
(2016) 09 CAL CK 0025
In the Calcutta High Court
Case No : Writ Petition No. 9955 (W) of 2015

Papiya Majumdar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 15-09-2016

Acts Referred:

Citation : (2016) LIC 4598

Hon'ble Judges : Shivakant Prasad, J.

Bench : Single Bench

Advocate : Mr. Joytosh Banerjee and Mr. Pinaki Dhole, Advocates, for the State; Mr. Gautam Dey, Mr. Anupam Das and Mr. Rituparna Sengupta, Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Shivakant Prasad, J. - The petitioner, a widow of the deceased Bhabani Prasad Majumdar who was an approved Assistant Teacher. On 27.11.2001 the respondent no. 3 approved the appointment of the deceased husband of petitioner as a Headmaster in Domohani Jr. High School who discharged his duties with responsibilities, but husband died in harness on 21.4.2007.

2. The deceased husband was sole earning member of the family and due to the sudden death of the husband of the petitioner, the family of the petitioner has been facing tremendous financial hardship.

3. The petitioner passed the Madhyamik Examination in the year 1988 and Higher Secondary Examination in the year of 1991.

4. The Vice-Chairman of the Jalpaiguri Municipality issued two letters dated 03.6.2007 and 12.10.2007 in favour of the petitioner certifying the petitioner as the legal heirs of her deceased husband and also certified that the petitioner's family have no income from any other sources, unable to maintain her two children due to lack of financial strength.

5. Petitioner made a representation dated 05.6.2007 before the respondent no. 4 requesting him to disburse her deceased husband's arrear salary, provident fund amount, pensionary benefits in favour of the petitioner and to grant the compassionate appointment under died in harness category in favour of the petitioner and she made an application dated 13.10.2007 before the respondent authorities for granting compassionate appointment under died in harness category in her favour but the respondent authorities did not take any proper steps.

6. The Director of Pension, Provident Fund and Group Insurance disbursed the provident fund and gratuity amount in favour of the petitioner under the death cum retirement benefit scheme.

7. The respondent no. 3 communicated one letter, being memo no. 19/9/1(2) dated 18.02.2008, to the respondent no. 2 forwarding the prayer of the petitioner for compassionate appointment in Domohani Jr. High School under the died in harness category.

8. Thereafter the respondent no. 3 served one letter, being memo no. 220(50) dated 15.02.2010, to the respondent no. 5 as well as the petitioner directing her to resubmit the relevant papers for considering the proposal of compassionate appointment and the petitioner resubmitted all the papers but the respondent no. 3 by a memo no. 1447 dated 13.10.2010 rejected the prayer of the petitioner for compassionate appointment under the died in harness category in terms of G. O. No. 697-ES/S/IS-18/08 dated 9th July, 2009 as the "Income" of her family exceeded the gross emoluments of Group-D employee at the material point of time. It is urged by the learned Counsel for the petitioner, the respondent authorities should have considered the compassionate appointment of petitioner in terms of the notification no. 1594 SE (S) dated 26th December, 2005 as the husband of the petitioner died on 21.04.2007 and the application form for compassionate appointment was submitted by the petitioner on 13.10.2007 before the respondent authorities.

9. It is further submitted that the petitioner made one representation before the respondent no. 3 on 14.11.2014 requesting him to consider her prayer for compassionate appointment as she is not in a position to maintain her two children for their studies due to financial hardship.

10. Again, on 09.3.2015 petitioner submitted another representation before the respondent no. 3 requesting the authority to consider the proposal for compassionate appointment under the died-in-harness category to the petitioner or her son who attained the age of majority. Thereafter, the respondent no. 3 by memo no. 513 dated 25th March, 2015 issued to the petitioner informed, prayer of the petitioner for compassionate appointment was already rejected in the light of G. O. No. 697-ES/S/IS-18/08 dated 9th July, 2009 as the "Income" of her family exceeded the gross emoluments of Group-D employee at the material point of time. It is submitted that since the deceased husband of the petitioner

died on 21.4.2007 as per the Government order dated 26th June, 2009, same is not at all applicable in the case of the petitioner as the law prevailing as on 21.4.2007 is applicable to the case of the petitioner who had filed an application for appointment on compassionate ground on 13.10.2007. Accordingly, the petitioner prayed that the memo dated 25th March, 2015 of the respondent no. 3 be set aside, cancelled and/or quashed.

