
(2013) 04 CAL CK 0071
In the Calcutta High Court
Case No : Writ Petition No. 21074 (W) of 2012

Ramesh Kumar Dubey

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 04-04-2013

Acts Referred:

Citation : (2014) 2 CHN 626 : (2013) 3 WBLR 630

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Ekramul Bari and T. Basak, for the Appellant;

Judgement

Debasish Kar Gupta, J.—None appears on behalf of the respondents when the matter is called on. No accommodation is prayed for. Let the affidavit of service filed in Court today be kept on record. This writ application is directed against an order passed by the respondent No. 3 under Memo. No. 318(1)LS dated April 18, 2012. By virtue of the impugned order, the respondent No. 3 rejected the claim of the petitioner for appointment on compassionate ground.

2. The father of the petitioner, late Rambilas Dubey was an approved Assistant Teacher of Vikram Vidyalaya (Branch), 40, Panchanantala Road, District-Howrah. He died-in-harness on December 14, 2006. The petitioner submitted an application for his appointment on compassionate ground on February 26, 2007. The claim of the petitioner was rejected by the respondent No. 3 by an order passed under Memo. No. 26/1(2)/DH/Howrah dated September 15, 2010.

3. The petitioner filed an application under Article 226 of the Constitution of India in the matter of Ramesh Kumar Dubey v. The State of West Bengal & Ors. [In Re: W.P. No. 8597 (W) of 2011]. By a judgment dated January 2, 2012, the order passed by the respondent authority was quashed and set aside with a direction upon the respondent No. 3 to consider the claim of the petitioner afresh in accordance with law. In compliance of the above direction, the impugned order is passed.

4. I have heard the learned Counsel appearing for the petitioner at length and I have considered the facts and circumstances of this case carefully. For proper adjudication of the issue involved in this matter, the relevant portions of the impugned order are set out below:

Now as per letter of District Inspector of Schools (S.E.), Howrah the petitioner submits the information's to the undersigned which is received on 04.4.2012 by this office.

The following facts emerged out.

1) There is no Govt. Order at present to consider appointment under Death-in-harness category for handicapped person specially, so no relief can be granted in accordance to Govt. Order for the handicapped.

2) The term "No fixed income" is not acceptable without approximate income. However the petitioner is able for maintaining his family with his wife and daughter.

3) The retirement dues including Provident Fund and Gratuity is Rs. 5,70,255/- which is received by the family of the deceased teacher. The interest must be calculated from that source. Family pension is drawing by the wife of the deceased teacher Rs. 9891/- w.e.f. 15.12.2006 under ROPA-1998. No bills/ Challans paying hospitals is submitted.

4) There is no receipt for payment of house rent/agreement with the house owner that he is dwelling in a rented house. As per affidavit before the notary Public at Howrah-12/2007 the deceased teacher has two married sons and two married daughters so, the income of the younger son, Sri Sanjay Dubey must be recorded as family income which is not mentioned at your representation.

5) Now, the District Inspector of Schools (S.E.) Howrah is of the opinion that he has considered the Govt. Orders which was prevalent at the time of death of the deceased teacher, Late Ram Bilas Dubey. If he assembles the income from (1) Family Pension, (2) Amount of P.F. & Gratuity, (3) Interest from P.F. and Gratuity, (4) Family Income of the two sons, (5) Valuation of the Flat No. 2B "Panchavati Apartment", 254/1, Panchanantala Road, Howrah, which was declared in the affidavit then it is proved that there is no financial crisis actually and he has suppressed facts which were submitted in the affidavit of 12/2007.

The matter is thus reconsidered and disposed of.

Sd/- District Inspector of Schools, (Secondary Education), Howrah. Dated 18.4.2012.

5. After perusing the above order, I find that the respondent No. 3 after making of his observations on extraneous consideration like there was no Government Order prevailing at the material point of time for consideration of the case of the handicapped person for appointment on compassionate ground or to ascertain report, petitioner was able to maintain his family with his wife and daughter or

that the petitioner did not possess any rent receipt for enjoying residential accommodation of a building lying and situated at Howrah, came to a conclusion that the petitioner was not entitled to get an appointment on compassionate ground for the following reasons:

- i) Family pension;
- ii) Amount of P.F. and Gratuity;
- iii) Interest of P.F. and Gratuity;
- iv) Family income of two sons;
- v) Valuation of the Flat No. 2B "Panchawati Apartments", 254/1, Panchanantala Road, Howrah.

6. So far as the first three grounds are concerned, it is the settled principles of law as decided in the matter of Tapan Kumar Barman Vs. State of West Bengal and Others, that the receiving of pensionary benefit by an applicant cannot be a ground for rejecting his claim for appointment on compassionate ground. The relevant portion of the above decisions are set out below;

Besides, the amount of Rs. 4,000/- being the family pension, is coterminous with the life of widow and the moment the widow dies, this benefit stands withdrawn. The sons are unemployed, the daughters are unmarried. Therefore, it is not for the Director to assess the financial need of the family and it is for the family who can feel their own need. Had the son been appointed, he would not have earned the same amount which his father would have earned during his service, however, his earning would have been some amount of financial replenishment. Therefore, the payment of terminal benefit on account of death cannot be equated with the scheme of compassionate appointment and this concept has been laid down by the Supreme Court in a decision rendered in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others,

7. So far as the last ground is concerned, I do not find that the valuation of the residential flat of the petitioner would be taken into consideration for rejecting his claim for appointment on compassionate ground because it was not a source of getting regular supply of money for maintenance of the family of the petitioner. That was not the case either of the respondents.

8. Therefore, the impugned order is quashed and set aside. The respondent No. 3 is directed to take steps for appointment of the petitioner on compassionate ground within three months provided he is otherwise entitled to the above relief not to get such appointment.

9. Let there be a cost of Rs. 5,000/- to be paid to the petitioner towards the fees for his learned Advocate. The Secretary to the Government of West Bengal, School Education Department is directed to ensure payment of the above cost to the petitioner within the period mentioned hereinabove from the public exchequer at the first instance and to realise the aforesaid amount from the

concerned District Inspector of Schools, Howrah from his salary or by initiating appropriate proceeding by raising public demand in case of his retirement.

10. The petitioner is directed to communicate this order to all concerned and they are further directed to act of such communication.

11. This writ application is disposed of accordingly. There will be, however, no order as to costs.