
(2007) 4 ALD 747 : (2007) 115 FLR 298

Andhra Pradesh High Court

Case No: CMA No. 153 of 2004

Divisional Railway
Manager, South
Eastern Railway

APPELLANT

Vs

Kolli Narayanamma

RESPONDENT

Date of Decision: Sept. 12, 2006

Acts Referred:

- Limitation Act, 1963 - Section 5
- Workmens Compensation Act, 1923 - Section 30

Citation: (2007) 4 ALD 747 : (2007) 115 FLR 298

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Gouri Shankar Sanghi, SC, for the Appellant; Y.V. Ravi Prasad, for the Respondent

Final Decision: Allowed

Judgement

L. Narasimha Reddy, J.

This CMA is filed u/s 30 of the Workmen's Compensation Act (for short "the Act") against the order dated 14-10-2003 passed by the Commissioner for Workmen's Compensation and Assistant Commissioner of Labour, Circle-I, Visakhapatnam (for short "the Commissioner"), in W.C.M.P. No. 1 of 2003 in W.C. Case No. 29 of 2001.

2. One Sri Kolli Appa Rao, the husband of the 1st respondent and father of respondents 2 and 3, was employed as Senior Gangman in the South Eastern Railways. He died on 25-3-2000, while in employment. The respondents filed W.C. No. 29 of 2001 before the Commissioner, claiming compensation under the Act. The case was dismissed on 30-10-2001, for default. The respondents filed an application for setting aside the order, dismissing the W.C. case for default. Since there was delay of 411 days in presenting the application, they filed W.C.M.P. No. 1 of 2003 for condonation of the same. It was pleaded that the 1st respondent was suffering from heart problem and she could not

appear on the relevant date. The application was opposed by the appellant. They pleaded that several relevant factors were suppressed, and that the 1st respondent misrepresented before the Court in the matter of condonation of delay. Through the order under appeal, the Commissioner condoned the delay.

3. Sri Gouri Shanker Sanghi, learned Standing Counsel for the appellant submits that the respondents and in particular, the 1st respondent got the claim dismissed, to pave the way for consideration of the case of one of her sons, for being appointed on compassionate ground, and having secured the employment, they tried to resurrect the O.P., by misrepresenting the facts. He contends that the averment, as to the illness of the 1st respondent was as vague as it could be, and even if it is true, nothing prevented the respondents 2 and 3 from pursuing the proceedings.

4. Sri Y.V. Ravi Prasad, learned Counsel for the 1st respondent, on the other hand, submits that providing employment on compassionate grounds cannot be a factor, to defeat or deny the claim under the Act. He contends that those two aspects are different from each other, and that no exception can be taken to the condonation of delay.

5. The appellant challenges the order passed by the Commissioner condoning the delay of 411 days. Whatever may be the stringency in the matter of condonation of delay, in other proceedings, in the matters relating to the extension of social security benefits, such as the claims under the W.C. Act or Motor Vehicles Act, the approach is somewhat liberal. Though law requires that each day's delay must be explained, the endeavour in such cases would be, to ensure that the concerned persons are extended the facility of seeking the adjudication of the matter on merits, except where the delay was deliberate or where the parties have attempted to mislead the adjudicatory authorities.

6. In the instant case, the claim was presented by the respondents herein, seeking benefit under the Act on account of the death of late Appa Rao. The W.C. case was dismissed for default on 30-10-2001. In her affidavit filed for condonation of delay of 411 days, the 1st respondent stated that though she was given the necessary information by her Counsel, she could not appear in the proceedings, since she suffered from heart problem and she was not able to move from the bed at the relevant point of time. She further stated that the Doctor advised her to take bed rest for a long time and she could recover from illness only after about 400 days. If there was even a semblance of truth in this, no exception can be taken to condonation of delay.

7. In their counter-affidavit, filed before the Commissioner, the appellant pleaded that the respondents pursued the proceedings in relation to seeking employment on compassionate grounds and enclosed a copy of the representation dated 12-11-2001, submitted by the 1st respondent. Appellant pleaded that, the respondents represented that they have withdrawn W.C. case and prayed for providing compassionate appointment, and having secured the said benefit, they have turned round in the matter. The Tribunal did not accept this contention, on the ground that the case was dismissed

for default; but was not withdrawn.

8. It is no doubt true that the order dated 30-10-2001 discloses that the W.C. case was dismissed for default. Twelve days thereafter, the 1st respondent filed a representation dated 12-11-2001, which reads as under:

I have withdrawn the W.C. case filed by the before the Commissioner for W.C. Visakhapatnam, and a copy of order dismissing my appeal is enclosed herewith.

I request you to provide appointment on compassionate ground to my son at an early date and oblige.

9. Acting on this representation, the appellant had provided employment on compassionate grounds. It is thereafter, that an application is filed for setting aside the order, dismissing the W.C. for default.

10. The representation dated 12-11 -2001 had its own bearing on the subject-matter, from more angles than one : Firstly, it belies the theory that the 1st respondent that she was so seriously ill, that she could not move anywhere, as pleaded in her affidavit filed in the application, u/s 5 of the Limitation Act. Secondly, it clearly discloses that her intention was to withdraw the claim before the Commissioner, as a prelude to seek employment to her son, on compassionate grounds. Viewed in this context, the dismissal of the claim for default, is obviously a circumstance, specifically invited and created by the respondents. It is important to note that the dismissal was on 30-10-2001, the representation was on 12-11-2001, and employment was provided in January, 2002. Therefore, the plea in the application filed u/s 5 of the Limitation Act; the dismissal was on account of the reasons beyond her control, cannot be accepted.

11. Extensive submissions were made by the learned Counsel for the respondents, that providing employment on compassionate grounds cannot be in lieu of benefit under the Act. There is nothing in law to suggest that one is to the exclusion of the other. However, it must not be forgotten that the whole concept of providing employment on compassionate grounds, was the outcome of several decisions rendered by the Supreme Court and High Courts and in the recent past, the Supreme Court took the view that compassionate appointment can be provided only in deserving cases, that too, where it is found that the family of the deceased is suffering from financial destitution, even after receiving various benefits. The respondents realized that if they were to have received the benefit under the claim, the basis for seeking appointment on compassionate grounds becomes shaky and in unequivocal terms, they have represented to the employer, that they have withdrawn the claim under the Act.

12. Apart from the legal implications of these steps, one thing, which clearly emerges is that, the 1st respondent was not truthful in her statements, and she made contradictory statements before the Commissioner on the one hand, and the employer of her deceased husband, on the other hand. She may have been driven by necessity in the whole

episode. But, once it emerges that the statement made by her in the context of condonation of delay is not truthful, and that there was deliberate attempt to mislead the Commissioner, she is not entitled to be shown indulgence, which the persons, who plead the correct facts; are extended. Irrespective of the nature of the benefits that may accrue to the respondents, allowing such applications or acceptance of such deliberate misrepresentations, would tell upon the vulnerability of the adjudicatory system. Sympathy too, has its own limits, and cannot be extended to persons, who have misled the authorities, while invoking it.

13. For the foregoing reasons, the CMA is allowed and the order under appeal is set aside.

14. There shall be no order as to costs.