

The General Manager Vs. Smt.Saloma

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Court : Kerala

Decided On : Jul-15-2015

Judge : Honourable Mr.Justice P.R.Ramachandra Menon

Appellant : The General Manager

Respondent : Smt.Saloma

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE P.R.RAMACHANDRA MENON & THE HONOURABLE MR. JUSTICE BABU MATHEW P.JOSEPH WEDNESDAY, THE 15TH DAY OF JULY 2015 24TH ASHADHA, 1937 OP (CAT).No.115 of 2015 (Z) ----- AGAINST THE

ORDER

IN OA3962014 of CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH DATED 14-01-2015 ----- PETITIONERS/RESPONDENTS IN O.A.: ----- 1. THE GENERAL MANAGER, SOUTHERN RAILWAY, PARK TOWN P.O., CHENNAI - 600 003.

2. THE CHIEF ELECTRICAL WORKSHOP ENGINEER, PERAMBUR, SOUTHERN RAILWAY, CHENNAI - 600023. BY ADV. SRI TOJAN J.VATHIKULAM, SC, RAILWAYS RESPONDENTS/APPLICANTS IN O.A.: ----- 1. SMT.SALOMA, W/O BERTHALOME JOSEPH,

VILAYIL VEEDU, KANDACHIRA, PERINAD P.O., KOLLAM - 691 601.

2. KU. B. LOVELY, D/O BERTHALOME JOSEPH, VILAYIL VEEDU, KANDACHIRA, PERINAD P.O., KOLLAM - 691 601. THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 1507-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: OP (CAT).No.115 of 2015 (Z) APPENDIX PETITIONER'S EXTS EXT.P1:- TRUE COPY OF THE OA NO.396/14 ON THE FILES OF THE CAT (ERNAKULAM BENCH). EXT.P2:- TRUE COPY OF THE REPLY STATEMENT IN OA39614. EXT.P3:- THE COPY OF THE

ORDER

OF THE CAT (ERNAKULAM) BENCH IN OA39614 DT. 14/1/15. P. R. RAMACHANDRA MENON & BABU MATHEW P. JOSEPH, JJ.

----- O. P. (CAT) No.115 of 2015
----- Dated this the 15th day of July, 2015

JUDGMENT

P. R. Ramachandra Menon, J.

Challenge is against Ext.P3 order passed by the Central Administrative Tribunal, Ernakulam in O.A. No.396 of 2014 dated 14/01/2015, directing the Railways to reconsider the application preferred by the respondents herein claiming compassionate appointment.

2. The undisputed facts reveal that the son of the first respondent and the brother of the second respondent was selected and appointed to the post of Skilled Artisan under the petitioners herein and he joined duty on 18/09/2002. While undergoing training as a new recruit in the Southern Railway, he met with a Train accident on 24/11/2002 and bid farewell to this world. Met with the situation and by virtue of O. P. (CAT) No.115 of 2015 -2- the scheme prevailing to provide compassionate employment assistance, application was preferred in this regard, seeking employment to the second respondent herein, who has passed SSLC in first class and has also passed trade test in the trade of Printing and Composing. The application preferred in this regard was rejected as per Annexure-A3

communication stating that the father of the deceased employee was alive and as such, there was no question of any dependency in the case of the second applicant, i.e., the sister of the deceased. The turn of events made the applicants to approach the Tribunal by filing the O.A. seeking for immediate interference and to direct the concerned respondent to consider the second applicant for compassionate appointment at the earliest. A plea was also raised as to the eligibility of the second applicant to have the benefit of Section 33 of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full O. P. (CAT) No.115 of 2015 -3- Participation) Act, 1995 (hereinafter referred to as the "Act") in respect of 3% of vacancies to be reserved in every establishment, by virtue of her physical hearing impairment as certified by the competent authorities.

3. O.A. was sought to be resisted from the part of Railways, referring to the absence of dependency, the father being a 'fisherman' and further that the question of dependency did not arise as the deceased was only on training, having completed just 'three months' from the date of joining the service. It was also contended that the name of the second applicant who happened to be the sister of the deceased was never entered in the employment records. After hearing both the sides, the Tribunal observed that the father of the deceased was of much advanced age and the alleged avocation as 'fisherman', by itself, could not have been a bar so as to have assessed the dependency.

4. Admittedly, the second applicant is a person O. P. (CAT) No.115 of 2015 -4- suffering from 90% deformity by virtue of being 'deaf and dumb'. The Tribunal also observed that the question of dependency depends upon various aspects and the matter ought to have been considered by the Railways with a practical sense of approach and understanding. The observations made by the Tribunal in paragraph 7 of the order are relevant and hence extracted below: "7. 2nd applicant admittedly suffers from the handicap of being deaf and dumb with 90% deformity. She can certainly be considered as a dependent of the deceased employee simply because of her disability. Naturally, a deaf and dumb sister would have looked upon the deceased as a supporter for her livelihood. While evaluating dependency, one cannot be pedantic and strict to the text book models of dependency. Human relationships, ethos of the society, ordinary course of human

conduct in the Indian village families and the haplessness of a disabled member in the family are factors which are to be reckoned for deciding the dependency of the disabled persons on other members of the family. The respondent Railway ought to have considered the above extenuating factors for treating the 2nd applicant as the dependent of the employee at the time of his death." O. P. (CAT) No.115 of 2015 -5- 5. While making the above observations, the object and scope of the 'Act' providing reservation to an extent of 3% for accommodating persons with disability against identified posts was also referred to in paragraph 8 and it was accordingly, that the Railway was directed to reconsider the matter by giving a direction as contained in paragraph 10 which reads as follows:

"0. In the above circumstance and in the light of the realities pointed out in this order, the respondents are directed to reconsider the request of 2nd applicant for employment on compassionate grounds. Respondents shall consider her for an employment that is suitable to her physical abilities. Respondents are directed to take a decision on her request in the light of the observations in this order and to pass appropriate orders within two months from the date of receipt of a copy of this order. Ordered accordingly. No costs." 6. After hearing the learned Standing Counsel for the petitioners at length, we have not been appraised of any tenable ground to call for interference with regard to the direction given by the Tribunal. It is for the competent O. P. (CAT) No.115 of 2015 -6- authority to consider the matter in the light of the observations made by the Tribunal and also considering the very purpose and object behind the scheme. Interference is declined. The Original Petition stands dismissed. Sd/- P. R. RAMACHANDRA MENON JUDGE Sd/- BABU MATHEW P. JOSEPH JUDGE kns/- //TRUE COPY// P.A. TO JUDGE

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