(2013) 03 CAL CK 0057

Calcutta High Court

Case No: WPCT No. 758 of 2007

Director General, Employees'' State Insurance Corporation		APPELLANT
	Vs	
Bharati Banerjee		RESPONDENT

Date of Decision: March 22, 2013

Citation: (2013) 3 CHN 650

Hon'ble Judges: Indira Banerjee, J; Anindita Roy Saraswati, J

Bench: Division Bench

Advocate: Tarun Kumar Chatterjee, for the Appellant;Kashinath Dey and Sandip Dey, for the Respondent

Final Decision: Dismissed

Judgement

Anindita Roy Saraswati, J.

The writ application has been filed by the Director General Employees'' State Insurance Corporation having its office at Panchdeep Bhawan, Kotla Road, New Delhi, 110002, challenging the order in connection with OA No. 1327 of 2005 by which the learned Tribunal directed the Director General again to consider the appointment of the applicant No. 2 i.e. the respondent No. 2 herein as and when vacancy would arise in the quota prescribed for compassionate appointment on the basis of the date of application. On 1st July, 2000 one Badal Kumar Bandopadhyay, Head Clerk of ESTC, who is the husband of the respondent No. 1 and father of the respondent No. 2 died in harness and accordingly on 28th July, 2000 the respondent No. 1 i.e. the wife of deceased Badal Kumar Bandopadhyay 2 made an application before the Regional Director, ESIC praying for an appointment in the Group-D category for respondent No. 2. She again made one representation on 3rd July, 2001 for compassionate appointment in favour of her eldest son i.e. the respondent No. 2.

2. The Deputy Director (Administration) by his letter dated November, 2003 intimated respondent No. 2 that his case was placed before the committee

consisting of Insurance Commissioner, Medical Commissioner and Additional Commissioner (PNA), ESIC. But the committee after going through the details of the case expressed its inability to appoint him on compassionate ground.

3. Thereafter, as per the direction of the Hon''ble Court and in connection with the WP No. 19903(W)/2003, the respondents filed an application before the Central Administrative Tribunal, Calcutta Bench, being OA No. 94/04, and after hearing the respective parties, the Learned Tribunal was pleased to dismiss the said application filed by the respondent Nos. 1 and 2.

4. Thereafter, respondent Nos. 1 and 2 moved before the Hon''ble High Court, Calcutta and whereby Their Lordships the Hon''ble Mr. Justice Aloke Chakraborty and Hon''ble Mr. Justice S.P. Talukdar were pleased to set aside the impugned order passed by the Tribunal with liberty to the applicant to make a representation enclosing a copy of the judgement in the case of Balbir Kaur (Supra) before the Director General for his consideration in accordance with law preferably within the period of three months from the date of the submission of such representation.

5. However, accordingly, the respondents made representation on 12th April, 2005 before the Director General which was also turned down by the Director General and with specified observation.

6. Against the said order the respondent Nos. 1 and 2 again moved before the Central Administrative Tribunal, Calcutta Bench, and the learned Tribunal considering the entire circumstances directed the Director General again to consider the appointment of the applicant No. 2 as and when vacancy would arise in the quota prescribed for compassionate of appointment on the basis of the date of application.

7. The petitioner being aggrieved by the said order preferred the present application challenging the order of the tribunal.

8. It is submitted by the learned Advocate on behalf of the petitioner that the Hon''ble Court directed the Director General to consider the representation filed by the present respondent Nos. 1 and 2 for giving appointment on compassionate ground considering the judgment of the Hon''ble Apex Court of India in connection with Balbir Kaur (Supra).

9. The said order was duly complied with by the Director General and also further considering the representation of the respondent Nos. 1 and 2 dated 12.4.05 it was observed that the committee did not find it a fit case for appointment on compassionate ground primarily due to non-availability of vacancies and also decided not to accept the request of the respondent Nos. 1 and 2 for being appointed on compassionate ground due to non-availability of vacancies. It was also further observed by the Director General that the case of Balbir Kaur (Supra) is not similar to the present case.

10. However, it was argued on behalf of the respondent Nos. 1 & 2 that till date no document or order is produced in any Court giving reasons for non-consideration of the case of the respondent No. 2. No-document was also produced by the petitioner regarding the waiting list for the purpose of appointment of the candidates on the ground of compassionate appointment and no steps were taken in terms of 7(e) and (f) of the office memorandum dated 09.10.1998. The case of the respondent No. 2 has been dealt with improper manner.

11. He further submitted that during the pendency of the O.A. No. 1327 of 2005 the petitioners gave appointment of respondent Nos. 5 and 6 and in spite of the direction given by the learned Tribunal, the petitioner failed to produce the original file relating to the appointment of the respondent Nos. 5 and 6.

12. Be that as it may, it appears to us that after the demise of the Badal Kumar Bandopadhyay, his wife Bharati Banerjee filed an application for appointment of her son on compassionate ground on 28.07.2000 and also gave representation on 28.05.2001 and the Director General (Admn.) of Employees'' State Insurance Corporation replied the application dated 28.05.01 on 13.08.01 and informed thereby that there was no vacancy in Group-D cadre in the W. Ben. region during the current requirement year. But after considering the earlier application dated July 28, 2000 the same Deputy Director in November, 2003 informed the respondent No. 2 that their case is not found a fit case for appointment on compassionate ground and there was no mention in the said letter that there was no vacancy in the Group D Cadre for giving appointment in compassionate ground.

13. However, it further appears that the petitioner by way of supplementary affidavit filed certain documents relating to the appointment of private respondent Nos. 5 and 6 as well as mentioning the existence of vacancies falling under 5 per cent quota i.e. the quota for appointment in the compassionate ground and on scrutiny of the document it is quite clear that in the year 2003 there was clear vacancies of 4 (four) posts in Group-D cadre under 5 per cent quota for appointment on compassionate ground out of which two vacancies were utilised for compassionate ground and two posts were still remaining vacant for a year.

14. But in spite of that, without giving any explanation, the present petitioner turned down the representation of the respondent Nos. 1 and 2 without assigning any reason but only stating that it was not a fit case for appointment on compassionate ground and in spite of the direction given by the Hon''ble Court in connection with WPCT No. 29 of 2005 by which the Director General was directed to reconsider the representation of the petitioner i.e. the present respondent Nos. 1 and 2 for compassionate appointment. But the said Director General turned down the representation given by the respondent Nos. 1 and 2 with a plea that "it is not a fit case" for appointment on compassionate ground due to non-availability of vacancies.

15. Considering the circumstances, we are in the opinion that the conduct of the present petitioner was not at all satisfactory and on the contrary learned Tribunal was quite justified in directing the Director General to consider the appointment of the respondent No. 2 on compassionate ground as and when vacancy would arise in the quota prescribed for compassionate appointment on the basis of the date of the application and we find nothing to interfere with the observation of the learned Tribunal.

16. Considering the above submission, we are in the opinion to dismiss the present application of the present petitioner and thus the present writ application is dismissed

17. There will be no order as to costs. Urgent certified photocopies of this judgement, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

Indira Banerjee, J.

I agree.