

(2015) 06 CAL CK 0017
In the Calcutta High Court
Case No : Writ Petition 16291(W) of 2014

Avradipta Sinha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 02-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 06 CAL CK 0017

Hon'ble Judges : Ashoke Kumar Dasadhikari, J

Bench : Single Bench

Advocate : Subhrangsu Panda, for the Appellant; Joytosh Majumdar and Sulagna Bhattacharya, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Ashoke Kumar Dasadhikari, J.—The order impugned passed by the Commissioner of School Education, West Bengal dated 4th March, 2014 refusing the claim of the petitioner for giving employment in died in harness category is under challenge in this writ petition.

2. Learned Counsel appearing for the writ petitioner submits that petitioner's case was considered by the Primary School Council and it was recommended before the Commissioner of School Education for approval. It was submitted that Commissioner is not the appellate authority nor he has power to adjudicate afresh. However, most illegally the concerned Commissioner refused to grant approval taking a plea that the family income of the petitioner is very likely to be higher than Rs. 7,154/- only per month in view of revision of family pension due to ROPA, 1998. He has passed the impugned order as if he is sitting in appeal on the order of recommendation made by the Chairman of the Council on proper verification, enquiry and scrutiny of the case.

3. Learned Counsel submits that the concerned Commissioner of School Education is not sure whether the amount assessed by him or calculated by him

to the tune of Rs. 7,154/- is correct figure or not. He passed the order impugned on the basis of surmise and conjecture.

4. Learned Counsel submits that even assuming, for the sake of argument, if it is taken that the petitioner's family is getting Rs. 7,154/-, the quantum of money is not sufficient to maintain a family of three persons when the elder son of the deceased employee was suffering from a man-eater disease cancer.

5. Learned Counsel submits this Court in several decisions decided that once the case is recommended by the School Council the concerned Commissioner of School Education is to grant his approval and send it back to the Chairman since he is not the appellate authority or has got power of adjudication of the decision of the Council.

6. Learned Counsel cited several decisions and he emphasized two decisions of the Hon''ble Division Bench of this Hon''ble Court rendered in case (Soumik Dandapath Vs. State of West Bengal) reported in 2012(1) C.H.N. (CAL) page 60 and (Satyagopal Mishra and ors. Vs. State of West Bengal and ors.) reported in (2011)2 W.B.L.R. (Cal) 757. He then submitted the decision of Satyagopal Mishra (supra) wherein rule 14 of the applicable rule was interpreted was challenged by the State before the Hon''ble Apex Court but the decision was upheld by the Hon''ble Apex Court. The ratio of these decisions would squarely apply in this case.

7. Learned Counsel submits that this Hon''ble Division Bench have observed that once the Chairman has formed an opinion, thereafter the question of compassionate appointment is thrown before the Director of School Education (now the Commissioner of School Education) for approval, obviously, it entails exercise of discretion, which was not being done at all and thus makes the issue very much vulnerable. The Hon''ble Division Bench on interpretation of Rule 14 held that the Council as sponsoring authority has larger role to play in considering the criteria for compassionate consideration. The Director is to merely look into the same by way of crosscheck but never as a super body of appeal.

8. Learned Counsel submits that this case is covered by the Hon''ble Division Bench decision. Therefore, the order impugned be set aside and a direction be given for approval by the Commissioner of School Education.

9. Learned Counsel further submits that there are several decisions of the Hon''ble Apex Court wherein it was held mere receiving some of money is not enough for refusing the claim of an eligible candidate to have employment in died-in-harness category.

10. Mr. Majumdar, learned Assistant Additional Advocate General submits, as and when the dependant depends on the livelihood of the deceased, in that case employment is to be given. He cited several decisions reported in (1) Umesh Kumar Nagpal Vs. State of Haryana and Others, (1994) 68 FLR 1191 : (1994) 3

JT 525 : (1994) 2 SCALE 834 : (1994) 4 SCC 138 : (1994) 3 SCR 893 : (1995) 1 SLJ 229 : (1994) 2 UJ 322 , Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, AIR 1994 SC 2148 : (1994) 68 FLR 791 : (1994) 2 JT 183 : (1994) 2 LLJ 173 : (1994) 1 SCALE 748 : (1994) 2 SCC 718 : (1994) 2 SCR 163 : (1994) 1 UJ 592 : (1994) WritLR 492 , State Bank of India and Another Vs. Somvir Singh, (2007) 113 FLR 225 : (2007) 3 JT 398 : (2007) 2 LLJ 230 : (2007) 3 SCALE 42 : (2007) 4 SCC 778 : (2007) 2 SCC(L&S) 92 : (2007) 2 SCR 509 , State Bank of India and Others Vs. Jaspal Kaur, (2007) 112 FLR 1037 : (2007) 3 JT 35 : (2007) 2 LLJ 385 : (2007) 146 PLR 754 : (2007) 2 SCALE 397 : (2007) 9 SCC 571 : (2007) 2 SCC(L&S) 578 : (2007) 2 SCR 101 : (2007) 3 SLJ 1 : (2007) 1 UJ 247 : (2007) AIRSCW 6861 : (2007) 7 Supreme 274 , Steel Authority of India Ltd. Vs. Madhusudan Das and Others, AIR 2009 SC 1153 : (2009) 122 FLR 677 : (2008) 12 JT 642 : (2009) 3 LLJ 54 : (2008) 15 SCALE 39 : (2008) 15 SCC 560 : (2009) 2 SCC(L&S) 378 : (2009) 2 SLJ 243 : (2009) AIRSCW 905 and also some other decisions.

