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MAHARANI DEVI & ANR.

v.

UNION OF INDIA & ORS.

(Civil Appeal No. 3581 of 2008)

B

MAY 15, 2009

[TARUN CHATTERJEE AND V.S. SIRPURKAR, JJ.]

C

Service law – Compassionate appointment – Employee dying issueless – Claim of compassionate appointment by widow in favour of near relative on basis of circular dated 16.05.1991 – However, amendment to the circular deleting the provision providing for compassionate appointment to near relative and circular not made retrospective – Issue regarding relevant date for consideration, date of death of employee or date of filing representation-when was the amended circular enforced, not considered by High Court – Hence, matter remitted to High Court – Circular No. E(NG)111/88/RC-111 dated 16.05.1991; RBE 102/91.

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E

Auditor General of India v. G. Ananta Rajeswara Rao 1994 (1) SCC 192; Project Uccha Vidyalaya Shikshak Sangh v. State 2001 (1) PLJR 287; Balbir Kaur and Ors. v. Steel Authority of India AIR 2000 SC 1906; Chairman Railway Board and Ors. v. C.R. Rangadhamaiah and Ors. 1997 (6) SCC 623, referred to.

F

State Bank of India and Ors. v. Jaspal Kaur 2007 (9) SCC 571, distinguished.

Case Law Reference:

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1994 (1) SCC 192	Referred to.	Para 4
2001 (1) PLJR 287	Referred to.	Para 6
AIR 2000 SC 1906	Referred to.	Para 7

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1997 (6) SCC 623 Referred to. Para 12 A

2007 (9) SCC 571 Distinguished. Para 14

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3581 of 2009.

From the Judgment & Order dated 15.2.2005 of the High Court of Judicature at Patna in Civil Writ Petition No. 2213 of 2005.

Shweta Garg for the Appellant.

Harish Chandra, Sadhan Sandhu and A.K. Sharma D.S. Mahra for the Respondents.

The Judgment of the Court was delivered by

V.S. SIRPURKAR, J. 1. Leave granted.

2. Appellant No.1 is the widow of one Shri Kailash Singh who was working as Storeman under the Eastern Railways, Bihar while the appellant No.2 is his nephew. The said Kailash Singh expired on 03.12.1995. He was a permanent employee of the Eastern Railways, now the East Central Railways. He died issueless. As per the claim of the appellants, appellant No.1 who is a helpless widow, after the death of her husband, the application came to be submitted on 05.12.1995 for compassionate appointment before the Divisional Railway Manager, Danapur (second respondent) in favour of the second appellant since the late Kailash Singh died issueless and in case of the employee dying issueless his near relative could get the compassionate appointment on the basis of a circular No. E(NG)111/88/RC-111 dated 16.05.1991; RBE 102/91.

3. Unfortunately for her, on 13.12.1995, the Railway Board, by its order, took a policy decision and introduced an amendment to the above mentioned Circular dated 16.05.1991 deleting the provision of providing compassionate appointment

A to the near relative. This decision was circulated by a Circular dated 22.12.1995. It must be added here that the Circular was not retrospective.

4. Since the application made by her was not responded to, another representation was made on 29.02.1996 for compassionate appointment for the second appellant. By order dated 19.03.1997, this application came to be rejected without giving any reasons. One more representation was made through Shri Sushil Kumar Modi, Leader of the Opposition in Bihar Assembly by his letter No. 1424 dated 06.10.1999 addressed to the Minister of State for Railways. However, even he was informed that there was no provision to employ near relative on compassionate ground and accordingly the competent officer had rejected her representation. The appellants, therefore, filed an original application before the Central Administrative Tribunal, Patna Bench, Patna (hereinafter called 'the Tribunal'). It was pointed out that there was a communication by the Railway Board bearing No. E(NG) 11/88-RC-1/1 dated 12.02.1990 which provided that if an employee dies in harness leaving a widow without children, the appointment of a near relative could be considered in case of hardship and on merits of each case. Relying on this circular the claim of the appellants was pressed. It was pointed that this circular was not considered by the authorities. It was then pointed out that the further circular dated 16.05.1991 referred to earlier in this judgment was also not considered. It was claimed that the subsequent order of the Railway Board dated 13.12.1995 holding the provision of appointment of near relative on compassionate ground was not applicable to the present case as it was not retrospective in effect. In short, it was claimed that since the husband of appellant No.1 died on 03.12.1995 during the previous order of the Railway Board when appointment of a near relative was permitted there was no reason to deny the appointment in favour of the second appellant. The respondent Railways pointed out that the decision to delete the provision of appointment of a near

