

Asha Devi Vs. The State of Jharkhand and Others

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Court : Jharkhand

Decided On : Apr-07-2017

Appellant : Asha Devi

Respondent : The State of Jharkhand and Others

Judgement :

1 W.P.(S) No. 3636 of 2012 IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P. (S) No. 3636 of 2012 Asha Devi, wife of Late Jagdamba Ojha Petitioner
VERSUS1 The State of Jharkhand.

2. Secretary, Drinking Water and Sanitation Department, Government of Jharkhand.

3. Engineer-in-Chief, Drinking Water and Sanitation Department, Government of Jharkhand.

4. Superintending Engineer, Drinking Water and Sanitation Department, Jamshedpur Circle, Jamshedpur, East Singhbhum.

5. Executive Engineer, Drinking Water and Sanitation Department, Jamshedpur Division, Jamshedpur, East Singhbhum. ... Respondents. CORAM: HON'BLE MR. JUSTICE DR. S. N. PATHAK For Petitioner : Mr. A.K. Mahato, Advocate For Respondents : Mr. Abhijeet Kumar Singh, JC to GP-V C.A.V. On 17/02/2017 Pronounced on 07/04/2017 Dr. S.N.Pathak, J.

Heard learned counsel for the parties.

2. In the instant writ application, the petitioner has prayed for quashing the office order no. 79, memo no. 782, dated 08.11.1997 in view of office order no. 35, dated 04.08.2008 and letter issued by memo no. 556, dated 10.07.2009 whereby appointment of the petitioner on compassionate ground has been cancelled. The petitioner has further sought for a direction upon the respondents to accept his joining in terms of appointment made by the authority vide office order contained in memo no. 685, dated 22.09.1997 with all consequential benefits and to treat him legally appointed on compassionate ground vide memo no. 685, dated 22.09.1997.

3. The factual exposition as has been delineated in the writ petition is that Jagdamba Ojha was initially engaged on daily wages in Drinking Water and Sanitation Department and he performed his duty in the district of East Singhbhum at Jamshedpur. In view of the decision of the respondents, the services of Jagdamba Ojha was taken into work charge establishment with effect from 31.10.1983 in the pay scale of Rs.350 - 425, vide office order no. 88, dated 31.10.1983. After his absorption in the work charge establishment in the pay scale, Jagdamba Ojha discharged his services diligently. However, Jagdamba Ojha died in harness on 14.06.1992 leaving behind his widow (petitioner). On the date of death, Jagdamba Ojha was discharging his duties as Nalkup Khalasi, Sub-Division - Ghatshila in the district of East Singhbhum. Thereafter, the petitioner who is Class-VI passed and whose date of birth is 11.05.1969, filed an application for appointment on compassionate ground. After submission of required documents and on the 2 W.P.(S) No. 3636 of 2912 recommendation by the competent authorities, the District Compassionate Appointment Committee, in its meeting dated 17.05.1997, considered case of the petitioner and issued memo no. 955, dated 30.08.1997 for appointment of the petitioner on compassionate ground on Class-IV post of peon in the pay scale of Rs.775 - 1025. In pursuant to the appointment letter issued by the respondents, the petitioner submitted joining and started discharging the duties as a peon. Just after expiry of two months, another office order no. 79, vide memo no. 782, dated 08.11.1997 was issued whereby appointment of the petitioner on compassionate ground stood cancelled without

giving any notice or giving opportunity to place her case on the ground that husband of the petitioner had not completed ten years service in work charge establishment. Being aggrieved by aforesaid order, the petitioner has preferred the instant writ petition.

