Balbir Kaur & Anr vs Steel Authority Of India Ltd. & Ors on 5 May, 2000

Equivalent citations: AIR 2000 SUPREME COURT 1596, 2000 (6) SCC 493, 2000 AIR SCW 1745, 2000 LAB. I. C. 1900, 2000 (3) UPLBEC 2055, 2000 (6) SRJ 370, 2001 (2) SERVLJ 99 SC, 2001 (3) LRI 712, (2000) 6 JT 281 (SC), (2000) 7 JT 135 (SC), 2000 LAB LR 803, 2000 (4) SCALE 670, (2000) 2 LABLJ 1, (2000) 2 SCT 899, (2000) 2 CURLR 631, (2000) 3 MAD LW 78, (2000) 4 ANDHLD 72, 2000 SCC (L&S) 767, (2000) 97 FJR 43, (2000) 86 FACLR 197, (2000) 3 LAB LN 55, (2000) 3 RAJ LW 424, (2000) 4 SERVLR 334, (2000) 3 UPLBEC 2055, (2000) 4 SUPREME 602, (2000) 4 SCALE 670, (2000) 3 ESC 1618, (2000) 4 ANDH LT 65, (2000) 3 BLJ 674, (2000) 90 CUT LT 450

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Bench: U.C.Banerjee

CASE NO.:
Appeal (civil) 11881 of 1996
Appeal (civil) 11882 of 1996

PETITIONER:
BALBIR KAUR & ANR.

Vs.

RESPONDENT:
STEEL AUTHORITY OF INDIA LTD. & ORS.

DATE OF JUDGMENT: 05/05/2000

BENCH:
U.C.Banerjee, S,B,Majumdar

JUDGMENT:

L.....I.....T.....T.....T.....T.....T.....T..J J U D G M E N T BANERJEE,J.

The core question which falls for determination before this Court in these Civil Appeals pertain to the interpretation of Family Benefit Scheme as introduced in NJSC Tripartite Agreement of 1989

and the consequences thereof on the existing welfare measure as contained in NJSC Agreement in 1983: Whereas the Orissa High Court in the judgment impugned held that by reason of introduction of Family Benefit Scheme in terms of NJSC Tripartite Agreement in 1989, question of compassionate appointment would not arise the appellant herein contended that by reason of clause 8.14.1 in the 1989 Agreement; the requirement of compassionate appointment cannot possibly be given a go bye:

> It is an existing obligation and has been expressly saved. The appellant contended that having regard to constitutional obligation as regards Egalitarian society, the issue of compassionate appointment cannot and ought not to be trifled with the question therefore does not seem to be so simple as suggested by Mr. Bhasme the learned Advocate appearing for the respondents and the issue undoubtedly is one of the live issues to be decided by this Court, more so having regard to the constitutional mandate. Incidentally be it noted that the appeal No.11882 of 1996 (Smt. T.K. Meenakshi & Anr. V. Steel authority of India Ltd. & Ors.) has been tagged on to the main appeal as argued before this Bench (CA No.11881 of 1996: Balbir Kaur & Anr. Vs. Steel Authority of India Ltd. & Ors.) by reason of the consideration of the issue pertaining to the Family Benefit Scheme but the factual contexts are however at variance and it is in this perspective we deem it fit to advert to the factual matrix of both the matters briefly. In Civil appeal No.11881 of 1996: (Balbir Kaur & Anr. Vs. Steel Authority of India & Ors.) it appears that the appellants before this Court are the dependants of a deceased employee Hari Singh, who happened to be a technician working in the department of Captive Power Plant-II belonging to Steel Authority of India. The deceased employee was admitted to Ispat General Hospital on 4th August, 1992 and was treated for cancer till 24th September, 1992. At the same hospital the deceased employee however underwent surgery and subsequent thereto the latter was advised to undergo treatment at Meharbhai Tata Memorial Hospital and accordingly was admitted therein on 25th September, 1992 but was discharged on10th November, 1992 when he was asked to report further on 7th December, 1992. The employee Hari Singh, however, expired on 22nd November, 1992.
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> Further factual score in the matter in issue depicts that on 22nd January, 1993 a request for compassionate employment to the appellant No.2, who is the holder of a valid heavy vehicle driving licence, was made but unfortunately of no effect. Having, however, being denied of any consideration, the appellant herein moved the High Court and the latter upon a reasoned judgment negated the plea as raised in the writ petition before the High Court and hence the appeal before this Court. The other appeal (T.K. Meenakshi & Anr. Vs. Steel Authority of India: CA No.11882 of 1996) though pertain to the similar issue of Family Benefit Scheme, but since the factual score is at variance with Balbir Kaurs matter, it would be convenient to advert to the same briefly at this juncture. The appellants herein are the dependants of one M. Kesavam the deceased employee of respondent No.1. Kesavam during his life time was working as an operator in Coke Oven (Operation) of Rourkela Steel Plant of the Steel Authority of India. The appellant No.1 being the wife of the deceased employee

