
(2010) 05 CAL CK 0077
In the Calcutta High Court
Case No : Writ Petition No. 18669 (W) of 2006

Gobinda Chandra Das

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 05-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 CAL CK 0077

Hon'ble Judges : Jayanta Kumar Biswas, J

Bench : Single Bench

Advocate : None, for the Appellant; Amar Mitra, for the Respondent

Final Decision : Allowed

Judgement

Jayanta Kumar Biswas, J.—The petitioner in this Article 226 petition dated August 2, 2006 is questioning the decision of the Collector, Burdwan dated April 10, 2006, Annexure P6 at p.33, rejecting his application for appointing his son as a stamp vendor on compassionate ground.

2. The decision of the collector dated April 10, 2006 is quoted below:

With reference to his application dt.22-2-06 this is to inform him that in the light of the clarification given in Finance Revenue Department, Government of West Bengal's No. 86(2)F.T.dt.18.1.2006/F.T/O/IM-22/OO stamp (Demand 3) the Government has decided not to appoint any new stamp vendor even on compassionate ground.

3. The petitioner is a stamp vendor. He has been working under licence No. 12 of 1973-1974 in "S.R's office, Burdwan". He has been suffering from illness. Under the circumstances, on February 22, 2006 he applied to the Collector, Burdwan for appointing his son as a stamp vendor on compassionate ground. By the impugned decision the collector has rejected his such application.

4. The O.S.D. & Ex-officio Deputy Secretary to the Government of West Bengal,

Finance Department, Taxation issued an order No. 2894(17)-F.T. dated August 22, 1997, Annexure P5 at p.29, notifying the guidelines "for granting new vending licence for sale of non-postal stamps".

5. Paragraph 9(c) of the government order dated August 22, 1997 provides as follows:

In case of death of a stamp-vendor or in case of a stamp-vendor's inability to run his/her business personally due to old age and permanent infirmity, the Collector may, at his discretion, consider, on compassionate grounds, granting of a new vending licence to the husband/the wife/a son/a daughter of the deceased or disabled stamp-vendor after termination of the licence of such deceased or disabled stamp-vendor provided that such a near relative fulfils all the eligibility criteria including minimum educational qualification and age limits as prescribed in the memo mentioned above and also provided that the deceased or disabled stamp-vendor has run the stamp vending business continuously and satisfactorily for atleast ten years before this/her death or his/her becoming disabled as the case may be and that such grant of licence is required for maintenance of the family of the deceased disabled stamp vendor.

6. The O.S.D & Ex-officio Deputy Secretary to the Government of West Bengal, Finance (Revenue) Department then wrote a letter No. 86(2)-F.T. dated January 18, 2006, Annexure R1 at p.10, to the Additional District Magistrate (Revenue), South 24-Parganas and the District Magistrate, Burdwan dealing with the five point demands of the West Bengal Stamp Vendors' Association, South 24 Parganas and Burdwan. With respect to demand 3 the following government view was recorded in the letter:

Demand No. 3: The Government has decided not to appoint any new Stamp-Vendors even on compassionate ground. So the question of raising age limit or reducing educational qualification eligibility is irrelevant.

7. Citing the view of the government recorded in the letter dated January 18, 2006 the collector turned down the petitioner's prayer. The petitioner learnt that the same collector gave compassionate appointment to a similarly situated person even in the face of the government's view recorded in the letter dated January 18, 2006. Under the circumstances, alleging that the action discriminated against him, he approached this Court with this petition.

8. The fact that a similarly situated person was given compassionate appointment by the same collector has not been disputed by the respondents. On the contrary, with the opposition filed on behalf of the collector a copy of the order of the Collector, Burdwan dated May 2, 2007, Annexure R2 at p. 12, has been produced. It is evident from the order that under similar circumstances one Sri Dipankar Dhara was given a compassionate appointment as stamp vendor.

9. Mr Mitra, Counsel for the state, has submitted that Dipankar has been appointed as a stamp vendor on compassionate ground considering his case as a

special case. He finds little to say why the petitioner's case was not considered as a special case as well. It is evident that the decision or view of the government recorded in the letter dated January 18, 2006 not to appoint any new stamp vendor even on compassionate ground does not prohibit appointment on compassionate ground treating a case as a special case.

10. In my opinion, every case of compassionate appointment is to be treated as a special case, because a compassionate appointment is given by making an exception to the rule under which all normal appointments are made. In my view, the petitioner is fully justified in saying that the action has discriminated against him. It is not that Dipankar has been appointed illegally. I am, therefore, of the view that the case of the petitioner should be considered on merits.

11. For these reasons, I allow the petition, set aside the impugned decision and direct the Collector, Burdwan to decide the petitioner's application for appointing his son as a stamp vendor on compassionate ground on merits giving a reasoned decision within six weeks from the date of communication of this order after giving the petitioner reasonable opportunity of hearing. The decision shall be communicated to the petitioner at once. No costs. Certified xerox.