4. Learned counsel for the petitioner submits that in view of the Full Bench decision rendered on 16.05.2005, a direction was given to the State Government that the persons who were working under the work charge establishment for five years, their cases will be taken into account in permanent regular establishment irrespective of their date of appointment. Learned counsel further submits that in view of the decision of the Full Bench, a letter has been issued from the office of the respondent no. 2 dated 01.08.2007 and a direction was given to the concerned authorities for regularization of services of the persons who have been working under the work charge establishment for more than five years. As the petitioner's husband had completed eight years seven months and twelve days of service and, therefore, pursuant to the letter issued by the department, a meeting of the District Establishment Committee was held and the services of the petitioner's husband was considered and decided to be taken into regular establishment with effect from 31.10.1988 since after completion of service with effect from 31.10.1983. Learned counsel further submits that after getting knowledge of the order dated 04.08.2008 regarding regularisation of the services of the petitioner's husband, the petitioner made a representation for cancellation of earlier order dated 08.11.1997 by which the petitioner's appointment on compassionate ground stood cancelled. Learned counsel submits that the petitioner cannot be made to suffer in view of the delay and laches on the part of the respondents as it is the respondents who had regularised the services of the petitioner on 04.08.2008 with effect from 31.10.1988.

5. On the other hand counter affidavit has been filed. Learned counsel for the State vehemently opposes the prayer of the petitioner regarding compassionate appointment and submits that the impugned order is justified and the cancellation order dated 08.11.1997 has been passed in accordance with law as services of the petitioner on the date of issuance of appointment letter was never regularised and dependent of work charge employee is not entitled for compassionate

appointment. 3 W.P.(S) No. 3636 of 2012. Be that as it may, considering rival submission of the parties, this Court is of the considered view that though services of the petitioner were regularised on 04.08.2008 with retrospective effect i.e. from 31.10.1988, the impugned order has rightly been passed as on the date of consideration, husband of the petitioner was not in regular establishment. The interpretation of the Full Bench Judgment by the petitioner is misconceived. The Full Bench of this Court vide Judgment dated 16.05.2005 in the case of Ram Prasad Singh Vs. State of Jharkhand [(2005) 3 JLJR38, came with a clear finding in para-17 of the said Judgment:

17. (i) The work-charged employees, who have completed more than five years of continuous service against one post in the work-charged establishment and otherwise eligible, have a right of consideration of their cases for taking over their services in the permanent (regular) establishment, irrespective of their dates of appointment. But the work-charged employees, working on daily wages, not holding any post, are not entitled. (ii) The dependents of work-charged employees are not entitled to claim appointment on compassionate ground and entitled to claim appointment on compassionate ground; and (iii) The work-charged employees working against a post, in regular scale of pay, on their retirement and after their death, their heirs/ dependents are entitled to claim death-cum-retiral benefits, such as, pension/ family pension, gratuity, leave encashment etc. apart from G.P.F. and Group Insurance amount, if otherwise fulfills the requisite qualifying period to earn pension, gratuity and leave encashment. It is also apparent from the records of the case that the petitioner's appointment was cancelled on 08.11.1997 and has approached this Court in the year 2012 i.e. after a lapse of 20 years of said cancellation which itself is sufficient ground for dismissal of the instant writ petition on the ground of belated claim. Compassionate appointment cannot be claimed as a matter of right. In para-4 of the Judgment passed in MMTTC Ltd. v. Pramoda Dei reported in (1997) 11 SCC390 it is observed by the Court

4. As pointed out by this Court, the object of compassionate appointment is to enable the penurious family of the deceased employee to tide over the sudden financial crisis and not to provide employment and that mere death of an employee

does not entitle his family to compassionate appointment. In *S. Mohan V. Govt. of T.N.* Reported in (1998) 9 SCC485 the Court stated that

4. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over. Similar was the view taken in the case of *Umesh Kumar Nagpal v. State of Haryana* [(1994) 4 SCC138. 4 W.P.(S) No. 3636 if 2912

6. the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole breadwinner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over.

7. As a cumulative effect of the aforesaid facts, guidelines and judicial pronouncements, this Court is of the considered opinion that at the time when case of the petitioner was considered and compassionate appointment was cancelled, husband of the petitioner was not a regular employee and as such, the appointment was rightly cancelled. No appointment can be given with retrospective effect and also in view of the fact that petitioner has approached this Court after twenty years from the date of death of her husband. The decision of the Full Bench of this Court in the case of *Ram Prasad Singh (Supra)* has already held that the dependent of a deceased work-charged employee has no right to claim compassionate appointment. This Court, therefore, not inclined to interfere with the impugned order.

8. This writ petition is accordingly dismissed. (Dr. S.N. Pathak, J.) RC/

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