
(2011) 07 CAL CK 0026
In the Calcutta High Court
Case No : W.P 19745 (W) of 2010

Partha Sarathi Sarkar

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 04-07-2011

Acts Referred:

Citation : (2012) 2 CHN 262

Hon'ble Judges : Biswanath Somadder, J

Bench : Single Bench

Advocate : Ekramul Bari and Tanuja Basak, for the Appellant; P.S. Deb Barman and Saikat Banerjee for the State, for the Respondent

Judgement

Biswanath Somadder, J.—The writ petitioner approaches this Court in a second round of litigation. Earlier, he had filed a writ petition, being W.P. No. 15346 (W) of 2009, challenging an order of the Director of School Education, West Bengal, rejecting the proposal of the District Primary School Council, Malda, to give compassionate appointment to him under the "died-in-harshess" category. By a judgment and order dated 8th January, 2010, Her Ladyship, the Hon'ble Justice Indira Banerjee disposed of that writ petition setting aside the order of the Director of School Education, West Bengal, and directing him to take a fresh decision in accordance with law, in the light of the observations made in that judgment. The decision of the Director of School Education, West Bengal, which was rendered on 26th August, 2010, is now under challenge in the present writ petition.

2. Relying on a Government Order dated 17th December, 2007, the Director of School Education, West Bengal, rejected the proposal of the Chairman, District Primary School Council, Malda, for reconsideration of the case of the writ petitioner for appointment on compassionate ground under the "died-in-harness" category. In his decision, the Director of School education, West Bengal, has categorically observed that the Government Order dated 17th December, 2007, was relevant in the instant case and the writ petitioner was not entitled to any

relief.

3. Before closely scrutinizing the decision making process which resulted in the impugned decision rendered by the Director of School Education, West Bengal, on 26th August, 2010, it is, perhaps, necessary to state briefly, some relevant facts.

4. The writ petitioner's mother was an approved primary school teacher of Hari Bhusan Das Memorial Prathamik Vidyalaya under English Bazar Circle in the district of Malda who died-in-harness on 4th April, 2004, at the age of 54, leaving behind one son, two married daughters and her husband. The writ petitioner, being the only son, made an application on 1st June, 2004, praying for appointment on compassionate ground under the "died- in-harness" category. This application was forwarded as a proposal by the concerned District Primary School Council, Malda, to the Director of School Education, West Bengal, on 10th January, 2006. which was rejected by the Director and communicated to the petitioner in terms of a memo dated 23rd March, 2008, issued by the Secretary, District Primary School Council, Malda, This prompted the writ petitioner to approach this Court in the first round of litigation.

5. It is also relevant to quote some of the observations made by Her Ladyship Justice Indira Banerjee in her judgment and order dated 8th January, 2010.

...The petitioner applied for compassionate appointment in terms of the aforesaid rule on 1st June, 2004. It is submitted that even though the petitioner's father was at the material time in receipt of Government Pension and in receipt of Family Pension on account of Petitioner's late mother, totaling about Rs. 8,500/- a month, the family had to incur tremendous expenditure on the medical treatment of the petitioner's father, who had been suffering from cancer. The petitioner's father ultimately died on 27th March, 2007, within three years from the death of his wife.

It is submitted that by reason of the medical treatment of the petitioner's late mother as also the petitioner's late father, the family, is virtually bankrupt.

The Malda District Primary School Council recommended the petitioner for compassionate appointment on the ground that the family was in economic hardship.

In the meanwhile, Rule 14 has further been amended by a Notification dated 28th January, 2008, whereby an explanation has been incorporated which is extracted herein below for convenience:

Explanation: -- The expression "financial hardship", in relation to income of a teacher, retired under this sub-rule, consisting of upto five members in his family for consideration of appointment under this sub-rule, shall mean an amount of income less than the initial gross salary of a group-D staff of the Council at the material point of time. For computation of income such family, an income of an amount earned from any other sources by each family member that provident

fund and gratuity at the material point of time shall be taken into account:

Provided that if the family of the 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.

The amendments are apparently prospective. The application of the petitioner for compassionate appointment was to be adjudged on the basis of the rules in existence at the material time when the petitioner's mother expired.

Assuming that the subsequent explanation is applicable in that the application of the petitioner is still pending, the subsequent event of the death of the petitioner's father is also to be taken into account. It appears that the petitioner is without income after the death of his father.

In any case, the impugned order is a non-speaking order. The order merely reads that the proposal for appointment of the petitioner is not approved since the family does not appear to have been in financial distress. The materials on the basis of which the Director of School Education came to the aforesaid conclusion have not been discussed. The impugned order cannot be sustained and the same is set aside. The Director of School Education is directed to take a fresh decision in accordance with law in the light of the observations made above.

