
(2011) 07 CAL CK 0041

In the Calcutta High Court

Case No : C.A.N. No. 3325 of 2011 in M.A.T. No. 454 of 2011

Rajendralal Biswas

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 01-07-2011

Acts Referred:

Constitution of India, 1950 — Article 226

West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 14, 14(2)

Citation : (2011) 4 CHN 38

Hon'ble Judges : Shukla Kabir (Sinha), J; Amit Talukdar, J

Bench : Division Bench

Advocate : Partha Sarathi Bhattacharya and Raju Bhattacharya, for the Appellant; P.S. Deb Burman, for the Respondent

Final Decision : Allowed

Judgement

Amit Talukdar, J.—Reverse osmosis process would lead us to make the situation soluble, which has befallen in the eye of the stand taken by Shri Deb Burman for the respondents, which otherwise, is not only interesting but of some legal importance.

2. Prior to this, we would rewind the reel containing the sequence of events leading to the filing of this appeal. These are:

The appellant No. 1, Rajendra Lal Biswas was an Assistant Head Teacher Piralutola Primary School in the District of Malda. The age took its toll upon him and gradually he began losing command over his physique.

This led him to recues himself from his teaching assignment. Consequent to his prayer to that effect for being incapacitated, a Medical Board was set up. Professor & Head of the Department of Medicine, Professor & Head of the Department of Physical Medicine & Rehabilitation and Professor & Head of the Department of Psychiatry, North Bengal Medical College, who formed the Medical Board inspected the profile of the trailing frame of the appellant No.2.

Professor & Head of the Department of Medicine, Professor & Head of the Department of Physical Medicine & Rehabilitation and Professor & Head of the Department of Psychiatry, North Bengal Medical College held under the auspices of the chairman of the said Board that the appellant No.1 "completely and permanently incapacitated for further service of any kind....." The report of the Board was dated 16/12/2003 (Page 41 of the stay petition).

In terms of the same, the respondent No.4 (The Chairman, Malda District Primary School Council) accepted the findings of the Board and declared him as medically unfit.

Obviously, when the crumbs of bread, which the breadwinner otherwise would have secured had he been in service to keep the pot boiling, having been diminished--he prayed for absorption of his Elder Son, the appellant No.2, Dilip Kumar Biswas in his place.

He accordingly wrote to respondent No.4 (Chairman, District Primary School Council) (Page 43 of the stay petition) on 24.03.2005 portraying his current condition. Nothing fructified.

He thereafter approached the respondent No.3 (Sub-Inspector of Schools, North Circle, Malda) (Page 44 of the stay petition).

Eerie silence prevailed. Hunger did not compromise. Needs of a family never whittled down. Passage of time, barring misery, brought no cheers for this set of distraught appellants. Years of being kept in the tenterhooks saw the appellant No. 1 afflicted with illness since he had called it a day from the job of Assistant Head Teacher at Piralutola Primary School.

Driven to desperation, he again petitioned respondent No.4 (Chairman, District Primary School Council) (Page 45 of the stay petition) carrying his grievances.

Apathy, compounded agony followed by anxiousness to see the end of it. But there was no light at the end of the tunnel for these poor appellants.

Flabbergasted, they sought for ".....the high prerogative Constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India....." with the following relief:

C).....why a writ of or a writ in the nature of Mandamus should not go commanding the respondents to take steps for grant of compassionate appointment.....

Fulcrum effect of the same before the Hon"ble Single Judge poured out in the following direction;--

.....Under the recruitment Rules in order to get compassionate appointment, an application, has to be made within two years from that date. Even assuming that such application had been made and has not been considered by the District Primary School Council, Malda, it is not open to the writ petitioner to invoke the

high prerogative constitutional writ jurisdiction of this Court under Article 226 of the Constitution of India after almost seven years from the date of the writ petitioner No.1 being declared unfit. The fact of making repeated representations by the writ petitioners to the concerned Council for consideration of the case for compassionate appointment is wholly inconsequential for the purpose of invoking the writ jurisdiction after a lapse of seven years.....

Dismissal of the same has paved the way for this appeal.

2. Delay, delay everywhere; not a drop of relief anywhere. It must have been the murmurs between the appellants. While in exercise of our power of Extended Judicial Review over a decision rendered by a Constitutional Forum, we would neither suffer from any sense of pedagogy or view it from a subaltern angle. But we should see that it is just Justice for the appellants, who have pursued their remedy for all these years like a teasing mirage.

