

(2016) 08 CAL CK 0019
In the Calcutta High Court
Case No : W.P.C.T. No. 140 of 2016

Steel Authority of India Ltd.

APPELLANT

Vs

Smt. Jaysree Banerjee

RESPONDENT

Date of Decision : 01-08-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 CalLT 187 : (2017) 152 FLR 266 : (2016) LIC 4177 : (2017) 1 WBLR 623

Hon'ble Judges : Nishita Mhatre and Tapabrata Chakraborty, JJ.

Bench : Division Bench

Advocate : Mr. Tapash Kumar Banerjee and Mr. Amitabha Roy, Advocates, for the Petitioners; Mr. Kedareswar Chakraborty, Ms. Amrita Sinha, Ms. Madhurima Sarkar and Mr. Saptarshi Chakraborty, Advocates, for the Respondents

Final Decision : Dismissed

Judgement

Tapabrata Chakraborty J.—The Steel Authority of India Limited (hereinafter referred to as SAIL) and one of its units, namely, Durgapur Steel Plant (hereinafter referred to as DSP) have preferred the instant writ petition challenging an order dated 15th February, 2016 passed by the learned Tribunal in OA No. 350/00289/2015.

2. Shorn of unnecessary details, the facts are that one Tushar Kanti Banerjee, the husband of the respondent No. 1 herein and the father of the respondent No. 2 herein, was suffering from the dreaded disease of cancer since the year 2009 and as it became impossible for him to continue in such service on medical ground, he made a representation in the month of November, 2010 for appointment of his son being the respondent No. 2 herein in his place and stead. The authorities, however, did not constitute any Medical Board and in the midst thereof the said Tushar Kanti Banerjee died-in-harness on 9th December, 2011. The respondent No. 1 herein made an application under the Right to Information Act, 2005 wanting to know the fate of the representations made by the deceased

employee. In reply thereto, the authorities communicated two letters dated 22nd December, 2012 and 22nd February, 2013 stating, inter alia, that in view of the guidelines contained in a circular dated 31st January, 2012, the claim for compassionate appointment cannot be considered. Aggrieved thereby, the respondents approached the learned Tribunal by an application being O.A. 557 of 2013 and the same was disposed of by an order dated 20th November, 2014 quashing the memoranda dated 22nd December, 2012 and 22nd February, 2013 with a direction upon the DSP authorities to consider the claim towards compassionate appointment. Pursuant to the said order the claim was considered and rejected by an order dated 9th February, 2015. The said order was again challenged by the respondents by an application being OA No. 350/00289/2015 and the same was disposed of by an order dated 15th February, 2016 quashing the impugned order dated 9th February, 2015 and remanding the matter back to the respondent authorities to reconsider the claim keeping in mind the observations and directions contained in the earlier order of the learned Tribunal in O.A. 557 of 2013. Aggrieved by the said order dated 15th February, 2016, the petitioners have approached this Court.

3. Mr. Banerjee, learned advocate appearing for the petitioners submits that the prayer for grant of compassionate appointment in favour of the respondent No. 2 could not be considered in view of the guidelines contained in the circular dated 31st January, 2012 (hereinafter referred to as the said guidelines) wherein there is no scope for considering the prayer of an employee for compassionate appointment when the employee has normally expired while in employment. Prior to death of the employee on 9th December, 2011, he was not declared medically invalid and such death was not due to any accident arising out of and in course of employment. Merely because the employee was suffering from a specified disease and or had been referred for treatment to a speciality hospital, his prayer for grant of appointment to his son is not entertain able. The said guidelines though promulgated by a circular dated 31st January, 2012 were declared to be operative in DSP on and from 1st January, 2011 vide memorandum dated 22nd February, 2012. Thus, on the date the said guidelines came into effect in DSP, the father of the respondent No. 2 was in service and in between 1st January, 2011 to 9th December, 2011 there was no declaration of medical invalidation. As such, the subsequent application dated 5th April, 2012 seeking compassionate appointment, as directed to be considered by the learned Tribunal, is not entertain able in view of the said guidelines. The petitioners cannot be directed to act in derogation to the guidelines and to grant compassionate appointment.

4. According to him cases of natural death cannot be considered for compassionate employment in terms of the said guidelines and that the medical invalidation category was introduced only for surviving employees, who may suffer undue hardship for losing their employment. The ambit of the said guidelines cannot be extended to the employees of DSP who expired prior to declaration of medical invalidity.

5. He further submits that the petitioner expired on 9th December, 2011 when he was admitted at A.M.R.I Hospital, Kolkata and on the said date a fire broke out in the said hospital and the death of the employee was not due to the disease for which he was undergoing treatment.

