

(2011) 06 UK CK 0108
In the Uttarakhand High Court
Case No : Special Appeal No. 13 of 2011

THDC India Limited

APPELLANT

Vs

Mrs. Beena Chamoli

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Citation : (2011) 3 UC 2330 : (2011) 1 UD 509

Hon'ble Judges : Tarun Agarwala, J; Serves Kumar Gupta, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This special appeal has been directed against the judgment of the learned Single Judge dated 5th January, 2011 whereby directions were issued to the Appellant to reconsider the application of the writ Petitioner for appointment on compassionate grounds.

2. The brief facts leading to the filing of the special appeal is that the husband of the writ Petitioner died in harness on 3rd April, 2003 and, immediately thereafter, the writ Petitioner moved the application for appointment on compassionate grounds under the existing scheme. The relevant scheme which was operating at the time when the Petitioner's husband had died is quoted hereunder:

9.3 Dependents of Deceased Employees

A dependent of deceased employee will be eligible for consideration for appointment in the Company against an available vacancy commensurate with qualification and experience. Priority will, however, be given to dependents of those who died as a result of an accident while on duty. This consideration will be admissible even if the name of such dependents is not sponsored by the Employment Exchange or if he/she has not applied against any advertisement, provided the applicant is otherwise eligible. It is, however, obligatory to notify such a vacancy to the Employment Exchange concerned indicating in the

requisition that the vacancy in question is proposed to be filled by the dependent of a deceased employee and that nominations by the Employment Exchange are not required. Non-existence of an earning member in the family of the deceased employee will be an important criteria.

Note: For purposes of this concession "dependents" mean only "sons", unmarried daughters or widow." "Deceased Employee" means an employee who dies while in Company's service.

3. The application of the Petitioner remained pending and eventually the Petitioner approached the High Court by filing a writ petition which was disposed of by an order dated 6th March, 2006 directing the competent authority to decide the representation of the Petitioner. Pursuant to the said direction, the Respondent Appellant rejected the application of the Petitioner for appointment on compassionate ground by an order dated 13th June, 2006. The Petitioner, being aggrieved by the rejection of her application, filed a writ petition which was allowed by the impugned order dated 5th January, 2011 directing the competent authority to decide the matter afresh in the light of the scheme existing in the year 2003, i.e., the scheme which was operating at the time of the death of the husband of the Petitioner. The Corporation, being aggrieved, has filed the present appeal.

4. Before the writ court, the Appellant contended that the scheme under which an appointment on compassionate ground was to be given has been superseded by a new scheme known as "Scheme of Financial Package for Dependents of Deceased Employees in lieu of Practice of Giving Employment" which came into existence w.e.f. 2nd April, 2007. The Appellant contended that under Clause 2 (ii) of the scheme, all pending applications would be considered and submitted before the writ court and that the Appellant could not be given an appointment on compassionate grounds in view of the new scheme and that the Appellant could only consider giving relief by way of monetary consideration. The submission of the learned Counsel for the Appellant was rejected by the learned Single Judge holding that the application of the Petitioner would be considered on the basis of the scheme which was operating on the date when the application for appointment on compassionate ground was made. The learned Single Judge held that the scheme which was in existence in the year 2003 would be applicable and that the scheme of 2007 would not be applicable.

5. We have heard Mr. Upmanyu Hazarika, the learned Senior Advocate assisted by Mr. Shobhit Saharia, Advocate for the Appellant and Mr. M.C. Pant, Advocate for the Respondent.

6. The learned Senior Counsel for the Appellant contended that the learned Single Judge committed an error in holding that the scheme of 2007 would not be applicable and that since the old scheme has been abolished, compassionate appointment was no longer permissible under the new scheme which came into effect in the year 2007. The learned Counsel submitted that the new scheme

which came into existence on 2nd April, 2007 has not been challenged by the Petitioner nor any amendment was made to this effect in the writ petition and, consequently, submitted that the order of the learned Single Judge was liable to be set aside. The learned Counsel further submitted that the new scheme of 2007 was floated keeping in view the fact that there was a large number of surplus employees in the Appellant's organization and that it was not possible for the Appellant to give employment to the dependants of the deceased employee. In this regard, the learned Counsel has placed reliance upon a decision of the Supreme Court in *State Bank of India and Another Vs. Raj Kumar*, , where in similar circumstances, the Supreme Court held that the dependants of employees who died in harness do not have any special claim or right to employment except by way of the concession that may be extended by the employer under the rules or by a separate scheme. The Supreme Court held that the scheme for compassionate appointment was traceable only to a specific scheme framed by the employer and that the appointment under the scheme could only be made if the scheme was in force and that no appointment could be made if the scheme had been abolished or withdrawn. The Supreme Court accordingly held that where an application seeking the appointment under the scheme was pending consideration and, during its pendency, the scheme had been abolished or superseded by a new scheme, in that view the mere fact that an application was made when the scheme was in force would not itself create a right in favour of the applicant and that the pending application could only be considered under the new scheme. The Supreme Court held:

Further, where the earlier scheme is abolished and the new scheme which replaces it specifically provides that all pending applications will be considered only in terms of the new scheme, then the new scheme alone will apply. As compassionate appointment is a concession and not a right, the employer may wind up the scheme or modify the scheme at any time depending upon its policies, financial capacity and availability of posts.

7. In the light of the aforesaid, the learned Senior Counsel submitted that the earlier scheme having been abolished, the application of the Petitioner could only be considered under the scheme of 2007.

8. In order to appreciate the submission of the learned Counsel for the Appellant, it would be appropriate to quote Clause 2 (ii) of the Scheme which reads as under:

2. SHORT TITLE AND APPLICABILITY

(i) ...

(ii) This Scheme shall also be applicable to all pending applications of dependents of deceased employees for Compassionate Appointment in THDC.

9. Admittedly, the scheme came into existence on 02/04/2007 by which the Appellant instead of giving an appointment could consider giving compensation in

terms of the money. This scheme under Clause 2 (ii) became applicable to all pending applications of the dependants of the deceased employees.

10. In the considered opinion of the Court, the said scheme of 2007 is not applicable and the decision cited by the learned Counsel for the Appellant in the case of State Bank of India and Anr. v. Raj Kumar (Supra) is distinguishable and the reason is not far to see. Clause 2 (ii) of the scheme clearly indicates that the scheme of 2007 would be made applicable to all pending applications. The Petitioner's application for appointment on compassionate ground was not pending when the scheme came into existence on 2nd April, 2007. The Petitioner's application had already been rejected by the Appellant on 13th June, 2006. The learned Single Judge allowed the writ petition and quashed the order dated 13th June, 2006 and directed the Appellant to decide the matter afresh. Once the matter has been remanded back, the application of the writ Petitioner could only be considered in accordance with the scheme that was in existence at the time when the application was filed. The new scheme of 2007 could not be considered.

11. In the light of the aforesaid, the learned Single Judge was justified in directing the Appellant to consider the application of the Petitioner afresh in the light of the scheme that was existing in the year 2003 and not in accordance with the scheme of 2007. The court does not find any error in the order passed by the learned Single Judge. The special appeal fails and is dismissed.