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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of Decision: 29th March, 2023***

+ **W.P.(C) 11187/2016 & CM APPL. 48555/2022**

SMT. KANTA DEVI & ANR. Petitioners
Through: **Mr. Sarvesh Singh, Advocate.**

versus

**DIRECTOR OF INDUSTRIES GOVT OF ORISSA
& ORS** Respondents
Through: **Mr. Shashank Bajpai and
Mr. Shubhankar Singh, Advocates for R-1 to
R-3.**

**CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH**

JUDGEMENT

JYOTI SINGH, J. (ORAL)

1. Present writ petition has been filed assailing the order dated 11.07.2016 whereby Respondent No. 3 has rejected the application of Petitioner No. 2 for appointment under the Rehabilitation Assistance Scheme (hereafter referred to as 'RA Scheme').
2. Factual matrix relevant to the extent relevant for disposal of the present petition is that Petitioner No.1 is the widow of late Shri R.B. Kanojia, who expired on 01.01.2003 after rendering service as Peon with the Respondents from 1972. Petitioner No. 2 is the son of Petitioner No.1 and the deceased is survived by two unmarried daughters in addition to Petitioner No. 2.
3. At the time of death of late Shri R.B. Kanojia, his family was in a state of penury and there was no bread earner for the surviving members. Since there was a provision of compassionate appointment under RA Scheme, Petitioner No.1 made a representation in October,

2003 requesting Respondent No.3 for considering the case of Petitioner No.2 for appointment on compassionate grounds. Representation was also made to Respondent No.1 in this behalf. Respondent No.3 vide letter dated 15.11.2003 asked Petitioner No.1 to submit the application in the prescribed format along with affidavits of all legal heirs of her deceased husband and also giving their no objection for appointment of Petitioner No.2. The requisite formalities were complied with by the Petitioners and thereafter, Respondent No.3 sought a report from DC (South West), GNCTD in February, 2004 to ascertain the financial status of the family, however, there was no response and Respondent No. 3 again sent a reminder on 06.10.2004 to the DC (South West) for submission of the report. Some correspondence was thereafter exchanged between Respondent No. 3 and DC (South West) including an enquiry conducted by the field staff of SDM Office. Report dated 13.04.2007 was finally sent to Respondent No. 3, according to which the family of the Petitioners was in financial distress and was in dire need of job.

4. Between 2007 to 2015, despite reminders by Petitioner No.2 to process his case for appointment, no concrete step was taken by the Respondents, save and except, exchange of letters between Respondent No. 3 and the Office of SDM. In 2015, the concerned Tehsildar sent the verification report of the Petitioners to Respondent No. 3 along with other necessary documents including the application filled by Petitioner No.2 duly signed and stamped by the Collector in Part-IV of the application to Respondent No.3.

5. After a prolonged correspondence and keeping the application of Petitioner No.2 pending for so long, suddenly on 11.07.2016 Respondents issued an order rejecting the application for compassionate appointment under RA Scheme on the ground that

there is no justification rendered by the Petitioners as to why the spouse of the deceased did not apply for appointment and reliance was placed on the provisions of Rule 2(b) r/w Rule 9(7) of OCS Rules, 1990 (hereinafter referred to as '1990 Rules'). It is this order which is impugned by the Petitioners in the present writ petition.

6. Contention of the learned counsel appearing on behalf of the Petitioners is that after the death of late Shri R.B. Kanojia, Petitioner No.2 had applied for compassionate appointment since RA Scheme had a provision to that effect. Respondent No.3 had asked the Petitioners to submit the application in the prescribed format and there is no dispute that the same was done and all requisite documents including affidavits of legal heirs, no objections of the other legal heirs, affidavits, etc. were furnished. The enquiry report submitted by the office of the Tehsildar established beyond doubt that the Petitioners were in a state of penury and financial distress and certified the annual income of the entire family, which clearly entitled Petitioner No.2 for appointment on compassionate grounds.