3. Will delay be a real monster to eat up the dream and expectation of the erstwhile breadwinner and his bread less family? We have to see the rules.

4. Rule 14 of the West Bengal Primary School Teachers Recruitment Rules, 2001 (as amended), which we will not quote for the sake of prolixity--contains two parts, as rightly pointed out by Shri Deb Burman. The first part relates to the died in harness category (sub-rule 1) while sub-rule (2) speaks for the persons, who fall under the category of permanent incapacitation. It is in this category, where the appellants can be classified.

5. Sub-rule (2) speaks that a teacher, who has permanently been incapacitated before attaining 58 years of age provided all other conditions being fulfilled, his (i) spouse; (ii) son; and (iii) daughter "may make within two years from the date of such retirement, a prayer in writing to the Council for appointment as primary teacher on compassionate ground".

6. In the instant case, we have found that the Medical Board was constituted on 16.12.2003 and he was formally declared unfit on 20.12.2003 by the respondent No.4 (Chairman, District Primary School Council). The appellant No. 1 approached the respondent No.4 on 24.03.2005 for compassionate appoint of appellant No.2. This would clearly show it was absolutely well within two years i.e. the cut off date set out in sub-rule (2) of Rule 14.

7. We will pause here for a moment. The other rider that he has to make the application before attaining 58 years of age is also required to be seen as to whether the same has been fulfilled. The date of birth of the appellant No.1 is shown as 26.11.1945 (See: Page 5 of the writ petition in running page 26 of the stay petition). His date of retirement was on 26.11.2005. The Medical Board assessed his age as 57. So he fulfills the other conditions required in sub-rule (2) of Rule 14.

8. His Lordship after dismissing the writ application in the fashion that we have had the occasion to see as above, perhaps, by way of a palliative held:

The dismissal of the writ petition on the ground of delay shall, however, not cause any prejudice to the right's, if any, of the writ petitioners, for consideration of the case for compassionate appointment by the concerned Council.

9. It is here where Shri Deb Burman, who has raised the dust that has shrouded the screen. But, in our opinion, the same requires to be wiped out so as to demystify the same. Shri Deb Burman had taken an initial objection that in view of the penultimate paragraph (supra) contained in His Lordship's judgment, no appeal would lie, as on merit no adjudication has been made and the equitable jurisdiction of the Court was not exercised.

10. Shri Deb Burman had submitted that the legal right of the appellants was never decided by His Lordship in the Writ Court but it was left to the discretion of the administrative authorities and Shri Deb Burman very forcefully argued that discretion cannot be a ground of appeal. Shri Deb Burman referred to the decision of the Supreme Court in State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , to show that the scheme for compassionate appointment, being an exception to general rule-- if it is proved that following the demise of the breadwinner, the family has survived, then question of compassionate appointment cannot be granted as a matter of rule. On such premises he has prayed for dismissal of the appeal.

11. As set out in the inception, we have juxtaposed the submission of Shri Deb Burman for the respondents with Shri Bhattacharya for the appellants for having a whole hog on the preliminary issue raised by Shri Deb Burman with regard to the maintainability of the appeal in the absence of any decision on the accrual of a legal right by the appellants.

12. Now over to Shri Bhattacharya. He has submitted that since the appellant No. 1 was 51 years 11 months 24 days old when he was declared permanently incapacitated by the Medical Board constituted under the rules, he having applied within two years before the respondent No.4 i.e. on 24.03.2005--obviously, he falls within the cut off period of sub-rule 2 of Rule 14 and there cannot be any qualms in this regard.

13. According to Shri Bhattacharya, once he has fulfilled the criteria as laid down in sub-rule (2) of Rule 14 and have applied within the period set out being the first criteria of fulfilling the conditions of the Medical Board; he definitely has acquired a legal right for compassionate appointment; more so, when he has come well within the time. Refusal and/or inaction on the part of the respondents kept the fate of the appellants pending, which according to Shri Bhattacharya, could not be attributed either to the laches or lapses of the appellants and thereafter out of exasperation, Shri Bhattacharya has submitted, they filed the application which resulted in the order that he has placed before us.

14. According to Shri Bhattacharya, the Hon''ble Trial Court simply dismissed the writ application solely on the ground of delay without taking into account that

repetitive applications would not make the issue stale but on the contrary, made it very much alive till the date the writ application was filed.

