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UNION OF INDIA & ORS.

v.

AMRITA SINHA

(Civil Appeal Nos 7640-7641 of 2021)

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DECEMBER 11, 2021

**[DR. DHANANJAYA Y. CHANDRACHUD
AND A. S. BOPANNA, JJ.]**

- C *Service Law – Compassionate Appointment – Held: In evaluating a claim for compassionate appointment, it is open to the authorities to evaluate the financial position of the family upon the death while in service – If the scheme requires that the family pension must be taken into account in evaluating the merits of an application seeking compassionate appointment, it has to be followed.*

- D *Service Law – Compassionate appointment – Nature of – Held: It is not a matter of right, but is to enable the family to tide over an immediate crisis which may result from the death of the employee.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos.7640-7641 of 2021.

- E From the Judgment and Order dated 26.04.2018 of the High Court of Judicature at Madras in W.P. No.15982 of 2017 and W.M.P. No.17280 of 2017.

Ms. Madhavi Divan, ASG, S. S. Rizvi, Ms. Vaishali Verma, Ms. Seema Bengani, Arvind Kumar Sharma, Advs. for the Appellants.

- F Rabin Majumder, Adv. for the Respondent.

The following Order of the Court was passed:

ORDER

- G 1. Delay condoned.
2. Leave granted.
3. The Division Bench of the High Court of Judicature at Madras, by its judgment dated 26 April 2018, has affirmed the judgment and order of the Central Administrative Tribunal¹, directing the appellants to

H ¹ “Tribunal”

reconsider the claim of the respondent for appointment on compassionate grounds for a post corresponding to her qualifications against vacancies for 2014-15.

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4. The spouse of the respondent was holding the rank of Sargent in the Indian Air Force. During the course of his employment, he died due to cancer on 6 January 2008, leaving behind the respondent and two minor children. An application was filed by the respondent seeking compassionate appointment, but, it was rejected on 17 February 2011. A subsequent application which was filed on 11 February 2014 was also rejected on 16 June 2015 on the ground that the respondent had secured merit points which did not enable her to obtain compassionate appointment.

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5. The Union of India in the Ministry of Personnel, Public Grievances and Pensions (Department of Personnel and Training) issued an OM² on 9 October 1998 titled “Scheme of Compassionate Appointment under the Central Government”. On 22 January 2010, the Government of India in the Ministry of Defence³ issued an OM⁴ titled “Scheme of Compassionate Appointment Relative Merit, Point and Revised Procedure for Selection”. This was followed by another OM⁵ of the MoD dated 14 May 2010.

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6. Following the death of her husband, the respondent was in the receipt of a family pension in the amount of Rs 8,265 per month. The total terminal benefits which were paid to the respondent were in the amount of Rs 22,91,568. The case of the respondent for compassionate appointment was evaluated and merit points were assigned under various heads in terms of the procedure which was prescribed by the MoD. The respondent, however, submitted that the family pension at the above rate was payable from 7 January 2008 to 6 January 2018, after which the amount of pension would stand reduced to Rs 4,959 per month. On this basis, the respondent submitted before the Tribunal that she should have been awarded 16 merit points instead of 10 against the head of family pension. The Tribunal observed that the denial of compassionate appointment on the ground that the respondent was drawing a monthly pension of Rs 8,265 on the date of consideration of the case was not

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² OM No. 14014/6/94-Estt(D)

³ “MoD”

⁴ F.No.19(3/2009/D)(Lab)

⁵ F.No.19(3/2009/D)(Lab)

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- A justifiable as pension is paid for the service rendered by a deceased employee. Moreover, the Tribunal noted that the quantum of pension would stand reduced with effect from 7 January 2018 to Rs 4,959 per month and since the deceased employee had died due to a terminal illness, the family “might be in debt” and “might have sold the property for his treatment”, while, at the same time, observing that it was not going into those aspects. On this basis, the letter of rejection was quashed and the appellants were directed to reconsider the case. The High Court, while affirming the judgment of the Tribunal, has held that the authorities have erred in taking into account the family pension in the monthly income, since this was an *ad hoc* income earned by the respondent, instead of considering the regular pension which would be earned with effect from 7 January 2018.