6. It is clear from the portion of the judgment and order dated 8th January, 2010, quoted above that the observations of the Court were required to be taken into consideration by the Director of School Education, West Bengal, before rendering his decision rejecting the proposal of the Council for reconsideration of the case for appointment of the petitioner on compassionate ground under the "died-in-harness" category. It is, therefore, necessary at this stage, to also quote the relevant portion of the impugned decision rendered by the Director of School Education, West Bengal:

On going through the submissions of the learned Advocate for the petitioner and the relevant records lying in the file, it appears that the Chairman, District Primary School Council, Malda, forwarded his proposal to this Directorate under its Memo No. 41 dated 10.1.2006. This Directorate observed that the family of the deceased teacher was received of Rs. 5,925/- per month (Rs. 3,000/- as pension from the husband of the deceased teacher + Rs. 2925/- as family pension because death of the teacher. The said amount is the source of income to the family of the deceased teacher composed of two members only i.e. Husband of the teacher and her only son. The record also sets that the family of the deceased teacher also received Rs. 34,096/- towards retiral benefits at the material point of time. Considering the above facts this Directorate considered the proposal of the Chairman, District Primary School Council, Malda in terms of provisions contained in the West Bengal Primary Teachers Recruitment Rules 2001 and rejected on the ground that the said family could not be treated as

financially distressed and the said decision was communicated to the Chairman, District Primary School Council, Malda under this Directorate's memo No. 1884-Sc/P dated 27.9.2007.

The Chairman, District Primary School Council, Malda forwarded another proposal in the same matter under its memo No. 1289 dated 26.8.2008 for reconsideration. In the meantime, husband of the said teacher expired on 27.3.2007. The petitioner claimed that he had no income from any sources i.e. from the pension or/and family pension and he deserved for compassionate appointment. In this context it is to state that mother of the petitioner expired on 4.4.2004. In terms of G.O. No. 1123-SE(Pry) dated 17.12.2007, there was no scope to allow the case since the financial condition of the family of the deceased teacher within two years of expiry of the teacher had to be taken into account to consider such case. Family of the deceased teacher was not financially distressed at the material point of time. Under such ground this Directorate rejected the proposal of the Chairman, District Primary School Council, Malda, for reconsideration and that was communicated to the Chairman under this office memo No. 1018-Sc/P dated 27.7.2009.

Considering the above facts I am of the opinion that the G.O. No. 1123 SE (Pry) dated 17.12.2007 is still relevant in this case and the petitioner is not entitled for any relief.

7. When a Court makes certain observations while disposing of a writ petition and directs a public authority to take a decision in the light of such observations, it is the bounden duty of that public authority to consider and discuss each and every observation made by the Court. No decision making process can withstand, successfully, the test of judicial review by the writ Court unless and until all observations made by the Court in its earlier Judgment were duly considered and discussed threadbare by that public authority before rendering its decision.

8. In the instant case, the impugned decision rendered by the Director of School Education, West Bengal, dated 20th March, 2008, relevant portion whereof has been quoted above, clearly reveals that none of the observations made by Her Ladyship, the Hon'ble Justice Indira Banerjee in the judgment and order dated 8th January, 2010, have been taken into consideration or even discussed in the decision making process. Instead, it appears that the Director of School Education, West Bengal, has solely relied on a Government Order dated 17th December, 2007 and has held that the same was relevant in the facts of the case.

9. It is, therefore, apt to take into consideration the contents of the Government Order dated 17th December, 2007. The said Government Order is actually a notification issued by the Primary Branch of the School Education Department, Government of West Bengal introducing certain draft amendments, proposed by the State Government, in respect of Rule 14 of West Bengal Primary School Teachers' Recruitment Rules, 2001. This notification dated 17th December, 2007, is neither an amendment of Rule 14 of the Recruitment Rules, nor does it seek to

bring into force any amendment of Rule 14 of the West Bengal Primary School Teachers' Recruitment Rules, 2001. Thus, reliance on the notification dated 17th December, 2007, and referring it as a "Government Order" is a sheer example of total non-application of mind on the part of the Director of School Education, West Bengal.

10. The Director of School Education, West Bengal, has, however, sought to justify his decision rejecting the proposal of the Chairman, District Primary School Council, Malda, for reconsideration of the writ petitioner's case for appointment on compassionate ground under the "died-in-harness" category in his affidavit-in-opposition. It appears from the said affidavit that the Director while justifying his decision, has relied on a different notification, which was initially dated 28th January, 2008, but subsequently corrected by another notification dated 20th February, 2008, to read as 15th February, 2008, whereby certain amendments in respect of Rule 14 of the West Bengal Primary School Teachers' Recruitment Rules, 2001, have been introduced with immediate effect.

11. Even if one assumes for a moment that the notification dated 15th February, 2008, has been wrongly quoted in the impugned decision rendered by the Director - which is certainly not the stand taken by State in its affidavit-it remains to be seen as to whether the said notification dated 15th February, 2008, could at all be applicable in the facts of the instant case.