11. According to the learned Counsel, appointment cannot be claimed as a matter of right unless and until the petitioner is entitled to have the same in terms of the circular and the rules. According to him, petitioner's claim cannot be entertained since it is not permitted under the rules.

12. Mr. Majumdar submits that the decision rendered by the Commissioner of School Education is a valid one and accordingly, the writ petition is liable to be rejected.

13. It is noted that all the judgements cited by Mr. Majumdar are on different set of facts and in none of these judgements Rule 14 of the Rules which is applicable in this case was subject-matter of consideration either.. Therefore, the ratio of that judgement are not at all applicable in the instant case.

14. Considered the submissions made by the learned Counsel appearing for the parties. It is not in dispute that the case of the petitioner was considered and measured taking note of the rules applicable. The concerned Council recommended petitioner's case for approval before the Commissioner of School Education after proper enquiry, scrutiny and verification. The Hon'ble Division Bench decision where Rule 14 was considered, explained and interpreted has not been upset by the Hon'ble apex Court. The relevant paragraphs in case of Soumik Dandapath (supra) where Rule 14 was interpreted reads as follows:-

"28. This would bring us to a very important question which has formed the very basis of the present Appeal. It is the Memo No. 3065/ES dated 24.8.2010 by the respondent No. 4 (the Chairman, Paschim Medinipur District Primary School Council) communicating to the appellant "that proposal for appointment cannot be approved as the family cannot be treated as financially distressed in terms of Memo No. 331-Se/Pry dated 26.6.2009. The said communication was a fall of the D.S.E. Memo No. 549/Se/P dated 27.7.2010. This Memo by the respondent No. 4 communicating the decision of the respondent No. 2 (D.S.E.) has widespread

ramification for this Appeal as well as in similar nature of such matters which frequently crop up for decision before the Court. At the cost of repetition if we again revert to Rule 14 we cannot give a narrow meaning to the words "approval of the Director....." as emphasized by the learned Senior Government Advocate to show that he has a master role to play. In the instant case even if we, for a moment, abide by the views of the learned Senior Government Advocate, we clearly come to the conclusion, that the Memorandum dated 24.8.2010 issued by the Respondent No. 4 in terms of the memo of Respondent No. 2 which we have quoted hereinabove it would at once be seen that it is an oblique exercise of power in the first place, as it neither contains any reason nor any cogent ground which has been deprecated by His Lordship of the Hon'ble Trial Court as already we have found that the Memo No. 331-I SE/Pry dated 26.6.2009 has no application since the entire issue has fructified much long before the amendment in Rule 14, which necessitated the issuance of such Memo. Once the Chairman (Respondent No. 4) has formed an opinion, thereafter the question of compassionate appointment is thrown before the D.S.E. (Respondent No. 2) for his approval. Obviously, it entails exercise of discretion, which has not been done at all and thus makes the issue very much vulnerable. To make it more precise we hold that the interpretation of Rule 14 comes to the position that the Council, as a sponsoring authority, has a larger role to play in considering the criteria for compassionate consideration. The Director is to merely look into the same by way of crosscheck but never as a super body of appeal.

29. After noting the objection of learned Senior Government Advocate and the learned Additional Government Pleader for the Chairman, as we have found that the decisions in Punjab National Bank and ors. (supra), State Bank of India and Anr. (supra) and State Bank of India and ors. (supra) are quite distinguishable. The decision in Shri Satyagopal Mishra's case (supra) operates as a binding precedent upon us in a coequal jurisdiction. More particularly/we are of the view that at the behest of the State Shri Satyagopal Mishra's case was tested before the Supreme Court. The effect of the said decision was not interfered with by the Hon'ble Supreme Court. Neither we are sitting in Review or in appeal over the decision of the preceding Division Bench and as we have found the Orders under appeal in Shri Satyagopal Mishra's (supra) case as also in this case are, if we may say, carbon copy of each other and not only identical but absolutely selfsame in nature being analogous, are required to be disposed of accordingly. We are also buttressed with the decision of the Supreme Court in State Bank of India and Ors. vs. Akeel Ahmed Khan, as referred to by Shri Bari, reported in 2005(11) SCC 508. The process being pari passu with each other it would be difficult to distinguish Shri Satyagopal Mishra's case (supra) separately. Moreover we have understood that following dismissal of the Special Leave petition in Shri Satyagopal Mishra's (supra) case the D.S.E. has passed necessary directions for compliance of the order."

