation : (2016) 6 GauLJ 152 : (2016) 5 GauLT 104

Hon'ble Judges : Mrs. Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : Mr. T. Son, Advocate, for the Petitioner; Mr. S. Tapin, Senior Govt. Advocate, for the State-Respondent Nos. 1 to 5

Final Decision : Dismissed

Judgement

Mrs. Rumi Kumari Phukan, J. (Oral)—Heard Mr. T. Son, learned counsel for the petitioner and Mr. S. Tapin, learned Sr. Govt. Advocate appearing on behalf of State respondent Nos. 1 to 5.

2. By this application under Article 226 of the Constitution of India, the petitioner has raised the grievances that she was appointed against the post of her husband Late Kaniang who was working as a regular office chowkidar in Group-D post under the Sangram Public Works Department in the pay scale of Rs. 750-12-830-EB-14-940 per annum. Husband of the petitioner died in the year 1993 and after his death instead of appointing her on regular basis to the post of Chowkidar in the Group-D post, the respondent authority appointed her in place of her husband on casual basis in a monthly wages initially @ Rs. 500/- and it has been enhanced to Rs. 6300/- after continuous service of 10 (ten) years. It is the case of the petitioner that she has not been provided the basic pay scale of the Group-D employee and the respondent Nos. 3 & 4 in spite of their promise has not appointed her in the place of her husband in Group-D post and concealed her compassionate appointment thereby depriving her from getting regular appointment. Accordingly, the petitioner has filed this petition with a prayer that

she should be appointed to the post of her husband on regular basis w.e.f. 1993 with all consequential financial benefits. The respondent authority stated to have violated the office memorandum dated 04.07.2001 issued by the Government of Arunachal Pradesh, by denying compassionate appointment of the petitioner as per the scheme and thereby violated the Article 14, 16 & 21 of the Constitution of India.

3. The respondent authority has resisted the case of the petitioner by filing affidavit-in-opposition submitting inter-alia that respondent Nos. 3 & 4 are not competent authority to make any compassionate appointment. The competent authority to appoint regular Group-D post on the compassionate ground is the Secretary to the State of the concerned Department with prior approval of the Minister in Charge as envisaged in the scheme for compassionate appointment by office memorandum No. OM-4/2001 dated 04.07.2001. It has been contended that the respondent Nos. 3 & 4 are competent authority for recruitment of Group-D work charged establishment and the regulation of appointment, promotion and service of such work charged staff and casual workers, is governed by Office Memorandum No. SPWD-100/2005/991-100 dated 13.08.2007. The petitioner was never assured by respondent Nos. 3 & 4 for appointment to the regular post of her deceased husband. However, on humanitarian ground the petitioner was engaged as Casual Worker by respondent No. 4 under his competency since 1993 with an intention to provide her assistance. Similarly, the respondent No. 3 is not the competent authority to appoint the petitioner to the regular Group-D post. The respondent authority denied to have receive any sort of application by the petitioner in prescribed proforma for appointment in the compassionate ground, for processing the case of compassionate appointment.

4. Further, it has been contended that it is a clear case belated case of compassionate appointment and the Para-8 of the relevant O.M.-4/2001 dated 04.07.2001 stipulates certain conditions for consideration of such appointment which read as follows:-

"The Department can consider the request for compassionate appointment even where death or retirement on medical ground of a Govt. servant took place long back say 5 years or so. While considering such belated request it should however be kept in view that concept of compassionate appointment is largely related to the need for immediate assistance to the family of the Govt. servant in order to relieve from economic distress. The very fact that the family has been able to manage some how all this years should normally be taken as adequate proof that the family had some dependable means of subsistence. Therefore, the examination of such cases would call for great deal of circumspection. The decision to make appointment on compassionate grounds in such case may therefore be taken only at the level of Secretary of the Department concerned".

5. The respondent authority has denied to receive any sort of representation by the petitioner nor there is any sort of employment to any similarly situated persons on compassionate ground. Thus, it is specific case of the respondent that

the petitioner was engaged instantly on expiry of her husband as casual worker in the same department on humanitarian ground with increase emolument and now she draws salary of Rs. 6300/-.It has been submitted that the petitioner has not made out a fit case to be interfered by invoking extra ordinary jurisdiction.