12. As observed hereinabove, the writ petitioner's mother had expired on 4th April, 2004. On 1st June, 2004, the writ petitioner had made an application before the concerned Council praying for appointment on compassionate ground under the "died-in-harness" category. That proposal was forwarded by the Council to the Director of School Education, West Bengal, on 10th January, 2006, which was ultimately rejected by the Director and communicated to the petitioner by the Secretary, District Primary School Council, Malda, by a memo dated 20th March, 2008. Had the application of the writ petitioner seeking appointment on compassionate ground, which was made on 1st June, 2004, been considered by the concerned authority immediately, the question of relying on the amendment of Rule 14, which was introduced with effect from 15th February, 2008, would not have arisen at all. Even, had the proposal of the Council, which was forwarded to the office of the Director of School Education, West Bengal, on 10th January, 2006, taken up for consideration by the Director of School Education, West Bengal, anytime between 10th January, 2006 and 15th February, 2008, there would have been no question of relying on the amendment which had no retrospective effect.

13. At this juncture, it may not be out of place to observe that the scheme of Rule 14 of the West Bengal Primary School Teachers' Recruitment Rules, 2001 does not envisage a situation where applications for compassionate appointment should be kept in a state of hibernation for years together. The essence of Rule 14 is to ensure that the family of a teacher who dies in service does not land in the streets with begging bowl in hand, particularly when the family depends on

the teacher's income for sustenance. In the present case, where the teacher died in April 2004 and an application was made for compassionate appointment on 1st June, 2004, by a member of the teacher's family, that application ought to have been taken up for consideration and decided within the shortest possible time. Instead, the concerned Council took almost one and half years to forward the proposal to the office of the Director of School Education, West Bengal, and thereafter, the Director took more than two years to come to a decision on such proposal. If this is the manner in which a proposal for compassionate appointment under the "died-in-harness" category is considered and decided by the public authorities, the very object of the scheme of Rule 14 of the Recruitment Rules stands frustrated. The timeframe of two years for making an application for compassionate appointment has been consciously provided by the rule-maker, keeping in mind the object of the Rule. Thus, to ensure that the object of the Rule is not defeated, it is imperative for the concerned authorities to take decision - one way or other -in respect of such applications, within the shortest possible time, which, under no circumstances, should exceed beyond a period of two years from the date of receipt of the application.

14. The learned advocate for the State at the time of hearing of the matter, however, strenuously argued that the amendments in respect of Rule 14 of the West Bengal Primary School Teachers' Recruitment Rules, 2001, which were brought into force in terms of the notification dated 15th February, 2008, were, in effect, substitution of the old Rule. In a case of substitution, the effect would be as if one of replacement and, therefore, effective from the date when the old Rule had come into force. This Court is unable to accept such submission made by the learned advocate for the State for the simple reason that although it is true that the old Rule stood substituted by virtue of the amendments, nowhere in the notification 15th February, 2008. it has been stated that such amendments would come into force with retrospective effect. On the contrary, the preamble of the notification makes it clear that the amendments were to come into effect immediately, which means, on and from that date. Unless the rule maker specifically provides for retrospective effect, simply because the word "substitute" is used to introduce an "amendment to an existing Rule, the same cannot, ipso facto, mean that retrospective effect has been given to the amended Rule. As observed hereinabove, the amendments came into force by way of the notification dated 15th February, 2008, with immediate effect on and from that date. It was, perhaps, for this reason, Her Ladyship, the Hon'ble Justice Indira Banerjee, in her judgment and order dated 8th January, 2010, made observations to the effect that the amendments were apparently prospective and that the application of the petitioner for compassionate appointment was to be adjudged on the basis of the rules in existence at the material time when the petitioner's mother expired.

15. In a more or less similar fact situation, this Court has recently render a judgment on 7th June, 2011, in W.P. 370 (W) of 2011 (Khondakar Minhazuddin vs. State of West Bengal & Ors.). Some observations made by a Division Bench

of this Court in the case of Sri Satyagopal Misbra vs. State of West Bengal & Ors., reported in (2011) 2 WBLR (Cal.) 757, were relied on, which may be aptly quoted in the context of the instant matter:

...This unfortunate Appellant has been pursuing his relief since January 2003 but fortune did not smile. It always remains concealed under the cloud of executive indifference. Now it should be just justice and it would be just desert. Otherwise it would be -

Twixt tweedledum and tweedledee". The discipline of law, the due process of law and the rule of law become mere claptrap if Judges bound to obey precedent choose to disobey untenable alibi.

And, behind the stonewall of rules and dead regulations would wail the appellant "How long o Lord, how long!" [Fuzlunbi Vs. K. Khader Vali and Another,]

16. For reasons stated above, the impugned decision rendered by the Director of School Education, West Bengal, on 26th August, 2010, is liable to be set aside and quashed and is accordingly set aside and quashed. The Director of School Education, West Bengal, shall consider the proposal of the Chairman, District Primary School Council, Malda, recommending the writ petitioner's name for appointment on compassionate ground under the "died-in-harness" category as a valid proposal and issue necessary order of approval in his favour. Such approval shall be accorded in terms of this order as expeditiously as possible, preferably within a period of four week's, but not later than six weeks from date of communication of a Photostat certified copy of this order. Once approval is accorded by the Director of School Education, West Bengal, in terms of this order, the Chairman, District Primary School Council, Malda, shall give immediate effect to the same by issuing necessary order of appointment in favour of the writ petitioner. The instant writ petition stands disposed of accordingly.

Urgent Photostat certified copy of this order, if applied for, be given to the learned advocates for the parties.