15. Faced with the initial hitch raised by Shri Deb Burman for the respondents, Shri Bhattacharya submitted that whereas the Hon''ble Trial Court on one hand found that no relief should be accorded to the appellants on the ground of delay; at the same time, His Lordship passed corollary directions on the respondent concerned to consider his case for compassionate appointment, which, according to Shri Bhattacharya, simply demonstrated the case of the appellants, which was based on legal right.

16. More so, Shri Bhattacharya submitted that even if he is to abide by the points raised by Shri Deb Burman that no legal right was decided but the entire issue was left to the discretion of the administrative authorities-- then also no decision has been taken from their end and obviously, the avenue remains open for him to come up in appeal.

17. As a part of his submission, Shri Bhattacharya has referred to several decisions of the Supreme Court on the proposition that there is no cut and dried period of limitation for filing a writ application and the cause of action always remains alive when there is pending representation. We would however, not advert to the same in view of the conclusion that we would be reaching, which is based on the premises other than those points which have been sought to be buttressed by the said decisions.

18. After we have had our foray in the entire issue raised by Shri Bhattacharya for the appellants and Shri Deb Burman for the respondents, we find the preliminary objection of Shri Deb Burman has to be answered.

19. In a run of the mill situation Shri Deb Burman would have been absolutely correct as no decision on the equitable right of the appellants had been taken; on the contrary, some consequential directions were passed, which in a way franchised the relief before the respondents.

20. This is one side of the issue.

21. On the flip side, we would find the Hon''ble Single Judge dismissed the writ application as His Lordship felt the high prerogative writ was not available to him and simply the fact of repeated representations is wholly inconsequential for invoking the writ jurisdiction after a lapse of 7 years. We would have subscribed to the opinion of the Hon''ble Trial Court and would have bowed out by saying amen. But there is a rider. His Lordship was bogged with the question of repeated representations, which would not have been necessary, had the respondents reacted to the initial representation made on 24.03.2005.

22. On 26.07.2010 (Page 45 of the stay petition) the appellant No.1 had again approached the respondent No.4. He filed the writ application on 03.09.2010. Wiping out from our mind the flurry of representations which have jilted the Hon''ble Trial Court, if we simply concentrate on the representation dated

26.07.2010 (supra), we find between the date of said/ representation till the date of filing of the writ application (03.09.2010), there is hardly a delay of less than two months. As such, computation of the delay was fictional.

23. The penultimate paragraph containing the directions for consideration of compassionate appointment upon the respondents, which provided much food for thought for Shri Deb Burman also, in our view, would not be of much consequence. Let us look at it from a different angle. The Hon''ble Trial Court was looking at the entire perspective from the first mirror, which was opaque. That is the mirror of delay. His Lordship also viewed the perspective from a mirror on a different wall, which reflected the plight of the appellants and have mellowed His Lordship's judicial mind to keep open the path for consideration for compassionate appointment by the respondent No.4. As such, even after sealing the fate of the appellants with the glue of delay. His Lordship left some sunshine by way of passing consequential directions that his relief, if any, can be pursued before respondent No.4.

24. In rain and sunshine, we stand in a position where we find that the appellants had come on time [Sub-Rule (2) of Rule 14]. They have set out a legal right. They have made out a case for infraction thereof. Then where is the difficulty in bringing some succor to these poor souls, who have been pursuing justice for all these long years ?

25. We have concluded that the delay was of no consequence, if at all there was any delay, for the simple reason the cause of action have been alive. It never became stale. The appellants had pursued their remedy relentlessly against a group of recalcitrant and repulsive set of respondents, who did not perform their legal duty in attending to the prayer for compassionate appointment.

26. Accordingly, as we have found that the appellant No. 1 has been able to sustain his claim for compassionate appointment, we would set aside the order passed by the learned Trial Court and allow the appeal and direction the appellant No. 2 be absorbed.

27. We have concluded in this score more so being emboldened by the situation where a similarly situated candidate Sadiqul Islam, who has been given appointment in the place of his Father Sk. Majlish Ali by the respondent No.4 (See : Annexure-P3 collectively of the stay petition).

28. Accordingly, appeal stands disposed of.

29. Order to be given effect within four weeks from the date of communication of this order.

Shukla Kabir (Sinha), J.

I agree.