

(2015) 09 OHC CK 0046
In the Orissa High Court
Case No : OJC No. 12343 of 1996

Swarnalata Prusty

APPELLANT

Vs

Orissa State Ware Housing Corporation and Others

RESPONDENT

Date of Decision : 29-09-2015

Acts Referred:

Citation : (2015) 09 OHC CK 0046

Hon'ble Judges : B.R. Sarangi, J

Bench : Single Bench

Advocate : A.K. Choudhury and H.K. Panigrahi, for the Appellant; B.K. Sahoo and K.C. Sahoo, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Dr. B.R. Sarangi, J—The petitioner, who is the wife of a deceased employee, has filed this application challenging the order dated 21.03.1996 passed by the authority in Annexure-22 rejecting her application for compassionate appointment under Orissa Civil Services (Rehabilitation Assistance) Rules, 1990, stating, inter alia, that either she or her son is not entitled to get such benefit as the deceased employee was not in the service of the Corporation on the date of his death. She further claims for grant of financial benefit, such as, Gratuity, C.P.F., Group Insurance, and arrear salary of her deceased husband and seeks for disposal of the appeal filed by her husband against the award of punishment following a disciplinary proceeding initiated against him.

2. The short fact of the case, in hand, is that the deceased employee, namely, B.C. Prusty, husband of the petitioner, who was appointed as a Lower-Division Clerk in the year 1976, was in-charge of Depots in respect of Jhumpura, Champua and Barbil and subsequently, posted at headquarters at Bhubaneswar. He was duly authorized to receive rice wheat and other stocks on behalf of the Corporation from the Collector, Keonjhar for storage. The petitioner's husband was subjected to a disciplinary proceeding for disobedience of the orders of Management and negligence of Office duty. Accordingly, charge was framed on

05.05.1977, to which, he submitted his explanation. Shri T. Vishwanadham, Storage and Inspection Officer was appointed as Enquiry Officer. In course of enquiry, the husband of the petitioner was placed under suspension on 04.02.1978 and finally, since charge stood proved against him, he was dismissed from service. As the copy of the inquiry report was not served on him, he made grievance for supply of such enquiry report. Thereafter, he was supplied with the enquiry report on 30.08.1978 and finally, he was dismissed from service on 19.05.1979 treating the period of suspension as such. The petitioner preferred an appeal against the dismissal order of Appellate Authority on the ground that the order so passed is violative of principle of natural justice and no reasonable opportunity of hearing had been given to him to defend his case. It is stated that the result of the appeal has been communicated to the husband of the petitioner, whereafter, he approached this Court by filing OJC No. 3006 of 1981 with a prayer to quash the order of dismissal and release outstanding dues/amounts. This Court vide order dated 12.08.1983 disposed of the writ application directing the opposite party No. 2 - Chairman, Orissa State Warehousing Corporation, Bhubaneswar to dispose of the appeal within three months. It is further urged that in spite of order being passed no action has been taken in the appeal itself. When the matter thus stood, the husband of the petitioner died on 08.11.1984 while travelling in a bus. Consequentially, the petitioner filed an application for grant of compassionate appointment under the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990. The authority considering such application disposed of the same by rejecting the claim of the petitioner vide impugned order under Annexure-22. Hence this application.

3. Mr. A.K. Choudhury, learned counsel for the petitioner strenuously urged that when the appeal is pending before the authority for consideration, the impugned order passed under Annexure-22 rejecting the claim of the petitioner for grant of appointment under Rehabilitation Assistance Scheme to her or her son on the ground that her deceased husband was not in employment, is absolutely misconceived one. It is stated that appeal being a continuation of the proceeding, the authority could not have rejected the claim of the petitioner vide impugned order in Annexure-22. To substantiate his contention, he has relied upon the judgment in Smt. Saroja Shivakumar Vs. State Bank of Mysore, (1996) ILR (Kar) 2655 : (1996) 6 KarLJ 384 , State Bank of Mysore, Bangalore Vs. Smt. Saroja Shivakumar, (1998) 79 FLR 181 : (1997) ILR (Kar) 2791 : (1998) 1 KarLJ 10 ; Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, AIR 1989 SC 1976 : (1989) 59 FLR 626 : (1989) 3 JT 570 : (1990) 1 LLJ 169 : (1989) 2 SCALE 473 : (1989) 4 SCC 468 : (1990) 1 UJ 24 , Mohini Kumari Naik v. Orissa State Electricity Board & others, Vol. 34, (1992) OJD (1) (S & L) Orissa High Court.