11. It is further contended that the respondent no. 3 rejected the prayer for compassionate appointment of the petitioner dated 13.10.2007 after passing over so many years whereas the husband of the petitioner died on 21.4.2007 when the petitioner was unable to maintain her family due to the financial hardship.

12. Mr. Joytosh Banerjee, learned Assistant Additional Advocate General for the State submitted that the writ petition is not maintainable as it suffers from vices of an inordinate delay of about five years as the prayer for the petitioner for the compassionate appointment was rejected on 13.10.2010 and after the said rejection, petitioner took no step and remained silent and suddenly on 14.11.2014 she submitted representation reiterating her compassionate appointment which was admittedly rejected by D.I. of School, Jalpaiguri and subsequently on 09.3.2015 she made another representation and she was intimated by the memo of authority on 05.3.2015 about the earlier order of rejection dated 13.10.2010. In this context, it is submitted that subsequent communication of earlier order of rejection does not give rise to fresh cause of action. Admittedly, late Bhabani Prasad Majumder was an approved Headmaster of the School who dies in harness on 21.4.2007; the petitioner submitted her application for appointment as compassionate ground on 13.10.2007 which was duly considered by the D.I. of School SE, Jalpaiguri by its Memo No. 1147 dated 13.10.2010 and the prayer of the petitioner was turned down in view of the G.O. No. 697-ES/S/IS-18/08 dated 9th July, 2009 because the family income exceeded the initial gross emolument of Group-"D" employee at the material point of time. The prayer of the petitioner for compassionate appointment made on 13.10.2007 was not considered as the Director of the School Education, Government of West Bengal by an Order No. 233-SE dated 09.3.2007 requested to resist from taking any decision in the matter of compassionate appointment on the basis of income of the family.

13. Mr. Majumdar further submitted, the certificate of income issued by Vice-Chairman, Jalpaiguri Municipality stating that the petitioner has no income from any source is a suppression of facts on her part as the income of the family was more than the gross salary of Group-"D" staff of the State Government.

14. It is also pointed out that the calculation of the financial hardship of a family has to be made in a particular method vide Government order dated 09.7.2009.

15. It would appear from the Notification No. 697-ES/S/IS-18/08 dated 9th July, 2009 that the Governor was pleased to make the rule regulating the selection of

a person for appointment to the post of non-teaching staff in supersession of all previous rule, orders, notification and direction on the subject which provides for an explanation with regard to the expression "financial hardship" which reads as under -

"Explanation. - The expression "financial hardship", in relation to income of a deceased Teacher or non-teaching staff consisting of up to five members in his family, shall mean an amount of income less than the initial gross salary of Group "D" staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of Family Pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into account:

Provided that if the family of the deceased teacher exceeds five members, the income so computed under this explanation shall be reduced by 20% for each member exceeding five and the amount so arrived at, shall be taken into consideration in computing the income for the purpose of comparing it with the gross salary income of Group "D" staff at the initial stage at the material point of time."

16. It would reflect from PPO dated 04.12.2007 in respect of the deceased Bhabani Prasad Majumder, that gross death gratuity shows the family pension to the petitioner to the tune of Rs. 5,725/- annexure "R3" to the affidavit-in-opposition with a remark to this effect, "as per G.O. No. 697-ES/S/IS-18/08 dated 9th July, 2009, monthly income of the deceased family exceeded the gross salary income of Group "D" staff at the initial stage at the material point of time." Her family pension was calculated to the tune of Rs. 10,749/- as on 04.12.2007 with D.P. and D.A. @ Rs. 24% and net family pension being calculated @ Rs. 6,449/- and after mathematical calculation monthly family income was considered Rs. 5,636/- which was above the basic of Group "D" staff and in that view of the matter, the prayer of the petitioner was rejected by the respondent no. 3.

