
(2013) 08 CAL CK 0073
In the Calcutta High Court

Debdatta Maiti

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 07-08-2013

Acts Referred:

Citation : (2013) 4 CALLT 101

Hon'ble Judges : Soumitra Pal, J

Bench : Single Bench

Advocate : Avishek Prosad, for the Appellant; Joytosh Majumder, Ms. Debjani Roy for Respondent No. 4, Ms. Sipra Majumder and Ms. Susmita Biswas Chowdhury for State, for the Respondent

Final Decision : Dismissed

Judgement

Soumitra Pal, J.—In this writ petition, the petitioner, an applicant for compassionate appointment, has prayed for a direction upon the respondents for enlisting his name in the live register of Died in Harness Category after setting aside the order contained in the memo dated 27th July, 2012 issued by the Director of School Education, West Bengal, the respondent No. 2 rejecting his application. The facts which are relevant for adjudication are that Jaharlal Maiti, the father of the petitioner, an Assistant Teacher of Nafarganj Baidyanath Vidyapith, South 24 Parganas, had expired on 18th August, 2006 while in harness leaving behind Usha Rani, his wife and two sons Debabrata and Debdatta. Thereafter on 2nd November, 2006 Debdatta, the petitioner, filed representation along with necessary documents, before the District Inspector of Schools (S.E.) South 24 Parganas, the respondent No. 3 for appointment on compassionate ground. Subsequently on 7th September, 2006 the petitioner along with his mother and elder brother swore an affidavit that they are the heirs of the deceased. On 10th October, 2006 the Savapati, Contai-III, Panchayat Samiti, Purba Medinipore certified that none of the family members, which includes the petitioner, are in employment and they are in extreme financial crisis. Separate certificates were also issued about their annual income and

landed property. Subsequently on 29th June, 2007 the Director of Pension, Provident Fund and Group Insurance issued Pension Payment Order holding that the heirs of late Jaharlal Maiti are entitled to EFP Rs. 4713/- and gratuity of Rs. 2,50,000/-. Thereafter, by memo dated 13th July, 2010 District Inspector of Schools (SE) South 24 Parganas, the respondent No. 3 requested the Chairperson of the South 24-Parganas District Primary School Council, the respondent No. 4 to make necessary arrangement for enlistment of the name of the petitioner. On 28th January, 2011 and on 3rd June, 2011 the Chairperson of the Council granted hearing. Certain documents, such as the first application for compassionate appointment, Pension Payment Order, information with regard to the deceased teacher furnished by District Inspector of School and Succession Certificate, as sought for, were furnished. Thereafter, the Chairperson forwarded the matter to the Director of School Education West Bengal, now redesignated as the Commissioner of School Education the respondent No. 5. Subsequently, by memo dated 27th November 2011 the Chairperson informed that the Director of School Education, the respondent No. 2 had rejected the prayer of the petitioner for appointment on compassionate ground. Aggrieved by the said order of rejection, the writ petition has been filed.

2. Mr. Avishek Prasad, learned Advocate for the petitioner, relying on Rule 14(1) of the West Bengal Primary School Teachers Recruitment Rules, 2001 ("2001 Rules" for short) submitted that the respondent No. 2 while rejecting the application for compassionate ground failed to consider the fact that the surviving members of the family were in extreme penury as income was insufficient to provide two square meals and other essentials to the family of the deceased. Moreover as the application for compassionate appointment was disposed of after a considerable delay and as it is a settled principle of law that compassionate appointment cannot be denied on the basis of family pension granted and as salary drawn by a primary teacher (untrained) during January, 2007 cannot be the barometer for consideration, the impugned order may be set aside and direction may be issued for appointment. The learned advocate for the petitioner had relied on the following judgments in support of his submission which are Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, Smt. Phoolwati Vs. Union of India and Others, ; Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, ; Govind Prakash Verma v. LIC of India (2005) 10 SCC 289; Nazrul Islam Vs. State of West Bengal and others, ; Swati Chatterjee v. State of West Bengal -; WPST 202 of 2011 Lalita Das v. State of West Bengal (unreported); FMA 874 of 2011 with CAN 1939 of 2011 (unreported); MAT 1520 of 2012 with CAN 9102 of 2012 (unreported) and W.P. 17607 (W) of 2012 (unreported).