6. He further submits that by the impugned order dated 15th February, 2016 the learned Tribunal has directed the petitioners to reconsider the case of the respondent No. 2 keeping in mind the observations and directions made in the earlier order of the Tribunal on 28th November, 2014 passed in OA 557 of 2013. Such remand of the matter would only lead to repetition of an order dated 9th February, 2015, as already passed earlier, since the petitioners cannot act in a manner contrary to their own guidelines and that as such the petitioners have been constrained to approach this Court.

7. In support of his arguments, Mr. Banerjee has placed reliance upon the judgments delivered in the case of Steel Authority of India Limited v. Madhusudan Das and others, reported in 2008 (15) SCC 560 and in the case of State Bank of India and another v. Raj Kumar, reported in 2010 (11) SCC 661.

8. Per contra, Ms. Amrita Sinha, learned advocate appearing for the respondents submits that the father of the respondent No. 2 was suffering from cancer (Multiple Myeloma) on and from the year 2009 and such fact was well within the knowledge of the petitioners, as would be explicit from the documents at page 68 to 86 of the writ application. Initially the employee was under the treatment of DSP Hospital and the Director (Medical and Health Service), DSP considering the disease referred him for proper treatment to Peerless Hospital, Calcutta on 28th February, 2009 on six occasions starting from 28th February, 2009 till 21st May, 2010 and he was again referred to Bokaro Steel Hospital on 3rd August, 2010. Thereafter, he was sent to A.M.R.I Hospital, Kolkata and while he was under treatment in the said hospital, he expired on 9th December, 2011 about 3 years, 2 months prior to his normal date of superannuation on 28th February, 2015.

9. Drawing the attention of this Court to the documents at pages 87 to 90 of the writ petition, Ms. Sinha submits that the employee did make an application in the month of November, 2010 praying for appointment of his son in his place and stead since it became impossible for him to continue in service due to the severe ailments which stood enhanced to Stage-III. Such claim was duly recommended by the Deputy General Manager on November, 2010 and on 17th October, 2011 but the competent authority did not take any steps towards constitution of a Medical Board. Had the said representations been considered in time, the employee would have undoubtedly been found to be permanently disabled. The petitioners cannot take advantage of their own inaction and take a plea that as there was no declaration of medical invalidation, compassionate appointment cannot be considered.

10. She further submits that the said guidelines could not have been applied in

DSP retrospectively with effect from 1st January, 2011. There is no provision in the said guidelines as regards the fate of the employees who would expire or be medically disabled within the period from 1st January, 2011 till 31st January, 2012. The employee made the first representation for appointment of his son in place and stead in the month of November, 2010 and that as such the claim towards compassionate appointment does not come under the purview of the said guidelines which were given retrospective effect from 1st January, 2011 by a circular issued on 22nd February, 2012 subsequent to the death of the employee on 9th December, 2011.

11. In support of her arguments, reliance has been placed upon the judgment delivered in the case of Balbir Kaur and another v. Steel Authority of India Ltd. and others, reported in 2000 SCC (L&S) 767.

12. In reply, Mr. Banerjee submits that the petitioners are sympathetic towards the respondents' claim but they cannot grant compassionate appointment since the claim does not come within the purview of the said guidelines which were made applicable to the employees of DSP with effect from 1st January, 2011 and particularly in view of Clause 9.1 of the said guidelines which runs as follows :

"9.1 Cases of natural death while on duty shall not be considered for compassionate employment. The dependent family members may avail benefits under Employees Family Benefit Scheme."

13. In the earlier order passed in O.A. 557 of 2013 the learned Tribunal observed that the death of the employee was due to fire which was totally unpredictable and unnatural and it cannot be said that the applicant died of a natural cause. As the death was unnatural, Clause 5.3.3 of the said guidelines would not apply. The employee was also suffering from cancer, which is the first disease as incorporated in the list of debilitating diseases. The said Clause 5.3.3 runs as follows :-

"5.3.3 The employee should have been under treatment in the company's/ company's sponsored hospital for the above ailments. Cases of sudden death, where the employee was continuing with his normal job and was not under treatment for the above diseases shall not be governed under these guidelines. The date for consideration under the guidelines shall be the date on which the committee declares an employee as medically invalid. If an employee dies due to diseases or otherwise before declaration of Medical invalidation by the committee then such death shall be considered as natural death and shall be death as per clause 9.1 of the Guidelines."

14. The learned Tribunal, placing reliance upon several judgments delivered by the Hon'ble Supreme Court, observed that the procedural law is required to assist and aid the object of substantial and real justice and that in the facts of the case and for the ends of justice the DSP authorities should consider the claim towards compassionate appointment and the orders impugned in the said application were set aside.

15. In course of hearing the attention of this Court has been drawn to the report of a committee constituted by the competent authority to examine the scheme for old compassionate cases as well as provisions of employment on compassionate ground as per National Joint Committee for the Steel Industry (hereinafter referred to as NJCS) agreement. The following clauses, as incorporated in the same, would be relevant for a decision in the instant matter :-

"2.0. Practices in DSP regarding employment on compassionate ground.