7. Matter was prolonged and delayed at the end of the Respondents and the office of the SDM, by merely corresponding with each other and taking no concrete steps for the appointment and despite keeping the application pending for over a decade, the same was rejected on frivolous and misconceived grounds that no justification was provided by the Petitioners as to why the spouse of the deceased i.e. Petitioner No.1 had not applied for compassionate appointment. A bare perusal of Rule 2(b) of 1990 Rules shows that it defines 'family members' to include wife/husband, sons, unmarried daughters, etc. in the order of preference and does not provide that if the spouse does not apply, the sons in the next order of preference are debarred from applying for compassionate appointment.

8. It was urged that Respondents have completely overlooked the aim and objective of the RA Scheme, pertaining to compassionate appointment which is financial assistance to the family of a deceased employee, so that after the source of livelihood is lost, the family can lead a dignified life and earn its bread and butter, which is a fundamental right enshrined under Article 21 of the Constitution of India.

9. Counter affidavit has been filed on behalf of the Respondents, wherein it is stated that after the application was filed by Petitioner No. 1 for appointment of her son Petitioner No. 2, it was noticed that it was not in the required format and Respondent No. 3 furnished copies of the prescribed application and the affidavit format to submit correct application with all documents in support of age, qualification, experience and affidavit from other family members giving their no objection to appointment of Petitioner No. 2 and an affidavit from Petitioner No. 2 that he shall maintain the family of the deceased, under intimation to office of Deputy Director of Industries, Government of Odisha, Delhi (hereinafter referred to as 'DDI'). Application was forwarded by DDI along with requisite documents which was not complete in all respects and after the formalities were completed the application in duplicate was sent by Respondent No. 3 to the office of Divisional Commissioner (South West), GNCTD on 01.03.2004 with a request to make inquiry with respect to financial status of the family of the Petitioners followed by reminders. No response was, however, received for several months from the said office and finally, the concerned SDM sent a letter dated 11.03.2005 enclosing the copy of the enquiry report with statement of two witnesses, however, without enclosing the relevant documents. Request was made to send all the documents which were sent under a

letter dated 27.07.2005 including death certificate of the deceased and Surviving Member Certificate of his family. Respondent No. 3 informed Petitioner No. 1 to pursue the matter with the office of the Divisional Commissioner (South West) which she did but the matter remained pending till 2011. Finally, after prolonged correspondence Respondent No. 3 forwarded the application to Handloom, Textile and Handicraft Department, Government of Odisha, with all testimonials on 23.11.2015 from where certain clarifications were sought and given. However, the application was rejected by the office of Director of Handicrafts and Cottage Industries on the ground that there was no justification provided by the Petitioners as to why Petitioner No. 1 being the spouse of the deceased employee had not applied for appointment. The Respondents are not at fault as the matter was constantly under examination but since the rule position does not permit the appointment of Petitioner No. 2, no relief ought to be granted by this Court.

10. I have heard the learned counsel for the parties and examined their contentions.

11. It is not in dispute that deceased husband of Petitioner No.1 was appointed as Peon in 1972 at Orissa Emporium, New Delhi and unfortunately expired on 01.01.2003. Soon thereafter Petitioner No.1 applied for compassionate appointment of Petitioner No. 2, her son, as per the RA Scheme. It is also seen from the documents filed on record by the respective parties that the matter was under examination and correspondence was exchanged between the offices of Respondent No. 3, concerned Divisional Commissioner/SDM/Tehsildar etc. and the Petitioners were diligently pursuing the matter and providing every document as and when called for.

12. Having kept the matter pending for over a decade, the Respondents have now rejected the application of Petitioner No. 2 on the sole ground that there was no justification provided as to why Petitioner No. 1 being the spouse of the deceased employee did not apply as the spouse is first in the order of priority under the definition of ‘family members’ provided in Rule 2(b) of 1990 Rules. In order to appreciate this stand, it will be relevant to extract the said provision hereunder, for ready reference:-

“2. In these rules, unless the context otherwise requires-

...

(b) ‘Family Members’ shall mean and include the following members in order of preference –

(i) Wife/Husband;

(ii) Sons or step sons or sons legally adopted through a registered deed;

(iii) Unmarried daughters and unmarried step daughter;

(iv)[Widowed daughter or daughter-in-law residing permanently with the affected family.]