3. Mr. Joytosh Mazumdar, learned advocate appearing on behalf of the Council, submitted that as the petitioner did not submit the application before the proper authority and the matter was dealt promptly after it was placed before the appropriate authority, the allegation of delay in disposing of the application is without foundation. On merit it was submitted whether the family of the

deceased is in penury or not is the guiding principle under Rule 14(1) of the 2001 Rules and as in January, 2007 a primary teacher (untrained) drew a salary of Rs. 5960/- it cannot be said that the family of the petitioner drawing a pension of Rs. 7829/- per month in July, 2007 was in extreme financial hardship and was unable to provide two square meals for itself and other essentials. Moreover, as stipulations in the 2001 Rule, which is statutory in nature, are binding and as sympathy cannot be a ground for consideration for appointment, the order under challenge is just and proper. The learned advocate for the respondent had relied on the following judgments in support of his submission which are Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, Umesh Kumar Nagpal Vs. State of Haryana and Others, Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, Bhawani Prasad Sonkar v. Union of India (2001) 4 SCC 209; Union Bank of India and Others Vs. M.T. Latheesh, State Bank of India and Another Vs. Somvir Singh, ; State Bank of India and Others Vs. Jaspal Kaur, Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, Steel Authority of India Ltd. Vs. Madhusudan Das and Others, Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, State Bank of India and Another Vs. Raj Kumar, and Rohitash Kumar and Others Vs. Om Prakash Sharma and Others,

4. The question to be considered is whether in the light of Rule 14(1) of the 2001 Rules, as the family received a pension of Rs. 7829/- per month, the Commissioner was justified in declining to grant appointment on compassionate ground.

5. In order to answer the question it is appropriate to refer to the impugned order, which is extracted hereunder:-

The deceased teacher it Jaharlal Maity died on 18/8/2006. At the material point of time the family income of the deceased teacher was Rs. 7,829 which seems to be enough for family of three. Hence the family may not be considered as financially distress. So the proposal for APTT under DH Category may not be considered.

6. In this context it is necessary to set out Rule 14(1) of the Rules which is as follows:-

14. Appointment on compassionate ground.-- The Council may appoint primary teachers, with the approval of the Director of School Education, West Bengal or his authorised officer, on compassionate ground in the following cases where, in the opinion of the Council, the cases deserve compassionate consideration:-

(1) When a teacher dies in harness before the date of his superannuation i.e. at the age of 60 years, leaving a family which in the opinion of the Council, is in extreme financial hardship that is it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family, the following members of the deceased teacher's family, viz, the

(a) widowed wife, of

(b) widower, or

(c) son, or

(d) unmarried daughter, or

(e) divorcee dependent daughter-divorced before the date of death of the teacher, possessing required educational qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach, may make within two years from the date of such death, a prayer in writing to the Council for appointment as primary teacher on compassionate ground, provided that only one member of a deceased primary teacher's family may be appointed on compassionate ground.

(Emphasis supplied)

7. It is clear from a perusal of Rule 14(1) the basic criteria for appointment on compassionate ground is that the Council may appoint primary teachers on compassionate ground with the approval of the Director if in its opinion the family of the teacher dying in harness is in such extreme financial hardship that it fails to provide two square meals and other essentials to the surviving members of the deceased teacher's family meaning thereby that the family is not having a minimum income for sustenance and is below poverty line. In this context it needs to be considered whether a family pension of Rs. 7829/- was sufficient for a family of three for having two square meals and other essentials for survival. The position under Rule 14(1) shall become clear if a comparison is made with the salary of Rs. 5960/- (Basic 3150/-, Dearness Allowance 2237/-, House Rent Allowance 473/- and Medical Allowance 100/-) paid in January, 2007 to a primary teacher (untrained). Therefore, as on 1st January, 2007 if a primary teacher (untrained) drew a salary of Rs. 5960/- per month, family pension of Rs. 7829/- per month in July, 2007 was sufficient to provide two square meals and other essentials and it cannot be held that the family of the petitioner was in extreme financial hardship. So far as the judgments relied on by the petitioner are concerned, the judgment in Nazrul Islam Vs. State of West Bengal and others, is not applicable on facts as therein the total annual income of the appellant was less than Rs. 10,000, (that is less than Rs. 850/- per month) which was below the poverty line and Rule 14 was not placed for consideration. The unreported judgment in W.P. 17607 (W) of 2012 is not applicable as it was passed relying on Nazrul Islam (supra). The judgment in Swati Chatterjee Vs. State of West Bengal and others, and the unreported judgments in WPST 202 of 2011 Lalita Das v. State of West Bengal, in FMA 874 of 2011 with CAN 1939 of 2011 and in MAT 1520 of 2012 with CAN 9102 of 2012 are also not applicable to the facts of this case as therein too Rule 14 was not under consideration. The decision of the Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, which has been relied on in Nazrul Islam (supra) and in