developed certain complications after a surgery at Ispat General Hospital and was advised to proceed to Christian Medical College, Vellore vide movement order dated 3rd January, 1994. The Service Conduct Appeal Rules read with Circular issued from time to time by the respondent No.1, entitles a lady patient for an escort as also travelling allowance and in terms therewith the deceased employee applied for grant of advance travelling allowance for himself as an escort and his wife as patient and was sanctioned an advance travelling allowance of Rs.3280/-. The factual score depicts that the appellant No.1 being accompanied by the deceased employee went to Vellore for medical treatment on 20th January, 1994 but whilst at Vellore the deceased employee fell ill somewhat seriously by reason wherefore the latter was admitted at the Christian Medical College Hospital at Vellore on 25th January, 1994 and on 28th January, 1994 the deceased employee breathed his last. The factual aspect therefore depicts rather a sad and dismal picture a person with a desire to have his wife treated at the Christian Medical College Hospital, goes to Vellore and there dies within three days after admission to the hospital. It is on this count that the widow of the deceased employee made a request to the Steel Authority of India for providing compassionate employment to the appellant No.2 since the bread-earner of the family unfortunately met with pre-mature death resulting into untold financial sufferings for the entire family. The representations went unheeded by reason wherefore a writ petition was moved before the High Court. The decision of the High Court as noticed above upheld the validity of the Family Benefit Scheme and answered the question of compassionate employment in the negative by reason of introduction of such a scheme. It is this order which has been impugned in this appeal before this court and since issues involving in both these two matters being identical as dealt with presently this matter has been tagged on to the other matter of Balbir Kaur as noted above. Before however, embarking on an inquiry in regard thereto it would be convenient to note however the necessary provisions of the NJSC Tripartite Agreement of 1983 as also of 1989. The same are set out herein below:-

Cl.7.16 NJCS Agreement, 1983 Cl.7.16: Employment.

Employment would be provided to one dependant of workers disabled permanently and those who meet with death. One dependant of the retiring employee would be provided employment, but in case of TISCO, the same would be subject to their Certified Standing Orders.

1989 Tripartite Agreement:

Cl.8.10.4: In case of death due to accident arising out of and in course of employment, employment to one of his/her direct dependant will be provided.

Cl.8.10.5: A Scheme would be introduced by NJCS for employees who die while in service or who suffer from permanent total disablement to receive monthly payments after the death/permanent total disablement of the employees, in case the

widow/employees deposit P.F. amount and Gratuity dues with the Companys separate trust constituted for this purpose. When finalised, the Scheme would be effective from 1.1.1989.

Cl.8.14.1: Benefits provided under the previous NJCS Agreement will continue, unless otherwise specified in this Agreement.

Cl.8.14.2: Merely as a consequence of the implementation of this Agreement, any facility, privilege, amenity, benefit, monetary or otherwise or concession to which an employee might be entitled by way of practice or usage, shall not be withdrawn, reduced or curtailed except to the extent and manner as provided for in this Agreement.

The employer being Steel Authority of India, admittedly an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under consideration acted like a model and an ideal employer It is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life the answer cannot however but be in the negative what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning: A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied, as it is likely to open a Pandoras Box This is the resultant effect of our entry into the new millenium. Can the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employees family by reason of the death of the bread-earner. It is in this context this Courts observations in Dharwad Distt. PWD Literate Daily Wage Employees Assn. & Ors. v. State of Karnataka & Ors. [1990 (2) SCC 396] seem to be rather apposite. This Court upon consideration of Randhir Sigh v. Union of India, [1988 (1) SCC122] as also Surinder Singh v. Engineer-in-chief [1986 (1) SCC 639]; and DS Nakara v. Union of India [1983 (1) SCC 305] observed in paragraphs 14 and 15 as below:

14. We would like to point out that the philosophy of this Court as evolved in the cases we have referred to above is not that of the court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty-second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. Jawaharlal Nehru, the first Prime Minister of this Republic while dreaming of elevating the lot of the common man of this country once stated:

Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organised on a planned basis for the raising of mankind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible; forcibly if necessary, and there seems to be little doubt that coercion will often be necessary.

These were his prophetic words about three decades back. More than a quarter of century has run out since he left us but there has yet been no percolation in adequate dose of the benefits the constitutional philosophy stands for to the lower strata of society. Tolstoy wrote:

The abolition of slavery has gone on for a long time. Rome abolished slavery. America abolished it and we did but only the words were abolished, not the thing.

