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Court : Orissa

Decided On : Nov-21-2008

Reported in : [2009(121)FLR374]; 2009(I)OLR316

Judge : L. Mohapatra and; Indrajit Mahanty, JJ.

Appellant : The Union of India (Uoi) and ors.

Respondent : Sri Pradipta Kumar Jena and ors.

Disposition : Appeal allowed

Judgement :

I. Mahanty, J.

1. In the present writ application, the Union of India has sought to challenge the judgment dated 9.8.2001 passed in O.A. No. 483 of 1995 by the Central Administrative Tribunal, Cuttack Bench, Cuttack allowing the same and directing that the applicant, namely, Pradipta Kumar Jena-Opp.Party No. 1 who had been appointed as 'Postman' under the 'Compassionate Appointment Scheme' is entitle to the post of 'Postal Assistant'.

2. Learned Counsel for the Union of India, inter alia, submitted that the applicant-Opp.Party No. Vs father retired on invalidation on 4.11.1993 while he was serving the Department and the Circle Relaxation Committee in their meeting/proceeding

dated 23.11.1994 approved the compassionate appointment of Opp.Party No. 1 under the Postman cadre. It was further submitted that the applicant was duly trained and joined in the post of Postman on 6.1.1995. The case of the applicant/O.P. No. 1 was that, although, he had joined as Postman under the compassionate appointment Scheme, the private Opp.Parties' 2 to 4 who had also been similarly approved for compassionate appointment to the posts of Postman and had undergone training, did not join in the said post and later on the said private Opp.Parties were appointed as Postal Assistants, thereby discriminating against the applicant.

3. The applicant's contention was that there was no distinction between the applicant and the private Opp.Parties 2 to 4 in their claim for compassionate appointment and had been trained together, but since the need of the applicant was far greater than that of the private Opp.Parties, he was compelled to accept the post of Postman whereas the private Opp.Parties chose not to join the post of Postman and requested for appointment as Postal Assistants.

4. Learned Counsel for the Union of India submitted that the appointment under the Compassionate Appointment Scheme is guided by the Circular of the Government of India, Ministry of Personnel, Public Grievances and Pensions dated 30th June, 1987 (Annexure-2) and in terms of the aforesaid guideline, no request for change in post was entertainable under the provisions contained in Clause-10 thereof. Clause-10 of the said Circular is quoted herein below:

10. Request for change in Post: When a person has accepted a compassionate appointment to a particular post, the set of circumstances which led to his initial appointment, should be deemed to have ceased to exist and thereafter the person who has accepted compassionate appointment in a particular post should strive in his career like his colleagues for future advancement and claims for appointment to higher post on consideration of compassion should invariably be rejected.

5. Learned Counsel for the petitioner submitted that misplaced reliance was placed by the Tribunal on a judgment of the Hon'ble Supreme Court in the case of Smt. Kamala Gaiind v. State of Punjab and Ors. 1992 (5) SLR 864 inasmuch as though the Hon'ble Supreme Court in the aforesaid case found no justification for

distinction between the parties in the said case, yet in the said case the Hon'ble Supreme Court was not dealing with interpretation of Compassionate Appointment Scheme of the Government of India under Annexure-2. Learned Counsel submitted that in terms of Clause-10 of the Compassionate Appointment Scheme, once the applicant accepts the compassionate appointment and joins the post offered, the set of circumstances which led to his initial appointment, should be deemed to have ceased to exist and thereafter, any application for consideration to the higher post thereafter have to be rejected.

6. Learned Counsel appearing for the applicant-Opp. Party No. 1 urged that the applicant had been discriminated against and his financial condition was such that no sooner he was offered a job of Postman and his needs were so great that he had no option other than to accept the post. He further submitted that the private Opp. Parties though similarly circumstanced as the applicant, chose not to accept the post and later on were offered the post of Postal Assistants. Placing reliance upon the aforesaid judgment of the Apex Court in the case of Smt. Kamala Gaiind (supra), learned Counsel for Opp. Party No. 1 supported the judgment of the Central Administrative Tribunal. He had also drawn the attention of the Court towards some observations made by the Hon'ble Supreme Court in the aforesaid case.

In the case of Smt. Kamala Gaiind (supra) it was noted by the Hon'ble Apex Court that the respondents therein i.e. the State of Punjab had failed to indicate any justification for discrimination. In the present case, the Union of India has placed heavy reliance on the Scheme of the Government of India for compassionate appointment under Annexure-2 and while denying discrimination, it has placed reliance on Clause-10 thereof whereby, once an applicant for compassionate accepts a job under the Department, such person shall not to be entitled to seek higher post other than by way of promotion. The said Scheme further stipulates that once an applicant accepts a post, 'the circumstance which led to his initial appointment should be deemed to have ceased'. In other words, we are of the view that once an applicant for compassionate appointment accepts the post offered to him under the compassionate appointment scheme, such a person can no longer remain an applicant and his name in the list of applicants stand deleted

and such a person becomes an employee under the department.

7. We are in agreement with the contentions advanced by the learned Counsel for the petitioner and are of the view that the case of Smt. Kamala Gaind (supra) is clearly distinguishable from the case at hand in view of Clause-10 of the Compassionate Appointment Scheme under Annexure-2, no plea of discrimination against the applicant can be substantiated/nor entertained.

We are further of the view that the allegation of discrimination between the applicant-O.P. No. 1 and the private opposite parties cannot and does not arise since the applicant had accepted the appointment differed, i.e. the post of postman whereas the private opposite parties though offered the post of postman and had undergone training, had not accepted such appointment. Therefore, it is clear that the applicant and the private opposite parties are no more in the same category for entertaining any allegation of discrimination. In other words, the applicant and the private opposite parties due to subsequent development form separate categories and hence, no allegation of discrimination between the persons in separate category can be entertained.

8. In view of the aforesaid conclusion reached by us, the writ application is allowed and the impugned judgment of the Tribunal dated 9.8.2001 (Annexure-1) passed in O.A. No. 483 of 1995 is quashed. No costs.

L. Mohapatra, J.

9. I agree.

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