15. In view of the aforementioned decision it is clear that the Director of School Education (now the Commissioner of School Education) is not an appellate

authority or having a power to readjudicate or to set aside or take a different view as against the decision taken by the Council being the sponsoring authority. He has only authority to crosscheck and grant approval.

16. In my view, Rule 14 was not the subject-matter in any of the judgements of the Hon"ble Apex Court as cited by Mr. Majumdar. The decision in case of Sri Satyagopal Mishra (supra) has been upheld by the Hon"ble apex Court and therefore, scope and ambit of Rule 14 of the Rules is settled.

17. The relevant paragraph of judgement rendered in case of Satyagopal Mishra (supra) reads as follows:-

"28. Compassionate appointment which is popularly known as Bread Winner"s Scheme has always been a favourite punching ground for the Respondent. Galaxy of decisions operates in the field but ultimately it is how one views the panorama is important. Decision in this field is required to be taken not on the basis of the personal notion of the Court but according to the law of the land. It is not the perspective of the particular Court but what is the wholesome fall out of the death of the bread winner which catapults the family to a sudden economic crisis and to protect the family of the employee who had served the employer so well during his life time, the scheme of compassionate appointment has been envisaged which is de hors the normal rules of appointment.

29. The appellant is guided by a set of rules which consolidates his prayer for compassionate appointment (See Rule 14 of the said Rules). In our opinion, the respondent No. 2 performed a very perfunctorily approach in regretting that proposal for compassionate appointment. In fact, the respondent No. 4 who conveyed the said decision on 15.9.2010 to the respondent No. 3 neither set out the details inn respect of the Order passed by the respondent No. 2 nor showed any reason. Simply put it on writing "that as per order by the DSE the proposal of Sri Satyagopal Mishra S/o-Late Pankaj Kr. Mishra as a Asstt.. Teacher on compassionate ground cannot be approved as....."

30. In our opinion, this is a serious miscarriage of justice where the Appellant had been sacrificed at the altar of a rule which he has not been made to know. The father of the Appellate was fifty six years and five months at the time of his death. He fell well in the category stipulated in Rule 14 of the said Rules, even as amended. While this Court neither should a scrooge be nor should an altruist while absorbing the situation arising out of a prayer for appointment in the compassionate category. It has to take a just decision keeping in mind that such appointments, leave out those already in the queue and would result in inducting of a person who wins without a level playing field having an edge over the others who may be equally, if not more competent.

31. Recently the Supreme Court in V. Sivamurth v. State of Andhra Pradesh and others, (2003)13 SCC 730 in paragraph 18 summed up the situation in the following manner:

"18. The principles relating to compassionate appointments may be summarized thus:

(a) Compassionate appointment based only on descent is impermissible. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointments is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well-recognised contingencies which are carved out as exceptions to the general rule are:

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) * * * * *

(c) * * * * *

(d) * * * * *

31. Once we have had a grasp of the entire situation, we find here the Appellate lost his Father who was still in service. He had duly made a representation for absorption on the category of compassionate appointment. His representation was kept pending for well over seven years when it was turned down in the fashion that we have seen - without any cogent reason or supporting materials.

33. Rule provide the compassionate appointment (See: Rule 14 of the said Rules).

34. Question of receipt of terminal benefit (see: PPO order in the proposal sent on 04.12.2008 by the respondent No. 5) cannot be a governing factor to conclude that the family of the deceased is no longer in distress (See: the Division Bench decision in Tapan Kumar Barman v. State of West Bengal and Others, (2009)1 Cal HN 23 and the decisions of the Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, AIR 2000 SC 1596 : (2000) 90 CLT 450 : (2000) 86 FLR 197 : (2000) 7 JT 135 : (2000) 6 JT 281 : (2000) 2 LLJ 1 : (2000) 4 SCALE 670 : (2000) 6 SCC 493 : (2000) SCC(L&S) 767 : (2000) AIRSCW 1745 : (2000) 4 Supreme 602 and Govind Prakash Verma v. LIC of India and others : (2005)10 SCC 289)."

18. In my view, the Commissioner of School Education or the Director of School Education has no power and authority to sit in appeal over the recommendation and/or decision of the Council. Otherwise also earning of a sum of Rs. 7,154/- is not sufficient to a family where the elder son of the deceased employee is suffering from cancer. The authority calculated total income taking mother's income. However, the Commissioner of School Education has no knowledge of expenditure for cancer treatment.

19. Accordingly, the order impugned is set aside and the concerned Commissioner of School Education is directed to grant approval within two weeks from the date of communication and send it back to the Chairman of the Council and on receipt of the approval the Chairman of the Council is to issue appointment letter in favour of the writ petitioner forthwith.

20. The writ petition is, thus, disposed of. There would be no order as to costs.