Perhaps what Tolstoy wrote about abolition of slavery in a large sense applies to what we have done to the constitutional ethos. It has still remained on paper and is contained in the book. The benefits have not yet reached the common man. What Swami Vivekananda wrote in a different context may perhaps help a quicker implementation of the goal to bring about the overdue changes for transforming India in a positive way and in fulfilling the dreams of the Constitution fathers. These were the words of the Swami:

It is imperative that all this various yogas should be carried out in practice. Mere theories about them will not do any good. First we have to hear about them; then we have to think about them. We have to reason the thoughts out, impress them on our minds and meditate on them; realise them, until at last they become our whole life. No longer will religion remain a bundle of ideas or theories or an intellectual assent; it will enter into our very self. By means of an intellectual assent, we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion never changes. Religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming, not hearing or acknowledging. It is the whole souls becoming changed into what it believes. That is religion.

As a matter of fact the constitutional philosophy should be allowed to become a part of every mans life in this country and then only the Constitution can reach everyone and the ideals of the Constitution framers would be achieved since the people would be nearer the goal set by the Constitution - an ideal situation but a far cry presently.

Unfortunately, the High Court has completely lost sight of this aspect of the matter.

Turning on to the factual aspects once again, it is not that compassionate appointments have never been effected. Steel Authority of India was in fact providing compassionate employment to one dependant of an employee dying in harness or permanently disabled. As a matter of fact on 22nd September, 1982 the respondent-Steel Authority, further issued the Circular pertaining to appointments on compassionate grounds. The Circular however for the first time introduced categorisation of compassionate employment as First Priority Cases; Second Priority Cases and Third Priority Cases. The Circular reads as below:

The system of compassionate appointments was reviewed in a meeting of the Advisory Committee recently. On the lines of the discussions, the system may be operated in future as given below:

1. First Priority Cases

(a) Employment of a dependent of an employee who dies owing to an accident arising out of and in the course of employment;

(b) Employment of a dependent of an employee who dies in a road accident while on duty or while coming to or going back from duty.

The existing practice will continue.

2. Second Priority Cases i.e. employment of a dependent of an employee whose services are terminated in accordance with order 23 of the Standing Orders, i.e. on his being found permanently medically unfit for his job by the Director M&HS.

(a) Dependents of only those employees would be considered for employment on compassionate grounds whose services are terminated on the ground of being declared permanently unfit for their job before they enter 56th year of age, that is, they have a balance of at least three years of service.

(b) The minimum period of service of the employer, whose dependent is to be considered for employment, will be 10 years, as against 5 years under the existing rules.

3. Third Priority Cases i.e., Cases of death for reasons not covered under (I) above. The existing rules will continue.

The above will be subject to the following general conditions:

(i) The eligible dependents for consideration for such employment would continue to be wife/husband/son/daughter.

(ii) No employment would be provided to a second dependent, i.e., if the husband/wife or a son/daughter of the deceased or of the employee whose services

are terminated on his being found medically unfit is already in employment of RSP, no employment will be provided to another dependent.

(iii) The employee covered under the 2nd and 3rd priorities-

(a) should not have been awarded a major punishment during the last 5 years of their service and

(b) should have at least good grading in the CCR for the last 3 years This has the approval of the Managing Director.

The requirement of such an insertion in the body of the judgment was felt expedient by reason of the introduction of the priorities and in any event special reference may be made to clause 7.16 of the Circular which expressly records cases of death for reasons not covered under (I) above and in that event the existing rules will continue. The existing rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments. Mr. Bhasme, learned Advocate appearing for the Steel authority contended that the Family Benefit Scheme was introduced on 21st November, 1992 and the salient features of the Scheme were to the effect that the family being unable to obtain regular salary from the management, could avail of the scheme by depositing the lump sum provident fund and gratuity amount with the company in lieu of which the management would make monthly payment equivalent to the basic pay together with dearness allowance last drawn, which payment would continue till the normal date of superannuation of the employee in question. Mr. Bhasme further contended that adaptation of this Family Benefit Scheme was meant to provide an assured or regular income per month, while the bulk amount deposited by way of provident fund and gratuity with the management remained intact. Mr. Bhasme, contended that consequently on deposits as above, with the management, the employees family could avail of pay up to normal date of superannuation on the footing that the employee though not actually working but notionally continued to work till the normal date of superannuation and such a scheme in fact stands at a much better footing and much more beneficial to an employee or a deceased employee. Apparently these considerations weighed with the High Court and the latter thus proceeded on the basis that by reason of adaptation of a Family Benefit Scheme by the Employees Union, question of any departure therefrom or any compassionate appointment does not and cannot arise. But in our view this Family Benefit Scheme cannot be in any way equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump sum amount being made available to the family This is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner, but that would undoubtedly bring some solace to the situation. It is significant to note that the Employees Provident Fund & Miscellaneous Provisions Act of 1952 is a beneficial piece of legislation and can amply be described as social security statute, the object of which is to ensure better future of the concerned employee on his retirement and for the benefit of the dependants in case of his earlier death. As regards the provisions of the Payment