7. We have heard Ms Madhavi Divan, Additional Solicitor General appearing on behalf of the appellants and Mr Rabin Majumder, Counsel appearing on behalf of the respondent.

- D 8. Ms Madhavi Divan submitted that the case of the respondent was considered strictly within the parameters of the OM and merit points were assigned. It has been urged that the authorities were justified in taking into account the family pension which was being earned as on the date of the consideration of the application and the fact that the pensionary payments would be reduced after a lapse of ten years would not be a ground to reassign the merit points in accordance with the Scheme. That apart, it was urged that the claim of the respondent had already been rejected on 17 February 2011 and even after a fresh claim was made for compassionate appointment, it was evaluated in terms of the Policy and the respondent was found not to be entitled to appointment on a compassionate basis.

- G 9. On the other hand, it has been submitted on behalf of the respondent that the case of the respondent was that the merit points which were assigned to her were incorrectly computed having due regard to the fact that the family pension of Rs 8,265 per month which became payable from 7 January 2008 would be reassessed at Rs 4,959 per month with effect from 7 January 2018. Mr Rabin Majumder placed reliance on the judgment of the Tribunal and has urged that having due regard to the financial condition of the respondent, the Court may not interfere with the judgment of the Tribunal on humanitarian grounds.

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10. While assessing the rival submissions, it becomes necessary, at the outset, to consider the reasons which weighed with the Tribunal since it is the view of the Tribunal which has been held not to suffer from error by the High Court. Under the policy document, which embodies the Scheme for considering cases for compassionate appointment, points are awarded under diverse heads. The monthly pension which was payable to the respondent was required to be taken into account in the award of merit points. The Tribunal, however, came to the conclusion that pension is paid for past service rendered by the employee and, hence, denial of compassionate appointment on that basis was not justifiable. This reasoning of the Tribunal is fallacious. Undoubtedly, pension is not an act of bounty, but is towards the service which has been rendered by an employee. However, in evaluating a claim for compassionate appointment, it is open to the authorities to evaluate the financial position of the family upon the death while in service. Compassionate appointment is not a vested right. It is provided in order to enable a family to tide over a financial crisis caused by the death of its wage-earner while in service. If the scheme requires that the family pension must be taken into account in evaluating the merits an application, it has to be followed.

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11. In the present case, the family pension which was payable as on the date of the consideration of the application has been taken into account. The fact that the pension would be up for revision in terms of the policy after a decade was not a reason to discard the pensionary payment which was being made towards family pension on the date of the consideration of the application for compassionate appointment.

12. Compassionate appointment is not a matter of right, but is to enable the family to tide over an immediate crisis which may result from the death of the employee. If the policy of the government envisages that the family pension would be paid for a ten years after which it would have to be modified, it cannot be said that by taking into account the present pensionary payment, the authorities have considered an extraneous circumstance. The same criterion is applied even handedly to all applicants seeking compassionate appointment.

13. The High Court has affirmed the view of the Tribunal by coming to the conclusion that the payment which was being made to the respondent was *ad hoc* in nature and was wrongly considered by the authorities while awarding merit points. This line of reasoning of the

- A High Court is equally erroneous as that of the Tribunal. The payment of the family pension was not an *ad hoc* amount, but, was evidently in accordance with the applicable service rules. The application of the respondent was initially rejected in 2011 and was, thereafter, again reconsidered in 2014. Absent a case of palpable arbitrariness, we are of the view that there was no reason for the High Court or the Tribunal to interfere with the evaluation which was conducted by the authorities in terms of the applicable guidelines. Moreover, we are clearly of the view that the grant of compassionate appointment would not be in accordance with the basic purpose and object of such a scheme.
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- C 14. For the above reasons, we allow the appeals and set aside the impugned judgment and order of the High Court dated 26 April 2018. The OA⁶ filed by the respondent shall, in the circumstances, stand dismissed.

15. Pending application, if any, stands disposed of.

Bibhuti Bhushan Bose

Appeals allowed.

⁶ OA No 310/01721/2015