
(1995) 05 CAL CK 0023
In the Calcutta High Court
Case No : C.O. No. 14301 (W) of 1993

Ashoke Kumar Maiti

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-05-1995

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (1995) 2 CALLT 176 : (1995) 71 FLR 986 : (1996) 1 ILR (Cal) 251 : (1995) LabIC 2175 : (1997) 3 LLJ 901

Hon'ble Judges : Rabin Bhattacharyya, J

Bench : Single Bench

Advocate : Jamini Banerjee and Salil Kumar Maiti, for the Appellant; Saradindu Samanta and Nirmalendu Patra, for the Respondent

Final Decision : Dismissed

Judgement

Rabin Bhattacharyya, J.—To lit up the claim for compassionate appointment, the petitioner has sought for Mandamus and for other ancillary reliefs within the fold of writ application.

2. However, to appreciate the controversy raised in this case by the contesting parties for compassionate appointment, a brief sketch of the facts is essential, in default, there will be an overwhelming confusion of facts and law.

3. In the revision, the facts canvassed by both the parties through the petition and the affidavit-in-opposition clearly show that both the brothers are battling over the compassionate appointment in the Panchayat projecting a competition of title as between the two claiming an appointment when their father who was a Dafadar of the Gram Panchayat in police station Chandipur, District Midnapore died in harness on September 19, 1992. It is needless to repeat that Basanta, since deceased was survived by his sons, daughter and widow and on the death of Basanta both the sons advanced their claim for compassionate appointment under Bojolalchawk Gram Panchayat. The bedrock of the petitioner's claim is

founded on an application dated November 15, 1991, where Basanta, since deceased, spoke for the appointment of the petitioner in the event of his death. The petitioner, in pursuance of the pious wish of his father, put in an application on November 11, 1992 disclosing the state of affairs, following which, the Gram Panchayat took a resolution on December 10, 1992, Annexure "B".

4. The petitioner in lodging the claim is vocal enough to say that for appointment on compassionate ground in the post of Group "D" under Jilla Parisad, there is no scope for sponsoring the name by the Employment Exchange, Annexure "E". The post of the Dafadari is still vacant and the petitioner must be transferred to in the shoe of his deceased father, as there is no bar under the law to such an appointment on compassionate ground.

5. The claim has received a jolt from the Respondent No. 8 who is constrained to file an affidavit-in-opposition challenging the right of the petitioner to be appointed in the said Panchayat under the pretence of compassionate appointment who dismembered himself long before the death of his father. He was a recalcitrant son who had no love and affection for his father and the other members of his family.

6. The petitioner, as alleged by the Respondent No. 8, has substantial means of income who received a loan under the self Employment Scheme amounting to Rs. 25,000/- and the respondent is under reasonable belief that the loan obtained by the petitioner from the Government was made by surrendering his right to appointment on compassionate ground.

7. He has firmly agitated in his affidavit-in-opposition that he preferred an application on October 27, 1992 for compassionate appointment as his father died in harness. He also did not lag behind to renew his prayer for such appointment even before the B.D.O. Nandigram.

8. His name was recommended as manifest from Annexure "M". The State Government in consideration of his claim selected him for the appointment and that he stood the medical test. But for the order of the Court passed on November 8, 1993, the Respondent No. 8 is hovering between despondency and hope. In cultivating his claim, it has been recited that his appointment as Secretary on the strength of selection made by the State Government cannot be postponed in the face of appointment of his elder brother to the post of Dafadar.

9. In the background of the aforementioned facts, blended with disturbed feature of the case, the only point falls for decision is as to whether the claim of the petitioner for compassionate appointment is water and air tight vis-a-vis the claim of the Respondent No. 8.

10. The learned Counsel for the respective parties are vocal in their submissions and contentions of the success of their respective claims.

11. The learned counsel for the petitioner has made a strong criticism of the Annexure "M" appended to the affidavit-in-opposition on the count that it was

contrary to the Circular "E" as appended to the writ application.

