
(2001) 12 CAL CK 0048
In the Calcutta High Court
Case No : Writ Petition No. 13413 (W) of 1999

Kalyani Adhikari

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 19-12-2001

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 21, 226

Citation : (2002) 2 CALLT 42

Hon'ble Judges : Pratap Kr. Ray, J

Bench : Single Bench

Advocate : Tapan Chakraborty and Tapan Kr. Ray, for the Appellant;

Final Decision : Dismissed

Judgement

P.K. Ray, J.—In this writ application the petitioners have challenged the decision dated 9th December, 1998 of the District Inspector of Schools (SE) Burdwan (herein after referred to as the "concerned District Inspector of Schools") whereby the prayer for appointment on compassionate ground under "die-in-harness" category to one of the petitioners was rejected. In the writ application it is the case of the petitioners that one Siba Sambhu Adhikari, since, deceased, breathed last on 8.8.1980 while in service as Assistant Teacher of B.M.S. Junior Public Institution (High), Village-Bhenpur, P.O. Shyamsundarpur, District-Burdwan leaving behind the petitioners. This writ application has been filed by the widow of the said Assistant Teacher, petitioner No. 1 and son of the said Assistant Teacher, petitioner No. 2 it is further contended that a representation for service under die-in-harness category was filed on 16th August, 1980 and subsequently on 20th February, 1982 and thereafter so many representations were made but nothing was done on the part of the respondents. The petitioners, on said issue moved this writ Court by W.P. No. 1950(W) of 1998. By the order dated 17th March, 1998 Bhaskar Bhattacharya, J. directed the respondents concerned to consider the writ application as a fresh representation and to dispose of the same in accordance with law by a reasoned order. On hearing the petitioners

accordingly the Impugned decision was passed whereby the District Inspector of Schools concerned rejected the prayer on the ground that within two years from the date of death since no application was filed, under the rule there was no scope to provide any appointment. It is submitted by the writ petitioners that the delay in deciding the matter was caused by the respondents though the petitioners filed an application long back in the year 1980 praying for a Job on compassionate ground. It is contended by the learned Advocate that the reason as assigned accordingly was not maintainable. It is further submitted that even at this stage that is after 21 years from the date of death of the said Assistant Teacher, there is scope of providing appointment to one of the petitioners. From the concerned Recruitment Rules as applicable in respect of the Secondary Schools earlier there was no scheme for providing job to the dependants of a teacher who breathed last untimely prior to his superannuation and for the first time such Rule was introduced under Memo No. 1464(16) G.A. dated 28th August 1981 with effect from 1st January, 1981. Hence, at the relevant time when the concerned teacher breathed last untimely there was no such scheme. Furthermore, after long lapse of 21 years, this application cannot be considered for the very simple reason that the scheme for providing job under compassionate ground to the dependants of a teacher, who breathed last untimely, was solely with the view to mitigate the suffering of the family members due to such untimely death of bread earner. The object of such scheme was based on a social welfare object only to mitigate the suffering of the family members immediately as caused due to the death which resulted the financial problem in the family. Hence, by no stretch of imagination it can be said that the cause of action of such appointment would survive even after so many years more particularly after 21 years from the death when the family was able to survive for so many years. Appointment to a dependants of a deceased under compassionate ground practically hits the equality clause of appointment in terms of the Constitution. It is violative of Articles 14 and 16 of the Constitution of India as equality of opportunity in employment is being curtailed to a certain extent by providing a special resolution to certain category of employees when other unemployed persons after registering name in the Employment Exchange are awaiting a call. Accordingly, even if any appointment under compassionate ground is made, the same must be on following the true letter and spirit of the said scheme.

2. However, the learned Advocate for the petitioners strongly contended in support of the writ application by referring two judgments, one passed in the case of Smt. Phoolwati Vs. Union of India and Others, and another judgment of Coordinate Bench of this Court passed in the case of Motiur Rahaman v. State of West Bengal & Ors., reported in 2001(3) CHN 662. In the case of Mottur Rahaman (supra) the factual matrix of the case is completely different wherein the teacher breathed last in the year 1985 and the application was filed in the year 1987. But despite such application nothing was done. Ultimately the son attaining major filed the application in the year 1994. The case was decided by

