

(2012) 05 JH CK 0075

In the Jharkhand High Court

Case No : Writ Petition (S) No. 5987 of 2011

Union of India and others

APPELLANT

Vs

Anju Kumari

RESPONDENT

Date of Decision : 04-05-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2
Constitution of India, 1950 — Article 226

Citation : (2012) 3 JCR 610 : (2012) 4 JLJR 146

Hon'ble Judges : Prakash Tatia, C.J;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Ajay Kumar Trivedi, for the Appellant;

Final Decision : Dismissed

Judgement

1. Heard learned counsel for the parties. The petitioner-Union of India is aggrieved against the order dated 08.3.2011 passed by the Central Administrative Tribunal, Patna, Circuit Bench at Ranchi,(in short -Tribunal), passed in OA. No. 102/2010(R) by which the Tribunal has directed the petitioner to consider the case of the appointment of the applicant on compassionate ground against a Group "C" post on merits either in their office or in establishments directly under them in which such posts are available.

2. From the facts, it appears that the applicant is the widow of employee D.K. Das, who was a Group "D" employee of Kendriya Vidyalaya situated in Meghahatuburu, West Singhbhum, who died in harness on 21.03.2000 leaving behind two minor girls and the wife-applicant. The applicant applied for her appointment on compassionate ground on 29.06.2000. In September, 2000 she was informed vide letter dated 08.09.2000 that request of the applicant for appointment on compassionate ground on Group "D" post could not be accepted. The applicant filed an application on 20.02.2001 followed by another application on 18.08.2001 which was duly forwarded by the Principal, Kendriya Vidyalaya, Meghahatuburu with favourable recommendation. The applicant was informed

vide letter dated 26.12.2001 by the higher authority stating therein that since some services of Group "D" posts have been privatized, no vacancy existed in Group "D" and, therefore, request for compassionate appointment could not be accepted. The applicant has requisite qualification and is eligible for compassionate appointment but because of that reason, her application for compassionate appointment was rejected. In view of the above, she filed O.A. No. 114/2002 before Tribunal which was disposed of on 12.03.2003 with direction to the respondent-authority to reconsider the case of the applicant in view of the statements made by the respondents in their reply.

3. The claim of the applicant was once again rejected vide order dated 4.05.2003 of the respondent. Then, the applicant again approached the Tribunal by filing another O.A. No. 224/2004 and the same was disposed of with direction to the authority to reconsider her case but the respondent-authority again rejected the claim of the applicant stating that already order has been passed on 14.05.2003 by which the claim of the applicant was rejected. The applicant again approached the Tribunal for the third time by filing O.A. No. 33/2008, which was disposed of vide order dated 27.10.2008 and the Tribunal observed that "since it is a long standing matter and the husband of the applicant died on 21.03.2000, therefore, let the respondents inform the applicant of the decision by a speaking order within a period of three months from the date of receipt/production of a copy of the order of the Tribunal." Then, again on 20.07.2009 the applicant's claim for compassionate appointment was rejected by the respondent- authority.

4. Therefore, in a case of death of an employee died in the year 2000 leaving behind his widow and two minor daughters in harness and the widow submitted application for her appointment on compassionate ground within three months from the time of death of her husband, her case was again and again, thrice, came before the Tribunal and Tribunal issued directions to the writ petitioner-authority to consider the case of the applicant but again and again her claim was rejected on one or another ground. In fourth round, again direction was issued to the respondent-authority "to consider the case of the appointment of the applicant on compassionate ground against a Group "C" post on merits". Therefore, now the respondent-authority i.e., Union of India, is before us who got further more opportunity fourth time to reject the representation of the applicant by virtue of the order passed by the Tribunal on 08.3.2011.

5. It is true that in a writ jurisdiction under Article 226 of the Constitution of India, in a writ of certiorari, High Court can not substitute order in place of the order passed by the authority which order was found to be absolutely illegal. However, High Court can and is supposed to decide all the issues raised in the writ petition and give findings on issues but as per the law of writ, the High Court in such cases cannot pass the order of appointment or any substantive order so as to grant complete relief to the writ petitioner, can leave the matter for grant of relief upon the authority who passed the wrong or illegal order and the directions are issued only to the authorities that they should pass the order in the light and

spirit of the order passed by the High Court. Such legal position normally results into again passing of the order by the same authority by giving different meaning to the order of the High Court which was never intended and such authority may give new reasons and grounds for again rejection of relief which was never the ground in earlier round of litigation and by ignoring the principle of res-judicata and principle of constructive res-judicata as well as in violation to the principle which is underline in Order II rule 2, C.P.C., which is applicable to the plaintiff of any suit and same principle is applied to the respondent, then the respondent cannot take defence which he did not take as defence in earlier round of litigation.

6. In this case, it is a case where a beneficial legislation meant for the dependents of person who died while in service and such dependents' benefit rule or scheme is framed by the employer himself and in such a matter the applicant may go on to submit representations one after another in most of the cases rendering her claim a stale or dead claim by passing of the time of years, which may be even decades and resulting into writs before the High Court. This is one of the example case where the lady, who in hardship condition due to the death of her husband and having two minor daughters with her, applied in time for compassionate appointment and if any decision could have been taken in time, she could have got the appointment to the year 2000 itself but she only got the orders in her favour thrice by the Tribunal without there being any actual relief. This is a serious issue required to be considered and examined about such type of limited jurisdiction which vests in the Court and that too, which has been constituted and created for the purpose of giving relief expeditiously to the persons to earn their meals as, because of such laws, the dependents of the employee can get no actual relief even after repeated, one after another order of Tribunal. The law since (sic) it is, which may be considered at appropriate time but the facts of this case is clearly one of the examples which may guide the law framer to rethink over such procedural matter resulting into not only mere multiplicity of the proceedings by a person in a very bad condition but only burdening the Tribunals and Courts.

7. In this case, facts reveal that the applicant was eligible for appointment and on which posts she has been given appointment, was to be decided by the employer. The applicant's claim was rejected on the ground that the some of the Group "D" posts have been privatized leaving no vacancy in Group "D" posts and the applicant's condition was that she may be adjusted in Group "C" posts for which the respondent-authority took the defence that there was no vacancy in Group "C" posts which was found to be false as the applicant got information under R.T.I. Act that there were 11 appointments already made in Group "C" category on compassionate ground since 2002.

8. Now, it has been submitted by the learned counsel for the petitioner-Union of India, that for Group "C" posts, the intermediate is requisite educational qualification with good knowledge of "Hindi" and "English" language.

9. As it was expected that the petitioner was likely to take new ground for again

rejection of the claim of the applicant which is pending since 12 years, here, in the fifth round of litigation, after fourth round before Tribunal, we are not inclined to allow the petitioner-authority to take a new ground which was only for rejection of the claim of the applicant.

10. In view of the above reasons, we are not inclined to interfere with the order of the Tribunal dated 08.03.2011, directing the respondent-authority to give the compassionate appointment to the applicant, who is widow of the employee with two minor daughters and had to suffer from long 12 years. This writ petition is dismissed without cost as we have not issued notice to the respondent-applicant.