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relative which was taken on 13.12.1995 was based on the basis of Office Memorandum of the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) dated 09.12.1993 and, therefore, the subsequent death of the husband of appellant No.1 on 03.12.1995 was of no consequence. It was further pointed out that the Department of Personnel Training, Government of India was the nodal Department and all the matters relating to Government service were to be implemented through the same agency. Reliance was also put on the judgment of the Supreme Court in *Auditor General of India v. G. Ananta Rajeswara Rao* 1994 (1) SCC 192 and, therefore, the appellant was not entitled to any relief.

5. The Tribunal took the view that whatever be the case, the respondent had not passed a speaking order nor had it considered the merits of the matter. The Tribunal, therefore, directed the respondents to re-consider the representation and the aspect of dependency of the appellant No. 1 on appellant No.2. They were further directed to consider the relevancy of the order of the Railway Board dated 13.12.1995 as the deceased employee had died in harness prior to the date of issue of that order of the Railway Board and further whether the order could be applied retrospectively. Time limit of four months was also set up by the Tribunal for disposal of the representation. However, on 12.08.2002 the respondent again rejected the claim of the petitioner. This time in their order the respondents pointed that the appellant No.1 had received the family pension of Rs. 1,04,658/- on account of death of her husband. It was held that the provision of extending the compassionate appointment was only to help the family left behind by the employee and further there was no provision for compassionate appointment to the near relative under the order dated 13.12.1995. It was reiterated that in view of the handsome amount that she had received after the death of her husband the appellant No.1 was not entitled for the appointment of the second appellant. The appellants again approached the Tribunal, Patna. Two questions were formulated by the Tribunal.

- A They were:- whether the request of the appellant No. 1 for appointment of appellant No.2 was required to be considered on the basis of the Notification dated 16.05.1991 or in the light of the order dated 13.12.1995 the second question was as to whether the respondent authorities were right in rejecting the
- B request of the appellant on the ground that the appellant No.1 had received over a lakh rupees as service dues of the deceased husband and she was also getting reasonable pension and whether it can be said that she was not suffering from financial or other hardship.

- C 6. On the first question, the Tribunal took the view that provision of compassionate appointment was a mere social welfare measure and the object of the same was not simply to give employment to a near relative. On this question, the Tribunal considered the Full Bench decision of Patna High Court in
- D *Project Uccha Vidyalaya Shikshak Sangh v. State* reported in 2001 (1) PLJR 287. The Tribunal held that the decision did not apply to the facts of the case of the appellants. The Tribunal, however, expressed that the Office Circular on which the
- E appellant had relied and which was in force on the date of death of Kailash Singh was not available at the time of submission of application on which date the amended circular was in force. The Tribunal did not accept the case that the first representation was made on 05.12.1995. The Tribunal treated the second representation dated 29.02.1996 to be the first representation
- F and further came to hold that since on that date the amended circular dated 13.12.1995 was in force only the amended Circular would be applicable to the facts of the case and as such the appellants would not be entitled to any relief. In short, the Tribunal held that the relevant date would not be the date
- G of the death of the employee but the date on which the representation was made.