of Gratuity Act, 1972 (as amended from time to time) it is no longer in the realm of charity but a statutory right provided in favour of the employee. Section 4 of the Act is of some significance and as such the same is set out herein below:

4. Payment of gratuity. (1) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years, -

(a) on his superannuation, or (b) on his retirement or resignation, or (c) on his death or disablement due to accident or disease;

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement:

> [Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.] It is upon consideration of the above noted provisions of Section 4, it was contended that question of compulsory depositing of the gratuity amount does not and cannot arise. We shall come back to the deposit of the Provident Fund but as regards the Gratuity amount, be it noted that there is a mandate of the statute that Gratuity is to be paid to the employee on his retirement or to his dependants in the event of his early death the introduction of Family Pension Scheme by which the employee is compelled to deposit the Gratuity amount, as a matter of fact runs counter to this beneficial piece of legislation (Act of 1972). The statutory mandate is unequivocal and unambiguous in nature and runs to the effect that the gratuity is payable to the heirs of the nominees of the concerned employees but by the introduction of the Family Pension Scheme, this mandate stands violated and as such the same cannot but be termed to be illegal in nature. We do find some substance in the contention as raised, a mandatory statutory obligation cannot be trifled with by adaptation of a method which runs counter to the statute. It does not take long to appreciate the purpose for which this particular Family Pension Scheme has been introduced by deposit of the provident fund and the gratuity amount and we are not expressing any opinion in regard thereto but the fact remains that statutory obligation cannot be left high and dry on the whims of the employer irrespective of the factum of the employer being an authority within the meaning of Article 12 or not. Adverting to the Provident Fund, be it noted that the same is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly by deferred in the event of an untimely death of a worker or an employee. As noticed above, the family needs the money in lump-sum and availability of this amount is the only insulating factor in such a grief stricken family. The amount is payable in one lump and as a matter of fact it acts as a buffer to the retirement of or on the death of an employee. Situations are not difficult to conceive when the family

needs some lump- sum amount but in the event of deposit of the same with the employer, the heirs of the deceased employee could be put into the same problems of realities of life, even though, if this money would have been made available to them the situation could have been otherwise.

In any event as appears in the contextual facts, the NJCS Agreement being a Tripartite Agreement expressly preserves the 1982 circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and on the wake of the same we do not see any reason to deny the petitioner the relief sought for in the writ petition.

On the wake of the aforesaid, we do feel it convenient to record that the option should have been made available either to have a compassionate appointment provided, however, the deceased employees representative is otherwise competent to hold the post or the adaptation of the family pension fund by way of deposit of provident fund and gratuity amounts. In fact, however, there was no option taken from the employees, at least no records have been produced therefor, neither any submissions made in that regard. Mr. Bhasme, further pointed out that though the present appeals related to two individual cases but any interpretation contrary to the one canvassed by the respondent is likely to open a pandoras box, since in the huge empire of the respondent, several such cases would be existing which would have to be reconsidered. Mr. Bhasme further contended that family members of large number of the employees have already availed of the Family Benefit Scheme and as such it would be taken to be otherwise more beneficial to the concerned employee. We are not called upon to assess the situation but the fact remains that having due regard to the constitutional philosophy to decry a compassionate employment opportunity would neither be fair nor reasonable. The concept of social justice is the yardstick to the justice administration system or the legal justice and as Rescopound pointed out that the greatest virtue of law is in its adaptability and flexibility and thus it would be otherwise an obligation for the law courts also to apply the law depending upon the situation since the law is made for the society and whichever is beneficial for the society, the endeavour of the law court would be to administer justice having due regard in that direction.

The learned Advocate appearing in support of the appeal very strongly contended that as per appellants information the respondent Steel Authority of India is in fact providing compassionate employment even now to one dependant of an employee dying in harness or permanently disabled. We are however not inclined to go into the issue on this score.

In that view of the matter these appeals succeed, the order of the High Court stands set aside. Steel Authority of India is directed to consider the cases of compassionate appointments in so far as the appellants are concerned. There shall be no order as to costs.