4. Mr. B.K. Sahoo, learned counsel for opposite party strenuously urged that by order dated 27.04.1999 this Court to produce the proceeding file of late B.C. Prusty, husband of the petitioner, it is stated that the relevant file was not available, but on the basis of the letter No. 467 dated 31.01.1984 it was

communicated to late B.C. Prusty by registered post with A.D. that the appeal filed by him has been rejected by the Chairman which is annexed as Annexure-A/1 to the writ petition. On verification of the dispatch register of the relevant year, it appears that the relevant entry addressed to Late B.C. Prusty and under the heading "Subject" it is noted "appeal dated 24.05.1997 against the order of dismissal dated 19.05.1979". The postal acknowledgement of the said letter shows that the letter has been received by Late B.C. Prusty on 01.03.1984. Late B.C. Prusty was not only found guilty in the departmental proceedings, but also he was proved guilty by the judicial Court on the charge of misappropriation and whatever arrear dues he had that has been paid to him and the small amount that was left out, has also been paid to the petitioner, who issued a receipt on 16.01.1985. Therefore, the appeal having been disposed of and communicated to the delinquent officer and the delinquent officer having also been found guilty of misappropriation by the criminal Court and that apart he being not in employment, the claim made by the petitioner to give her compassionate appointment is absolutely misconceived one. Therefore, the authority is justified in passing the impugned order in accordance with law.

5. On the basis of the above pleaded facts, though so many facts have been placed before this court, this Court had got it clarified from Mr. A.K. Choudhury, learned counsel for the petitioner whether he would pursue the matter with regard to the disciplinary proceeding initiated against the deceased employee or whether he would confine his prayer to give compassionate appointment to the petitioner or her son, as the case may be, in accordance with law. To such query being made, Mr. A.K. Choudhury, learned counsel for the petitioner confined his prayer with regard to grant of compassionate appointment either to the petitioner or to her son in place of the deceased employee.

6. On perusal of the cause title, it appears that by the time the petitioner approached this Court in 1996, she was 40 years old and at this point of time she has become 59 years old. Therefore, the question of consideration of her case for compassionate appointment at such a belated stage, does not arise. So far as the benefit to the son of the petitioner is concerned, the same can be made available in consonance with the Orissa Civil Services (Rehabilitation Assistance) Rules, 1990. Rules 1990 make it clear that Rehabilitation Assistance cannot be claimed as a matter of right. The sole contention is that the appeal being a continuation of the disciplinary proceeding initiated against the husband of the petitioner, it cannot be said that the deceased employee is no more in employment. Therefore, rejection made by the authority vide Annexure-22 is absolutely misconceived one. This contention cannot be accepted in view of the fact that the appeal of the deceased employee has been rejected and the result of the appeal has been communicated to the deceased employee while he was alive and therefore, no benefit can be extended to the legal heirs of the deceased employee. More so, the deceased employee having been involved in a misappropriation case and punished in the criminal case and he being no more in employment, the Rehabilitation Assistance benefit cannot be granted to the legal

heirs of a dismissed employee of the Corporation. In *Saroja Shivakumar v. State Bank of Mysore and Smt. Sushma Gosain and others* (supra), it has been held that misconduct being something personal, denial of compassionate appointment is improper. But, the fact of none of the cases mentioned supra is akin to the facts of the present case, inasmuch as, in the present case, the deceased employee having been dismissed from service in a disciplinary proceeding which has been affirmed in appeal, he was no more in employment and therefore, no benefit of compassionate appointment should be extended to his legal heirs on the death of the husband of the petitioner in the road accident. Even if the misconduct is a personal one but that has been concluded both departmentally and in a criminal proceeding, holding the deceased guilty of charge, who is no more in employment.

7. In *Smt. Sushma Gosain and others* (supra), the apex Court has held that the application made by the legal heirs of the deceased has to be considered for appointment on compassionate ground instantly. There is absolutely no reason to make the legal heirs to wait for quite long time and subsequent denial of appointment is patently arbitrary and cannot be supported in any view of the matter. In paragraph 9 the apex Court has held as follows:

"9. 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."

Similar view has also been taken by this Court in *Mohini Kumari Naik* (supra). But the ratio decided in the above mentioned cases is not applicable to the present case in view of the fact that it is not a claim of compassionate appointment simpliciter and more so the deceased having been terminated from service following a disciplinary proceeding and no more in employment, the legal heirs of the deceased cannot claim at a belated stage that they are entitled to compassionate appointment in place of the deceased employee. The rehabilitation assistance scheme clearly indicates that compassionate appointment cannot be claimed as a matter of right. More so, benefit of compassionate appointment is not admissible to the legal heirs of the deceased employee, who was no more in service at the time of death.

8. For the foregoing reasons, this Court is of the view that no fault can be found with the order passed in Annexure-22 rejecting the prayer of the petitioner for compassionate appointment of the son of the petitioner. Therefore, this Court is not inclined to interfere with the same as the writ application suffers from delay and laches. Accordingly, the writ application stands dismissed.