12. In developing his contention according to him, an Assistant Secretary is not armed with jurisdiction or authority to issue letter for appointment of the Respondent No. 8 as the order issued on September 27, 1993 by Annexure "M" cannot attain any value or force in the face of Annexure "E" to the writ application.

13. To boost the claim of the petitioner, he has laid much stress on the Annexures to the writ application. He has submitted that the Gram Panchayat took a resolution on December 10, 1992 for appointment of the petitioner in place of his deceased father who died in harness. Annexure "D" to the writ application is a fusion of right to stimulate his right for compassionate appointment.

14. The authenticity and propriety of the Annexures of the writ application have been seriously challenged and disputed by the learned Counsel for the Respondent No. 8. He has contended throughout that his claim for compassionate appointment was upheld by Annexure "M" upon consideration of the claim presented by the respective parties. He wanted to impress upon the Court that there is a disruption in the joint family as the petitioner got himself separated from his father. But, I am not unmindful that a writ Court is completely precluded from adjudicating upon the claim of the Respondent No. 8 on the score of disruption in the joint family as it involves evidence. In case of compassionate appointment, it will not be legitimate for the writ Court to enter into the disputed question of fact where evidence must be gone into as there is no existing material on record to decide the same.

15. The learned Counsel for the Respondent No. 8 is categorical in his submission that the Respondent No. 8 is much younger in age and in the back ground of Annexure "M", his claim for compassionate appointment cannot be throttled. Incidentally, he has agitated in his submission that there is immediacy as the Respondent No. 8, besides the mother and the sister, who are putting up with him are suffering from acute financial stringency for the death of Basanta. There could be no ground, as cultivated by the Counsel by the Respondent No. 8, to reject his claim.

16. The above is the summum bonum of the contentions raised by the learned Counsels for the respective claims.

17. In adjudicating upon the claim of the respective parties when I glance at the Annexures, it is worthy to note that a resolution Annexure "B" appended to writ application was founded on Annexure "D" dated November 15, 1991. The Annexures B, C and D have been made by the learned Counsel for the petitioner as the spring board to crown success of his client's claim. But, if we penetrate through them, I cannot help holding that the said Annexures (B, C, D) proved no food or material for the petitioner entitling him to compassionate appointment. It appears from the body of Annexure "B, that the claim of the petitioner for

compassionate appointment was given publicity Basanta, since by the resolution on the strength of Annexure "D" written by Basanta, since deceased dated November 15, 1991. A very complicated question of law arises and has arisen, in fact, in this case as to whether Basanta had any right to bequeath in favour of his son. Compassionate appointment is a privilege but not a right and there could be no post-mortem disposition of it. It is not an estate in regard to which such post-mortem disposition could be made by a person before his death. Nor it is an inchoate right liable to transfer. The compassionate appointment is dependent upon various factors which will be considered by the State in consonance with rules, instructions, circulars and Statutes. The consideration of compassionate appointment to the exclusion of the above is not viable in law.

18. The fabric of the claim of the petitioner that the decision was taken in the shape of a resolution by the panchayat on December 10, 1992 is void ab initio. It is pre-eminently noticeable that Annexure "D" of the writ petition is the source of resolution which for the reasons indicated above cannot acquire any legal strength, about which, I have copiously dealt with it. It is based upon slippery foundation. It eats into vital of the case of the petitioner and the resolution of the Panchayat is worm eaten. It is not a legacy that can be left behind pre-eminently nor Basanta could lay down name of succession for compassionate appointment.

In my view, the resolution is based upon a letter written by Basanta cannot afford any right in favour of any relation for compassionate appointment as it was not a property liable to be gifted away and its bequeath is not permissible. The resolution taken by the authority for appointment of the petitioner in the background of Annexure "D" does not strengthen the claim as it is beside the law. Therefore, the prayer for compassionate appointment, however, may be to the post of Dafadar cannot be considered. In that view of the matter, the writ application fails and the order dated November 3, 1993 stands vacated. Considering the circumstances, I do not award any cost.