
(1998) 09 CAL CK 0041

In the Calcutta High Court

Case No : Constitutional Writ Jurisdiction, A.S.T. No. 1245 or 1998

Rafiqul Islam

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 16-09-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1999) 1 CALLT 166

Hon'ble Judges : Mahemmad Habeeb Shams Ansari, J

Bench : Single Bench

Advocate : Mr. Arun Kr. Sanyal, for the Appellant; Mr. C. Chakraborty, for the Respondent

Judgement

M.H.S. Ansari, J.—The present writ application is filed for a direction in the nature of mandamus enjoining the respondents to immediately offer the petitioner a suitable appointment in the post of Assistant Teacher in a primary school under the Murshidabad District Primary School Council under died-in-harness category.

2. The case of the petitioner is that his father Nazrul Islam was the Headmaster of Jilli South Primary School who died-in-harness on 9.5.81 leaving behind his widow: a daughter aged 10 years and a son, the petitioner herein then aged about 63 years. The petitioner on attaining the age of majority applied for appointment as primary teacher on compassionate grounds after having passed the Madhyamik examination in 1993.

3. As no action was taken on the representation made by the petitioner as also that the widow, mother for granting the petitioner's appointment on compassionate ground, a writ petition was filed being C.O. No. 15676(W) of 1995 which was disposed of with a direction to the Chairman, Murshidabad District Primary School Council, to consider the case and pass a reasoned order.

4. Pursuant to the said order dated 22.9.95 passed by this High Court, the case

of the petitioner was considered and rejected by an order dated 28.3.96 and communicated to the petitioner by memo. No. 2716/L-483 dated 11.11.96.

5. The ground of rejection of the request of the petitioner is that the father of the petitioner expired on 9.5.81 and the petitioner applied on 4.1.95 after a long time from the date of the death of the teacher and relying upon the G.O. No. 101-Edn (P) dated 28.1.80, whereby It is stated that benefit of appointment on compassionate ground will be extended to the duly qualified ward, if applying within two years from the date of death of the teacher died-in-harness.

6. Learned counsel for the petitioner submitted that the ground of rejection is neither proper nor tenable and the G.O. No. 101 dated 28.2.80 relied upon by the respondent-council is no longer good law in view of the subsequent G.O. No. 457 Edn (P) 4A-50/83 dated 12.10.87 and G.O. No. 107-Edn (S) dated 29.1.88. Learned counsel for the petitioner relied upon the two Judgments of the Supreme Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, and Smt. Phoolwati Vs. Union of India and Others, .

7. The question of appointment of one of the dependants of an employee of the State or Central Government who died while in service was subject matter of consideration before the Supreme Court in Smt. Sushma Gosain and Others Vs. Union of India (UOI) and Others, In that case, the Supreme Court after referring to the Government Memorandum under which the appointment on compassionate ground was being claimed, observed that the purpose of providing appointment on compassionate ground is to mitigate the hardship due to the death of the bread-earner in the family. It was observed that if an employee dies while in service, then according to the rule framed by the State to appoint one of the dependants shall not be violative of Articles 14 and 16 of the Constitution of India, because it is to mitigate the hardship due to the death of the bread-earner of the family.

8. In the case of Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, , the Supreme Court pointed out that the High Courts and the Administrative Tribunals cannot issue directions on sympathetic consideration to make appointments on compassionate ground when the regulations framed in respect thereof do not cover and contemplate such appointments. Any such right for appointment on compassionate grounds flows on basis of rules, regulations or some administrative order.

9. In the case of Umesh Kumar Nagpal Vs. State of Haryana and Others, , it was impressed that as a rule, appointments in public service should be made strictly on the basis of open invitation of applications and merit The appointment on compassionate ground was an exception to the aforesaid rule taking into consideration the fact of the death of the employee while in service and leaving his family without any means of livelihood. In such cases, the object is to enable the family to tide over certain crisis. In the said case, a scheme was made for appointments of the heirs of the ex-employee to a Class II post on the ground of

compassionate appointment. The Supreme Court not only held in the said decision that no scheme for appointment to Class II or Class I post, shall be made by way of appointment on the score of compassionate appointment, but it has been further indicated in the said decision as follows:

"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 interest of Justice and to meet certain contingencies. One such exception is in favour of the dependants of all 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. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. The Government or the public authority concerned has to examine the financial condition of the family of the deceased, and it is only if it is satisfied, that but for the provision of employment, the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family. The posts in Classes III and IV are the lowest posts in non-manual and manual categories and hence they alone can be offered on compassionate grounds, the object being to relieve the family, of the financial destitution and to help it get over the emergency."

and it was further observed as under:

"For these very reasons, the compassionate employment cannot be granted after a lapse of a reasonable period which must be specified in the rules. The consideration for such employment is not a vested right which can be exercised at any time in future. The object being to enable the family to get over the financial crisis which it faces at the time of the death of the sole bread-winner, the compassionate employment cannot be claimed and offered whatever the lapse of time and after the crisis is over."

10. In Jagdish Prasad Vs. State of Bihar and Another, , the question for consideration, in that case was with respect to appointment on compassionate ground to an applicant who was four years old at the time when his father an ex-employee died-in-harness. it was contended before the Supreme Court that since the appellant in that case was a minor when the father died-in-harness, the compassionate circumstances having continued till the date he made an

application for appointment, he was entitled to be appointed on compassionate ground. Such contention was not accepted by the High Court and up-holding the rejection of such claim for appointment, the Supreme Court observed as under;

"The very object of appointment of a dependent of the deceased employees who die in harness is to relieve unexpected Immediate hardship and distress caused to the family by sudden demise of the earning member of the family. Since the death occurred way back in 1971, in which year the appellant was four years" old, it cannot be said that he is entitled to be appointed after he attained majority long thereafter. In other words, if that contention is accepted. it amounts to another mode of recruitment of the dependent of a deceased government servant which cannot be encouraged, de hors the recruitment rules."

11. In Haryana State Electricity Board Vs. Naresh Tanwar and Another, , the High Court by its Judgment which was subject matter of appeal before the Supreme Court, proceeded on the footing that the compassionate appointment to achieve its purpose cannot be restricted within the time frame of three years and if assistance to the members of the deceased employee is required to be given, the family member must necessarily attain majority and then become eligible to apply for getting appointment. The Supreme Court after referring to the decision of Umesh Kumar Nagpal and Jagdish Prasad case referred to (supra), observed that the principle of compassionate appointment as indicated in the said decisions of the Supreme Court is not only reasonable but consistent with the principle of employment in Government and public sector and held that the Impugned decisions of the High Court, therefore, cannot be sustained and accordingly set aside the impugned Judgments.

12. In the light of the said authoritative pronouncements of the Supreme Court, the present writ petition is liable to be dismissed.

13. In the instant case, the father of the petitioner died on 9th May, 1981, when the petitioner herein was aged about 61/2 years. The petitioner on attaining the age of majority applied for appointment after having passed the Madhyamik examination in 1993. As already noticed above, compassionate appointment cannot be granted after a long lapse of reasonable period as the very purpose of compassionate appointment is intended to meet the Immediate financial problem suffered by the members of the family of the deceased employee and such consideration cannot be kept binding for years.

14. In the result, the above writ petition is dismissed, but in the circumstances, without any order as to costs.

15. Petition dismissed