(v) Unmarried or widowed sister permanently residing with the affected family;

[(vi) Brother of unmarried Government servant who was wholly dependent on such Government servant at the time of death]”

13. Be it noted that the aim and objective of the RA Scheme is to provide a succour to the family of the deceased employee on his sudden death in harness so that the family tides over the financial distress and one member of the family on employment in the same department is able to earn a living for the family and himself. It is not the case of the Respondents that the Petitioners or their family was or is not in financial distress or that the economic condition is not such that compassionate appointment is not the need of the hour. In fact, quite to the contrary, there is a report from the Office of the SDM certifying the state of penury of the family and the need for compassionate appointment. On a pointed query, counsel for the

Respondents is not able to controvert the argument of the Petitioners that even today, the family has meagre source of income. The only issue that therefore requires examination is whether the impugned order passed by the Respondents premised on Rule 2(b) of 1990 Rules can pass muster.

14. Rule 2(b) provides that family members would mean and include the spouse i.e. wife/husband, sons, unmarried daughters, etc. and these are detailed in an order of preference/priority. The word 'preference' is really the bone of contention between the parties. Respondents understand preference to mean that unless the spouse applies for compassionate appointment, the next relation in the order of preference cannot apply, while according to the Petitioners, there is no such bar and the order of preference only means that if the spouse and a son or daughter apply, as per the eligibility in the said Rule, then between the various applicants, the order of preference will prevail to decide who gets the appointment first.

15. This Court entirely agrees with the stand of the Petitioners. 'Preference' can only mean giving advantage to one over the other i.e. a choice that one can exercise or a priority that one can avail as against the other. Simply put, if two or more persons come under the definition of 'family members' and apply for the post, then in deciding the application advantage/preference will be given to the one who comes first in the order of preference going by the seriatim in the definition. As an illustration, if the widow of the deceased employee and the son both apply for compassionate appointment, then as per the order of preference under Rule 2(b), the widow will be given preference, however, this Rule can by no stretch of imagination be interpreted to mean that if the widow does not apply, the son is debarred from making an application. Accepting the interpretation

given by the Respondents would defeat the whole object of the RA Scheme of compassionate appointment.

16. Significantly, the Respondents have stated in the counter affidavit that they had regularly and meticulously processed the application of Petitioner No. 2 for appointment but there was administrative delay in moving the files. It is evident from the reading of the affidavit that the Petitioners were diligent in prosecuting their case before the concerned Authorities and at each step whatever documents were required to be submitted and/or whatever formalities were required to be complied with, were complied and it cannot be said that there was any lack of follow up or diligence on their part. The documents also show that the matter was under active consideration of the Respondents and as soon as the impugned decision dated 11.07.2016 was communicated to the Petitioners, they approached this Court. It is also not the stand of the Respondents even today that there is a change in the financial condition of the Petitioners or their family and in fact, on a pointed query to the counsel for the Petitioners, it is stated that Petitioner No.2 has not got employment in all these years and is doing a job of a daily wager for a meagre wage. This position is not denied by the Respondents.

17. Keeping in backdrop the aim and objective of a compassionate appointment and also the admitted factual position that Petitioners are not at fault in prolonging the matter, this Court is of the view that the matter requires to be revisited by the Respondents on merits of the case under the RA Scheme and 1990 Rules. It is open to the Respondents to conduct an enquiry into the current financial status of the Petitioners. However, the entire exercise will be completed within three months from today. It is made clear that the fact that Petitioner No. 1/widow of the deceased employee had not applied for

compassionate employment, will not be an impediment in the way of considering the case of Petitioner No. 2. It is also made clear that if Petitioner No. 2 is found entitled for compassionate appointment, age relaxation, if required, shall be given to him since Petitioners are not responsible to the delay in processing their claim. The decision taken shall be communicated to the Petitioners, who will be at liberty to take recourse to legal remedies in case of the decision being adverse to them, if so advised.

18. Writ petition is disposed of in the aforesaid terms along with the pending application.

JYOTI SINGH, J

MARCH 29, 2023/shivam/pkv