17. Learned counsel for the petitioner on the contrary submitted that the respondent authority should have considered the compassionate appointment of the petitioner by giving effect to the notification being no. 1594 SE(S) dated 26th December, 2005 since the petitioner had submitted her prayer for compassionate ground on 13.10.2007 after the demise of her husband on 21.4.2007. The said G.O. provides for rules relating to recruitment of non-teaching staff and it provides for a general procedure under Rule 8 which has been relied upon by the petitioner in support of her case. Culling out the provisions for compassionate appointment on the death-in-harness category for profitable appreciation of the case, the Rule 8(2) is reproduced hereunder thus -

"8. General procedure - (2)(a) Each District Inspector of Schools shall maintain a

roster wherein he shall enter, after examination of all relevant records, name of a member of the family of a teacher or non-teaching staff who died in harness leaving his family in extreme financial hardship and the family is in need of immediate financial assistance.

(emphasis given)

(b) For appointment in the death-in-harness category, the preference shall be given to the unemployed spouse of the deceased teacher or non-teaching staff over his unemployed sons and unemployed and unmarried daughters and, in absence of the unemployed spouse of the deceased teacher or non-teaching staff, to the unemployed sons of the deceased teacher or non-teaching staff over unemployed and unmarried daughters of the deceased teacher or non-teaching staff:

Provided that, on request of the family of the deceased teacher or non-teaching staff, the preference may, in exceptional circumstances, with the prior permission of the Director, be changed.

(c) Only one member of the family of the deceased teacher or non-teaching staff shall, subject to fulfilment of the conditions specified in these rules, or any order issued by the State Government in this behalf for the time being in force, be eligible for appointment in the death-in-harness category.

(d) A certificate from the Sabhapati of the Panchayat Samiti or the Chairman of the Municipality, Notified Area Authority or, as the case may be, Municipal Corporation to the effect that the family of a deceased teacher or non-teaching staff is in extreme financial hardship and is in need of immediate financial assistance shall be a relevant document for considering the appointment in the death-in-harness category of a member of the family.

(emphasis given)

18. It would reveal from the certificate dated 12.10.2007 of the Vice-Chairman of Jalpaiguri Municipality that names of surviving legal heirs was given in favour of the petitioner certifying that the petitioner has no land and no income in respect thereof and that she is an unemployed person with no income from any source and only dependent on her relatives with her two minor sons but such certificate has been issued without proper enquiry because the PPO shows the petitioner's income from her family pension which ought to have been disclosed.

19. Dwelling on the expression of extreme financial hardship from the above referred G.O. No. 697-ES/S/IS-18/08 dated 9th July, 2009 and the general rule relating to compassionate appointment on death-in-harness category due to extreme financial hardship and the family is need of immediate financial assistance, I am of the view the G.O. relied on by the petitioner is also not favourable to the petitioner's appointment on the ground of died-in-harness category.

20. Mr. Majumdar has relied on the authority of State Bank of India and Another v. Somvir Singh reported in (2007) 4 Supreme Court Cases 778 wherein it has been held thus -

"Appointment on compassionate grounds is an exception carved out to the general rule that recruitment to public services is to be made in a transparent and accountable manner providing opportunity to all eligible persons to compete and participate in the selection process. Such appointments are required to be made on the basis of open invitation of applications and merit.

Dependants of employees who died in harness do not have any special or additional claim to public services other than the one conferred, if any, is traceable only to the scheme, executive instructions, rules, etc. framed by the employer in the matter of providing employment on compassionate grounds. There is no right of whatsoever nature to claim compassionate appointment on any ground other than the one, if any, conferred by the employer by way of scheme or instructions as the case may be.