applying the rules of 1995 and accordingly the Court held that the relevant rule at the material time as was prevalent in terms of Memo No. 457-Edn. (P)/4A-50/83 dated 12th October, 1987 would be the guiding rule. In that case the impugned decision as passed by the District Inspector of Schools concerned was only on a ground that the petitioners therein failed to produce certain documents. Considering all the aspects of the matter, the Court held accordingly in favour of the petitioners. Here in the Instant case, the writ application is on different ambit. Here the teacher who breathed last was working in a Secondary School where admittedly there was no such scheme at that time for providing job under the compassionate ground in the event of any untimely death of any teacher. In the case Mottur Rahaman (supra) the teacher was of primary Section and accordingly relied on circular of Primary Education Department wherein such scheme was introduced long back prior to the Introduction of the said scheme to the Secondary Schools in the State of West Bengal. Since there was no scheme which is admitted by the petitioners even at the relevant time when the death occurred, the judgment as referred to, has no applicability. It is a settled law that a Judgment is a precedent if the question of law involved is Identical and facts are also indentlcal. It is also a settled law that even a change of word in the pleadings will not help to consider the said judgment as a precedent. .Reliance may be placed in the case Regional Manager v. Pawan Kumar Dube, reported in AIR 1976 SC 1776 wherein the apex Court held "it is the Rule deducible from the applications of law to the facts and circumstances of a case which constitutes Its ratio decidendi and not same conclusion based upon the facts which may appeal to be similar. One additional or different fact can make a world of difference between the conclusions in two cases, even when the same principles are applied in each to similar facts". Furthermore, it is now a settled law that a decision is an authority for what it decides and not what can logically be deducted therefrom as even a slight distinction in fact or an additional fact may make a lot of difference in decision making process. Reliance may be placed to the case Quinn v. Leatham, reported in (1990) All ER 1, the case of Krishena Kumar and Others Vs. Union of India and others, and Commissioner of Income Tax Vs. M/s. Sun Engineering Works (P.) Ltd., . Judgment passed in Motiur Rahaman (supra) was based on facts of the said case qua the rule and circular letter applicable to Primary Teacher, where Judgment of the apex Court on the issue in question has not been applied. The apex Court judgments have settled the law on the scope and ambit of consideration of an application under compassionate appointment. Reliance may be placed to cases namely Haryana State Electricity Board and another Vs. Hakim Singh, where the delay was 14 years whereas the rule was to apply within one year and as such apex Court did not grant any relief to appoint under category of die-in-harness. It is further held in the apex Court explaining rationale of the rule relating to compassionate appointment in the following way at page 87 of the judgment:

"The rule of appointments to public service is that they should be on merits and though open Invitation. It is the normal route through which one can get into a

public employment. However, as every rule can have exceptions, there are a few exceptions to the said rule also which have been evolved to meet certain contingencies. As per one such exception relief is provided to the bereaved family of a deceased employee by accommodating one of his dependants in a vacancy. The object is to give succour to the family which has been suddenly plunged into penury due to the untimely death of its sole breadwinner. This Court has observed time and again that the object of providing such ameliorating relief should not be taken as opening an alternative mode of recruitment to public employment."

3. The case Haryana State Electricity Board Vs. Naresh Tanwar and Another, wherein there was a delay for 12 years and accordingly the apex Court did not grant any relief but only directed to consider the matter sympathetically, upon holding, inter alia, that the right to be considered for appointment on compassionate ground was not a vested right which could be expressed at any time even after the crisis created by the death was over. The case Jagdish Prasad Vs. State of Bihar and Another, where there was a delay of 23 years and accordingly no relief was granted, the case State of U.P. and Others Vs. Paras Nath, by a Bench of Three Judges of apex Court wherein there was a delay for 17 years seeking job on compassionate ground and accordingly Court did not allow such and the Judgment Union of India (UOI) and Others Vs. Bhagwan Singh, . Furthermore, applying the definition of the word "immediate" as explained in the Black Law Dictionary, the word means "at once and without delay" under a scheme for appointment on compassionate ground. The appointment is required to be made immediately to mitigate the suffering of the family. Reliance to this effect may also be placed to paragraph 13 of the case P. Orr & Sons (P) Ltd. v. Associated Publishers (Madras) Ltd., reported in 1991 10 SCC 301. Further in Susama Gosain's case, reported in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, , apex Court has considered the provision in depth upon holding that appointment on compassionate ground would be only to mitigate the hardship due to the death of the bread earner.

4. Hence, the case Motiur Rahaman (supra) cannot be a ratio decidendi and/or a precedent in this present case. Since, the said Court had no occasion to consider the judgment of the apex Court in this field by which it has already been a settled legal proposition that the time is the essence to grant relief for appointment to such type of cases and further it is settled that after long delay, the petition is not maintainable, hence, the Judgment of Motiur Rahaman (supra) with due respect to His Lordship, has no binding effect to me though this Court is a co-ordinate Bench. The Judgment passed in Smt. Phoolwati (supra) has no relevancy in the present case, since in that case the Court directed to decide the appointment on compassionate ground as expeditiously as possible. Here in this case the petitioners have approached the writ Court in 1998 which is after long 18 years from the date of death. Bhaskar Bhattacharya, J. did not condone the delay while directing the District Inspector of Schools concerned to decide the matter, since in the order itself, it was mentioned that the said Authority would

decide the question in accordance with law. Accordingly, by the order passed by Bhaskar Bhattacharya, J. that delay in filling application for job was not condoned and the argument to that effect by the learned advocate for the petitioners is rejected.

In that view of the matter, this writ application is dismissed. There will be no order as to costs.