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UNION OF INDIA AND ORS.
v.
SMT. DRAUPADI BEHARA AND ANR.

JANUARY 3, 2005

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[ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

Service Law:

Appointment on compassionate ground—Government of Orissa—G.I. Dept. of Posts, Letter No. 17-85/93-E.D & Trg. dated 2.2.1994—Letter of MP/ MLA certifying that employed member living separately and not referring any assistance to main family—Effect of—EDDA-cum-EDMC—Death of—Leaving his wife and five sons—Application by one of sons for appointment on compassionate ground—Inquiry revealing that widow and sons were living together and there was no evidence of separation—Letter of MP in favour of applicant—Tribunal rejecting the claim—High Court directing authorities to appoint applicant within specified period—Held, High Court erred in giving the direction—There was not even a remote suggestion in the G.I. that certificate of MP/MLA would be determinative—Matter remitted to CAT for reconsideration.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7 of 2005.

From the Judgment and Order dated 20.11.2002 of the Orissa High Court in O.J.C. No. 15059 of 1998.

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R. Mohan, Additional Solicitor General, Imtiaz Ahmed, V.K. Verma and P. Parmeswaran for the Appellants.

Shibashish Misra for the Respondents.

The following Order of the Court was delivered :

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ARIJIT PASAYAT, J. Heard learned counsel for the parties.

Leave granted.

The respondent No.1 is the widow of one late Ishwar Chandra Behara,

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who was working EDDA cum EDMC. He died on 25.02.1995. Indisputedly, he left behind his widow and five sons including respondent No. 2. An application for employment of respondent No. 2 as a compassionate measure was filed before the authorities. The same was rejected on the basis of an enquiry conducted which revealed that the sons were living together and there was no *prima-facie* evidence of any separation. An application under Section 19 of the Administrative Tribunal Act, 1985 (in short 'the Act') was filed before the Central Administrative Tribunal, Cuttack Bench (in short 'the CAT'). It was pleaded that the authorities were not justified in rejecting the application for compassionate appointment merely on the basis that the report indicated about joint living of the widow and the five sons. The present respondents filed an application under Article 227 of the Constitution of India, 1950 (in short the 'Constitution') before the Orissa High Court *i.e.* OJC No. 15059 of 1998. By the impugned judgment, the High Court held that the decision of the authorities rejecting the prayer for compassionate appointment was not in order. Direction was given to appoint the present respondent No.2 within a particular time with the condition that respondent No.2 will financially support respondent No.1 so long as she is alive.

Mr. R. Mohan, learned Additional Solicitor General submitted that the findings recorded by the High Court are erroneous. The rejection of the claim for compassionate appointment was done after considering the report made by the concerned authority which conducted due and proper enquiry about the financial status. CAT considered the relevant aspects and rightly held that the prayer for compassionate appointment was not to be accepted. The High Court erroneously placed emphasis on the certificate issued by the Member of Parliament and directed for appointment. Such a direction could not have been given. At the most, the High Court could have directed for consideration of the case of respondent No.2 along with similarly placed persons. In any event, no evidence was led to shew that the findings recorded by the enquiring authority were erroneous.

In response, Mr. Shibhashih Mishra, learned counsel appearing for the respondents submitted that the scheme of the authorities clearly indicates that if a certificate is issued by a Sarpanch or Member of Parliament or MLA, then the request for compassionate appointment may be entertained and considered on merits. In this case, indisputedly, a Member of Parliament had given a certificate which was not shown to be wrong.

We find that it has been clearly indicated in the report about sufficient

A income of all members of the family and the *prima facie* absence of any material to show that the members had separated. The respondents remained content by producing certificate of M.P. No other material was placed for consideration to contradict conclusions recorded in the enquiry report. Great emphasis has been laid by the respondents on the scheme of compassionate appointment (G.I. Dept. of Posts, letter No. 17-85/93-E.D. & Trg. Dated 02.02.1994), more particularly the following:-

C “In certain cases where there is already an earning member in the family but Huddra/Sarpanch or an MP/MLA certified that the employed member is living separately and not referring any financial assistance to the main family, the requests of compassionate appointment may be entertained and considered on merits.”

D The same is not of any assistance to the respondents. The quoted portion was one of the points on which clarification was sought for. In any event, there was not even a remote suggestion that the certificate of MP or MLA would be determinative.

E It would be, therefore, appropriate to direct the Tribunal to re-consider the matter. The parties shall be permitted to place materials in support of their respective stand. It goes without saying that CAT, after considering the relevant materials, shall dispose of the matter in accordance with law. We make it clear that we have not expressed any opinion on the merits of the case.

F However, the High Court was clearly in error in directing appointment, without reference to the presence of similarly situated persons who were seeking compassionate appointment. No direction could have been given by the High Court for appointment as such within a time limit and for asking extension of time to comply with the order, till the concerned respondent was appointed. At the most, the High Court could have asked for consideration of the case of the concerned respondent along with other applicants for compassionate appointment, if any, in terms of the operative scheme.

G The appeal is, accordingly, disposed of. No costs.