6. In response to the affidavit-in-opposition, the petitioner in her reply has reaffirmed her submission and has submitted that the case of the petitioner cannot be equated to the temporary work charged staff by way of promotion nor it is related to seniority and merit basis. Still she contended that she was appointed on compassionate ground to a regular post of Chowkidar and the respondent authority deliberately engaged her as Casual worker in place of regular chowkidar post. Her case was considered by the authorities prior to the issuance of O.M. No. 04/2001 dated 04.07.2001 and the respondent authorities has choosen the easy route to escape from the burden. Further, the case of the petitioner is not covered under the Office O.M. dated 13.08.2007 i.e. the scheme for appointment, promotion etc., or work charged staff.

7. In course of his argument, learned counsel for the petitioner Mr. T. Son has reiterated all the contention that has been pleaded in the case which has been mention above. However, on the query made by this Court as to the documents that the petitioner has filed claiming for compassionate appointment or even the casual appointment of the petitioner on wages basis, it has been contended that Annexure 1 to 3 are direct available to petition. No any document could be produced before this Court nor any relevant document has been annexed along with the petition to show at least that the petitioner has duly filed the petition/proforma etc., to the respondent authority or to the Secretary to the Govt. of the concerned Department that she has ever prayed for compassionate appointment in place of her deceased husband. The learned counsel for the petitioner has simply referred to Annexure-1 stating it to be appointment letter of the petitioner but it is to be noted that the said piece of document is a pension payment order to the petitioner on the death of her husband allowing the petitioner to draw family pension w.e.f. 04.03.1994. Save and expect the aforesaid documents, no any document is produced before this Court in support of all above contention to make out an absolute right on the part of the petitioner against the respondent. Further, it is to be noted that the matter relates to far back of 1993 and the petitioner is continuing in the said of Casual employee since then and the present petition has been filed in the year 2014, that too without any supporting document.

8. The aforesaid OM which is meant for compassionate appointment has embodied certain guideline in Para-8 that has been referred above that belated claim for compassionate appointment is to be considered with great of deal circumspection. Here, the petitioner remain cool and calm since 1993 and continued to work till then as casual employee and suddenly has come up with the present petition. Such a serious matter, that too without any supporting document cannot be accepted only on verbal submission. The very purpose of

compassionate appointment also frustrated in the given circumstances.

9. The petitioner has submitted Annexure-2 showing compassionate appointment during 2007-2013 to another employees has no bearing with the matter in hand, while the petitioner failed to produce any document to show that those persons were appointed without considering the case of the petitioner.

10. Similarly, Annexure-3 is the OM dated 04.07.2001 is of no help to the case of the petitioner while she herself failed to show that she ever filed any application in prescribed proforma praying for such compassionate appointment. On the next Annexure-4 simply reflects that the petitioner is working as a casual labour under the respondent department is also in capable of lending any support to the case of the petitioner, as there is no mention as to under what circumstances the petitioner was appointed. That apart, there is no mention about duration of the service of the petitioner.

11. I have also given due consideration to the submission of learned counsel for the State respondents Mr. S. Tapin having regard to the stand taken by the respondents that they never received any such application, representation from the petitioner. In absence of any document produced by the petitioner and even absence of any specific reference as regard the date and year about filing of such application/representation etc., filed by the petitioner, this Court is of the considered view that calling of the relevant record since 1993 onwards would be unjustified. It is also noted that the petitioner has not made the Secretary to the State of Arunachal Pradesh as a party to this case to challenge that her petition etc., has not been considered by that authority. Such a contention of the petitioner without any valid documents/basis cannot be relied on and adhered to invoke the extra ordinary writ jurisdiction of this Court under Article 226 of the Constitution, while the petitioner has failed to prove the infringement of her legal right.

12. Regarding invoking of jurisdiction empowered under Article 226 of the Constitution, the Hon"ble Supreme Court (Full Bench) in (2006) 4 SCC 1, Secretary of Karnataka & Others v. Uma Devi & Others, it has been categorically held as below -

"when the Court is approached for relief by way of a writ, the Court has necessarily has to ask itself whether the person before it had any legal right to be enforced. It cannot be said that the temporary contractual daily wages employees have been able to establish a legal right to be made permanent even though they have never been appointed in terms of relevant rules or in adherence of Article 14 & 16 of the Constitution. It is therefore not possible to accept the argument that the State action is not regularising the employees was not fair within the framework of Rule of law. The wide powers under Article 226 are not intended to be used for perpetuating the illegalities, irregularities or improprieties or for scuttling the whole scheme of public employment".

13. In view of the given background of this case, this Court is of the opinion that

the petitioner miserably failed to make out any case of infringement of any legal right so as to interference by this Court as has been prayed for. Accordingly, the writ petition has no merit and the same is dismissed. No order as to costs.