Swati Chatterjee (supra), in FMA 874 of 2011 and in MAT 1520 of 2012, is not applicable as in a subsequent judgment in Steel Authority of India Ltd. Vs. Madhusudan Das and Others, while allowing the appeal the Apex Court referring to Balbir Kaur (supra) held "It may be that such a provision was made as a measure of social benefit but does not lay down a legal principle that the Court shall pass an order to that effect despite the fact that the conditions precedent therefor have not been satisfied", (paragraph 17). Rather in SAIL (supra) reliance was placed on the law laid down in Umesh Kumar Nagpal Vs. State of Haryana and Others, wherein it was held "...As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or relax the qualifications laid down by the rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interests of justice and to meet certain contingencies. One such exception is in favour of dependants of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependants of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased". Though in paragraph 6 in Govind Prakash Verma v. LIC of India (2005) 10 SCC 289 the Apex Court observed "The terminal benefits received by the widow and the family pension could not be taken into account," however, as it is an "Order" and not a law declared and binding on all Courts under Article 141 of the Constitution of India and facts were different, it is not applicable.

8. The judgment in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, and followed in Smt. Phoolwati Vs. Union of India and Others, wherein the Apex Court had directed to grant appointment on compassionate ground as there was delay, are not applicable as in the instant case the petitioner had filed the application before a wrong forum and the matter was finally decided in 2012 after it was placed in 2010 before the Council which had enquired into the matter and had subsequently placed it in accordance with law before Director/Commissioner. Moreover Sushma Gosain (supra) was considered in the light of the memorandum dated 25th November, 1978 issued by the Ministry of Home Affairs. That an appointment on compassionate ground has to be considered in the background of the scheme or instruction or memorandum or rules framed by the authorities came up for consideration in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, wherein allowing the appeal it was held "instruction" containing provisions for appointment on compassionate

ground upon demise of a member of the staff of the Corporation while in service "are statutory in character" (paragraph 2). Therein it was also held "The High Courts and the Administrative Tribunals cannot confer benediction impelled by sympathetic consideration." ... "Yielding to instinct will tend to ignore the cold logic of law."... "The Courts are to administer law as they find it, however, inconvenient it may be" (paragraph 10). In *Union Bank of India and Others Vs. M.T. Latheesh*, it was held that "It is settled law that the principles regarding compassionate appointment that compassionate appointment being an exception to the general rule the appointment has to be exercised only in warranting situations and circumstances existing in granting appointment and guiding factors should be financial condition of the family. The respondent is not entitled to claim relief under the new Scheme because the financial status of the family is much above the criterion fixed in the new Scheme" (paragraph 37). That the scheme has to be given primacy came up for consideration in *State Bank of India and Another Vs. Somvir Singh*, wherein allowing the appeal it was held "It is well settled that the hardship of the dependant does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be" (paragraph 13). Again in *State Bank of India and Others Vs. Jaspal Kaur*, laying down the law it was held "The High Court also failed to appreciate that the appointment under the scheme of compassionate appointment was at the discretion of the authority which was to be exercised keeping in view the scheme and the objective/rationale behind it. It was submitted that compassionate appointment cannot be claimed as a matter of right. Moreover, the public office is not heritable" (paragraph 13). In *Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others*, wherein the appellant was receiving family pension and had income from immovable properties, the Supreme Court dismissing the appeal as the appellant did not fulfil the criteria under the scheme held that "Appointment on compassionate grounds can only be granted to tide over the sudden crisis of the family of the deceased. The right to get appointment on compassionate grounds would depend upon the scheme operating in the field" (paragraph 9) and also held that "it is now a well-settled principle of law that appointment on compassionate grounds is not a source of recruitment" (paragraph 11). Similarly in *Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others*, the Apex Court while allowing the appeal held "...the concept of compassionate appointment has been recognised as an exception to the general rule", and "Being an exception, the scheme has to be strictly construed and confined only to the purpose it seeks to achieve" (paragraph 15). That instructions, Schemes or Rules have to be interpreted in its plain and literal sense came up for consideration in a recent judgment of the Apex Court in *Rohitash Kumar and Others Vs. Om Prakash Sharma and Others*, wherein it was held as under:

18. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the Court has no choice but to enforce it in full rigour.

It is well settled principle of interpretation that hardship or inconvenience caused, cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the Statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice.

9. That the Scheme prevalent at the time of verification and consideration for appointment on compassionate ground has to be taken into consideration and not the earlier Scheme when the application was filed, came up for discussion in State Bank of India and Another Vs. Raj Kumar, wherein the facts and findings were as under:-

The learned counsel for the Bank submitted that even though the respondent's father died on 1-10-2004, the application for compassionate appointment was made only in June 2005; that before the application could be processed, the Compassionate Appointment Scheme was abolished and was replaced by a new Scheme on 4-8-2005; and that therefore, the Bank was justified in calling upon the respondent to apply under the new ex gratia scheme." (paragraph 6). Thereafter the Apex Court held "The claim for compassionate appointment is therefore traceable only to the scheme framed by the employer for such employment and there is no right whatsoever outside such scheme. An appointment under the scheme can be made only if the scheme is in force and not after it is abolished/withdrawn. It follows therefore that when a scheme is abolished, any pending application seeking appointment under the scheme will also cease to exist, unless saved. The mere fact that an application was made when the scheme was in force, will not by itself create a right in favour of the applicant." (paragraph 8). In Director of Education (Secondary) and Another Vs. Pushpendra Kumar and Others, allowing the appeal it was held that "Care has, therefore, to be taken that a provision for grant of compassionate employment, which is in the nature of an exception to the general provisions, does not unduly interfere with the right of other persons who are eligible for appointment to seek employment against the post which would have been available to them, but for the provision enabling appointment being made on compassionate grounds of the dependant of a deceased employee" (paragraph 8).

10. Further in Eastern Coalfields Ltd. Vs. Anil Badyakar and Others, it was held that appointment on compassionate ground is not a vested right which can be exercised at any time in future.

11. It is, therefore, clear from the law laid down from the judgments of the Apex Court that while considering an application for compassionate appointment, Instructions or Schemes or rules framed for such appointment have to be strictly construed and Courts and Tribunals have to interpret the law as it is though harsh and cannot yield to sympathetic consideration as "appointment on compassionate ground is not a source of recruitment". (Paragraph 11 - Mumtaz Yunus Mulani (supra) and as "...there may be other cases waiting already for appointment on compassionate grounds, they may be even harder than that of

the second respondent." {Paragraph 16 - LIC v. Asha Ramchandra Ambekar (supra)}.

12. Therefore, as 2001 Rules are statutory in nature and as Rule 14(1) thereof, as interpreted, postulates in order to avail himself of the benefit of appointment on compassionate ground one has to be in penury and should be below poverty line, however, as in the instant case in 2007 the family of the petitioner consisting three members was having an income of Rs. 7829/- per month, compared to a salary of Rs. 5960/-per month drawn by a primary teacher (untrained) in January, 2007, it cannot be held that the family was in extreme financial hardship, that it failed to provide two square meals and other essentials to the surviving members of the deceased teacher's family. Therefore, the impugned order calls for no interference. Hence, the writ petition is dismissed. Let the records of the State be returned to Mr. Joytosh Majumder, learned advocate. No order as to costs.

Urgent photostat certified copy of this judgement, if applied for, be furnished to the appearing parties on priority basis.