Thus the appellant Bank is required to consider the request for compassionate appointment only in accordance with the scheme framed by it and no discretion as such is left with any of the authorities to make compassionate appointment dehors the scheme.

The authority did not commit any error in taking the terminal benefits and the investments and the monthly family income including the family pension paid by the Bank into consideration for the purpose of deciding as to whether the family of the deceased employee had been left in penury or without any means of livelihood. The scheme framed by the appellant Bank in fact mandates the authority to take those factors into consideration. The authority also did not commit any error in taking into consideration the income of the family from other sources viz. the agricultural land.

The High Court itself could not have undertaken any exercise to decide as to what would be the reasonable income which would be sufficient for the family for its survival and whether it had been left in penury or without any means of livelihood. The only question the High Court could have adverted itself to is whether the decision making process rejecting the claim of the respondent for compassionate appointment is vitiated?

Whether the order is not in conformity with the scheme framed by the appellant Bank? It is not even urged that the order passed by the competent authority is not in accordance with the scheme. The hardship of the dependant does not entitle one to compassionate appointment dehors the scheme or the statutory provisions as the case may be. The income of the family from all sources is required to be taken into consideration according to the scheme which the high Court altogether ignored while remitting the matter for fresh consideration by the appellant Bank. It is not a case where the dependants of the deceased employee are left "without any means of livelihood" and unable to make both ends meet.

The High Court ought not to have disturbed the finding and the conclusion arrived at by the appellant Bank that the respondent was not living hand-to-mouth. The High Court cannot dilute the criterion of penury to one of "not very well-to-do". The view taken by the Division Bench of the High Court may amount to varying the existing scheme framed by the appellant Bank. Such a course is impermissible in law."

21. In case of Yunus (Babooobhai) A. Hamid Padvekar v. State of Maharashtra through its Secretary and others reported in (2009) 3 Supreme Court Cases 281, the Hon"ble Apex Court has observed in paragraph 10 thus -

"10. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution of India. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the Court as pointed out in Durga Prasad v. Controller of Imports and Exports. Of course, the discretion has to be exercised judicially and reasonably."

22. Accordingly it is submitted that the writ application suffers from delay in preferring the writ application after long silence of five years on her prayer having been rejected by the respondent no. 3 in the year 2010.

23. It is submitted that on the date of filing the writ in the year 2015, petitioner's prayer for her appointment on compassionate ground cannot be reiterated inasmuch as she attained her age of 45 years and that too, she gave proper education to her children.

24. To counter the argument of Mr. Majumdar, learned counsel for the petitioner Mr. Goutam Dey refers to the case of Kalyan Majumdar reported in 2012(3) CHN (Cal.) 449, wherein it has been observed that the opinion of the family being in extreme financial hardship would necessarily have to be formed by the council, taking into account all relevant factors in the context of an appointment to be given on compassionate ground and also relied on a decision of Soumik Dandapath v. State of West Bengal reported in 2012(1) CHN (Cal.) 60.

25. I have gone through the decisions referred to above which are distinguishable from the facts and circumstances of the instant case. In the context of the Hon"ble Supreme Court decisions quoted above, I am unable to dilute the criterion of penury to one of "not very well to do" as the family of the deceased employee has not been left in penury or without any means of livelihood and to take a view different from the Scheme under the rule of the Government of West Bengal Education Department which provides for methodology to ascertain the extreme financial hardship of a deceased family to consider the petitioner's appointment in death-in-harness category to meet immediate financial assistance.

26. Bestowing upon the observations made by the Hon''ble Supreme Court in the context of my discussion above, I find the writ application being devoid of merit, ergo, the writ application is dismissed, however, without any order as to costs.

27. Urgent certified photocopy of this Judgment and order, if applied for, be supplied to the parties upon compliance with all requisite formalities.