

(2005) 07 GAU CK 0031
In the Gauhati High Court

Union of India and Ors.

APPELLANT

Vs

Sarokhaibam Madhubala Devi

RESPONDENT

Date of Decision : 27-07-2005

Acts Referred:

Citation : (2005) 07 GAU CK 0031

Hon'ble Judges : M.B.K.Singh, J and T.Nanda Kumar Singh, J

Bench : Division Bench

Advocate : Kh.Tarun kumar Singh, N.Ibotombi Singh, Advocates appearing for Parties

Judgement

T.N.K. Singh, J.—Heard Mr. N. Ibotombi Singh, learned CGSC appearing on behalf of the appellants/respondents as well as Mr. Kh. Tarunkumar Singh, learned counsel for the respondent/writ petitioner.

2. The judgment and order of the learned Single Judge dated 27.1.2003 for allowing the writ petition W.P.(C)No.796 of 2002 filed by the respondent/writ petitioner has been challenged by filing the present Writ Appeal on the ground that (1) the compassionate appointment is not a matter of right and (2) court can only give direction for consideration and not for appointment; but under the impugned judgment and order dated 27.1.2003, the learned Single Judge counsel for the petitioner/respondents had directed the appellants/respondents to appoint the respondent/writ petitioner as Washerwoman on compassionate ground in clear deviation of laws laid down by the Apex Court. For substantiating the case of the appellants, the learned counsel appearing for the appellants had placed heavy reliance on the following cases of the Apex Court:

(1) Himachal Road Transport Corporation Vrs Dineshkumar, reported in (1996) 4 SCC 560;

(2) State of Haryana & Ors Vrs Ajoy Walia, reported in (1997) 6 SCC 255;

(3) Jharkhand Mazdoor Sangh Vrs Presiding Officer & Ors, reported in (2002) 10

SCC 703.

3. Before discussing the laws cited above by the learned counsel for the appellants, it will be required to remember that (a) the Apex Court in *Radhakrishna Agarwal & Ors vrs State of Bihar & Ors*, reported in (1977) 3 SCC 459 held that judgment is to be understood in the context of the fact of that particular case and (b) the Apex Court also held that a decision is available as a precedent only if it decides a question of law in the *State of Punjab & Ors. Vrs Surinder Kumar & Ors*, reported in (1992) 1 SCC 489.

4. The operative portion of the impugned judgment and order of the learned Single Judge dated 27.1.2003 reads as follows:

?In view of what has been discussed above, this court is of the considered view that this writ petition be allowed with the direction that the writ petitioner having been otherwise found fit and eligible, shall be appointed as Washerwoman on compassionate ground, as soon as vacancies for such appointment are available in any unit of the C.R.P.F. under the respondent No. 3 i.e. the Inspector General of Police, C.R.P.F., N.E. Sector, Govt. of India, Group Centre, Langjing, Imphal West, Manipur.?

From the cases cited above by the learned counsel appearing for the appellants/respondents, it appears that the ratio laid down by the Apex Court are that (1) the court should not direct the concerned authority to appoint a person to a post on the compassionate ground; (2) and the court should merely direct the concerned authority to consider and not straight away issue direction to appoint a person on the compassionate ground. From the close perusal of the impugned judgment and order of the learned Single Judge as well as on careful hearing of the submissions of both the parties, we are of the considered view that the learned Single Judge had not passed the impugned judgment and order contrary to the ratio laid down by the Apex Court inasmuch the learned Single Judge had not straight way issue direction to the appellants to appoint the respondent/writ petitioner as WasherWoman for the simple reason that under the impugned judgment and order dated 27.1.2003 the respondent/writ petitioner is to be appointed only if she is found fit and eligible for such appointment as washerwoman on compassionate ground after consideration by the appellants/respondents and also such appointment is to be made only when vacancy is available in any unit of the C.R.P.F under the appellant/respondent No. 3. For the sake of repetition we may reiterate that what the Apex Court had forbidden the court in the cases cited above by the counsel for the appellants is that the Court should not straight way issue direction to appoint, and the learned Single Judge in the impugned judgment and order dated 27.1.2003 is not straight way issuing direction to the appellants to appoint the respondent/writ petitioner to the post of Washerwoman without any condition on compassionate ground.

5. At the conclusion of hearing, the learned counsel appearing for the petitioner faintly argued that compassionate appointment cannot be granted to the

respondent/writ petitioner after a lapse of reasonable period. From the close scrutiny of the present case, it appears that delay in issuing the order for appointment of the respondent/writ petitioner on compassionate ground was not on the fault of the writ petitioner, but it was because of the fault of the appellants. The learned counsel appearing for the respondent by referring the decision of the Apex Court in Amrik Singh & Anr. Vrs Union of India & Ors, reported in AIR 1980 SC 447 submits that the respondent/writ petitioner should not suffer because of the administrative lapses of the appellants.

6. From the above discussion, we are of the considered view that the interference to the judgment and order of the learned Single Judge dated 27.1.2003 passed in W.P(C) No. 796 of 2002 is not called for. Accordingly the present Appeal is devoid of merit and Appeal is dismissed. No order as to costs.