- H 7. On the first question, therefore, the Tribunal found the case against the appellants. On the second question, however, the Tribunal relying on *Pankaj Kumar V. Union of India* decided

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on 24.08.2000 held that the employment on compassionate grounds could not be denied on the ground of financial service benefits received by the widow and children of the deceased Government were sufficient to meet their needs. In support of this proposition, the Tribunal relied on the decision of *Balbir Kaur & Ors. v. Steel Authority of India* AIR 2000 SC 1906.

8. The appellants filed a writ petition before the Patna High Court. However, the same came to be dismissed in limine and that is how the appellants are before us in this appeal.

9. On the basis of the contentions raised by the learned counsel for the appellants and the learned senior counsel Shri Harish Chandra appearing on behalf of the respondent which falls for our consideration is as to which is the relevant date for deciding the claim of the appellants whether it is the date on which the husband of the appellant No.1 died i.e., 03.12.1995 or whether it is the date on which the representation was made i.e. 22.12.1995 when the amended Circular was enforced depriving any relative from getting any appointment on compassionate ground.

10. It was urged that the Tribunal was not right in holding that the first representation was not made on 05.12.1995 but was made later on 29.02.1996. We will not go into that question since it amounts to a question of fact. However, the basic question still remains as to which is the relevant date as to the right for being considered for compassionate appointment accrues on the date of the death of the concerned employee or it is to be considered on the date when the application for compassionate appointment is made.

11. We do not find any discussion about this in the High Court order and indeed there could not have been none since the writ petition was dismissed in limine.

12. The learned counsel for the appellants relied on the judgment of this Court reported in *Chairman Railway Board &*

A *Ors. v. C.R. Rangadhamaiah & Ors.* 1997 (6) SCC 623 which is a Constitution Bench decision. This was a case wherein the validity of the same Notification issued by the Railways under Article 309 amending Rule 2544 of Indian Railway Establishment Board with retrospective effect was under
 B consideration. By that amendment the pension conditions of the employees who had already retired on the date of Notification was adversely affected. The Court held that in the
 C circumstances, the rules could not have been amended retrospectively affecting the rights of the employees. The Court, however, held that on the date when the said retrospective
 D amendments were introduced Article 19(1)(f) and Article 31(1) were available in the Constitution of India. The Court held that, therefore, the right of property of the petitioner was breached
 E by the impugned retrospective circulars. Further in cutting down the pension by bringing in the amendments to the provisions
 F retrospectively would be invalid, breaching Articles 14 and 16. Relying heavily on this judgment the learned counsel suggests that at least in the aforementioned case, the amendments were retrospective while in the present case they were not retrospective and, therefore, the amended Circular dated 13.12.1995 would not be applicable. The further argument is that under any circumstance the right for being considered for compassionate appointment had accrued on the date of death of the employee that being the only relevant date. According to the learned counsel the date on which the representation was made was irrelevant.

13. As against this the learned senior counsel Shri Harish Chandra urged that the most relevant date would only be when the representation was made because the Railway Board had
 G to consider as to whether the appellants were indigent on the date when the application was made.

14. On this crucial question, however, there is the High Court has not expressed any opinion. It has merely approved of the judgment of the Tribunal. Learned senior counsel in
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support of his argument relied on the judgment in *State Bank of India & Ors. v. Jaspal Kaur* reported in 2007 (9) SCC 571. However, we do not find any similarity in the situation appearing in this case and the one decided by this Court. The reported decision only considered the question as to which scheme pertaining to compassionate appointment should be preferred - whether it should be the scheme prevailing at the time when the application for compassionate appointment was filed or the one which was available on the date of decision of the Court.

15. Such question is not for our consideration in the present matter. That decision is, therefore, of no use for learned counsel for the respondents. However, in our view the question posed by us as to what would be the relevant date for consideration, whether it would be the date of death of employee or whether it would be the date of making the representation? That has not been considered by the High Court. We, therefore, remand this matter to the High Court with a request to the High Court to decide the same. We request the High Court to dispose of the matter within six months of the writ reaching the High Court as the matter pertains to the rights of a poor widow. The appeal is allowed in the terms stated by us with no orders as to the costs.

N.J.

Appeal allowed.