2.1. In DSP, employment on compassionate ground has been provided to the dependants of the following categories of exemployees :-

(i) Employees who die due to accident arising out of and in course of employment i.e., death in harness.

(ii).....

(iii) Employees permanently disabled while in service (w.e.f. 1.1.1971).

(iv) Employees meeting with normal death while in service (w.e.f. 1.1.1971).

16. The attention of this Court has also been drawn to the NJCS agreement dated 29th April, 2010 with the trade unions of the main steel plant and its subsidiaries including DSP wherein Clauses 5.1 and 5.1.1 runs as follows :-

5.1. Protection of Existing Benefit

5.1.1. Merely as a consequence of the implementation of this agreement, any facility, privilege, amenity, benefit, monetary or otherwise or concession to which an employee might be entitled by way of practise or usage, shall not be withdrawn, or curtailed except to the extent and manner as provided for in this agreement."

17. A composite reading of Clause 2 of the earlier report and Clause 5.1 of the NJCS agreement would reveal that the practices in DSP regarding employment of compassionate ground to the dependants of the employees who met with normal death while in service would not stand withdrawn or curtailed by the said NJCS agreement.

18. Subsequent to the said NJCS agreement, the said guidelines have been promulgated vide circular dated 31st January, 2012 to bring uniformity in dealing with compassionate cases. The coverage of the said guidelines is restricted to the following categories :-

"3. Coverage

3.1 The guidelines shall cover specifically two types of compassionate cases which are as below :

(a) In case of death or permanent total disablement due to accident arising out of and in course of employment as per NJCS agreement.

(b) In case of an employee declared incapable to perform his normal duty by the committee constituted for this purpose, due to his/her physical/mental incapacity due to suffering from chronic debilitating diseases."

19. The said guidelines have been introduced unilaterally by DSP though Clause 5.3 of NJCS agreement dated 29th April, 2010 categorically provides that in respect of anomalies, if any, that may arise in the terms of the agreement, the same has to be referred to and settled by the concerned committee. The said Clause 5.3 has been ignored by the DSP while issuing the said guidelines.

20. It is indisputable that the settlement for NJCS as a bipartite settlement between SAIL and its subsidiary companies on the one hand and the employees represented by several trade unions on the other is binding upon the parties therein. The said settlement cannot be varied by terms of any guidelines issued subsequent thereto and such settlement can be changed or modified only by a separate settlement or award. The said guidelines have been introduced unilaterally by the circular dated 31st January, 2012 issued by the Assistant General Manager (PERS-NW) of the DSP and the same has been given retrospective effect from 1st January, 2011 in DSP. The said guidelines have not been incorporated in any further settlement which have been entered into by SAIL and its subsidiary companies with the employees and the same have no force of law. The said guidelines issued cannot take precedence over the NJCS agreement. [See paragraph 11 of the judgment delivered in the case of M/s. Eastern Coalfield Ltd. v. Dewanti Kumari & Ors., reported in 2016 (3) WBLR (Cal) 464]. As such, we are unable to accept the contention of Mr. Banerjee to the effect that in the event the petitioners are asked to reconsider the claim towards compassionate appointment as per the directions contained in the impugned order the result would be repetition of an identical order as passed in the earlier round of the litigation. It is incumbent upon the petitioners to consider the claim towards compassionate appointment in terms of the report dated 6th September, 1995 and the NCJS agreement dated 29th April, 2010.

21. In the instant case it is evident that with effect from 1st January, 1971 employment of the dependants of an employee on compassionate ground was available even in the event the concerned employee met with normal death. Such prevalent practise was not interfered with by NJCS agreement on 29th April, 2010. Prior to death of the employee on 9th December, 2011 no further settlement was arrived at and that as such even in the case the normal death in harness the dependants of a deceased employee has a right to be considered for compassionate appointment.

22. The judgment delivered in the case of Steel Authority of India Ltd. (supra) has been cited on behalf of the petitioners in support of the contention that the death of the employee was not an accidental one. The judgment delivered in the case of State Bank of India and another (supra) was cited on behalf of the petitioners in support of the contention that the claim for compassionate appointment should be considered in terms of the scheme prevalent on the date

on which the application was made. The said judgments are not relevant for a decision on the issue as to whether the terms of a bipartite settlement can be varied by guidelines issued unilaterally by a party to the said settlement.

23. Taking into considerations the earlier directives contained in the order dated 20th November, 2014 passed in O.A. 557 of 2013 and upon meticulous consideration of the factual issues, the learned Tribunal rightly set aside the order dated 9th February, 2015 and directed the petitioners to reconsider the claim towards compassionate appointment. We do not find any error of law in the order dated 15th February, 2016 passed by the learned Tribunal. The said order does not suffer from any jurisdictional error or any manifest injustice warranting interference of this Court.

24. The writ petition is, accordingly, dismissed.

25. There shall, however, be no order as to costs.

26. Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.