

Smt. Sushma Gosain and Others

Vs

Union of India and Others

Civil Appeal No. 3642 of 1989

(K. Jagannatha Shetty, M. N. Venkatachaliah JJ)

25.08.1989

JUDGMENT

JAGANNATHA SHETTY, J. -

1. Special leave granted.
2. We must first express our disapproval of the way in which the department of Director General Border Road ("DGBR") has behaved in this pitiable case.
3. Ram Kumar was working as Storekeeper in the Department of Director General Border Road ("DGBR"). In October 1982, he died in harness leaving behind the appellants. Appellant 1 - Sushma Gosain is his widow and appellants 2 and 3 are his minor children.
4. In November 1982, Sushma Gosain sought appointment in DGBR as Lower Division Clerk on compassionate grounds. In January 1983 she was called for the written test and later on for interview. She was said to have passed the trade test. But nonetheless she was not appointed. Whenever she approached DGBR, she was told that her case was under consideration.
5. In September 1985, Sushma Gosain filed writ petition in the High Court of Delhi for a direction against DGBR to appoint her in a suitable post. She was entitled to appointment in terms of Government Memorandum O.M. No. 14034/1/77/Estt. (d) dated November 25, 1978 issued by the Ministry of Home Affairs. DGBR however, resisted the writ petition with the primary contention that the appointment of ladies in the establishment was prohibited. In support of the contention. DGBR relied upon a notification dated January 25, 1985 issued by the Central Government under sub-sections (1) and (4) of Section 4 of the Army Act, 1950. The DGBR however, mercifully stated that it approached other departments to get an employment to Sushma Gosain in order to mitigate her hardship but everyone regretted. Interestingly, it was also stated that if Sushma Gosain nominates a male member of her family he could be considered for appointment. This was not without the knowledge that she has only a minor son.
6. The High Court dismissed the writ petition by the brief order which reads as under :

"An affidavit has been filed on behalf of the respondents setting out all the relevant facts and the attempts made by them to provide employment to the petitioner. It is apparent from the said affidavit that it has not been possible to do anything for the petitioner.

Counsel for the petitioner has told us that her client is not able to provide the name of a male relation to whom employment could be offered. In these circumstances, even this alternative is not possible.

Since we cannot give any relief to the petitioner, this petition is dismissed.

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Sd/- T.P.S. Chawla Chief Justice

Sd/- Y.K. Sabharwal Judge"

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7. The appellants appeal to this Court.

8. We heard counsel on both sides and gave our anxious consideration to the problem presented. It seems to us that the High Court has made the order in mechanical way and if we may say so, the order lacks the sense of justice. Sushma Gosain made an application for appointment as Lower Division Clerk as far back in November 1982. She had then a right to have her case considered for appointment on compassionate ground under the aforesaid government memorandum. In 1983, she passed the trade test and the interview conducted by the DGBR. There is absolutely no reason to make her to wait till 1985 when the ban on appointment of ladies was imposed. The denial of appointment is patently arbitrary and cannot be supported in any view of the matter.

9. We consider that it must be stated unequivocally that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant.

10. In the result, we allow the appeal and in reversal of the order of the High Court, we direct respondent 2 to appoint Sushma Gosain appellant 1 in the post to which she has already qualified. We further direct that she shall be appointed in an appropriate place in Delhi itself. The appointment shall be made within three weeks from today.

11. The appellants are entitled to their costs which we quantify at Rs. 15,000 and it shall be paid within three weeks.

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