
(2013) 07 CAL CK 0093
In the Calcutta High Court
Case No : W.P. No. 8260 (W) of 2011

Rupa Modak

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 02-07-2013

Acts Referred:

Citation : (2014) 2 CHN 418

Hon'ble Judges : I.P. Mukerji, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

I.P. Mukerji, J.—This is the case of a widow of a deceased professor of English in Surendranath College, Kolkata. He died on 29th September, 2006. The widow claims compassionate appointment. The rule regarding compassionate appointment is set out hereunder: "None except wife/son/daughter/near relation of the deceased employee and solely dependent on the earning of the deceased employee, shall be eligible for consideration for appointment in the died-in-harness, the benefit will be admissible if the family left behind by the deceased employee; is in immediate need of assistance and such employment on compassionate ground is absolutely essential to support the family of the deceased.

A person belonging to a completely separate family not be treated as solely dependant on the deceased employee for the purpose of such appointment on compassionate ground".

This compassionate appointment was refused to the writ petitioner. It was said that the amount received by her as terminal benefit, amounting to Rs. 5 lakhs and a pension of Rs. 22,696/- per month was more than enough for her livelihood and for the maintenance of the family.

2. The professor left behind two minor sons. They are still minor and being looked after by the mother. In a short period of time they will need substantial

funds to finance their education, it was submitted. Moreover it was stated that the professor had taken a house building loan of Rs. 5,14,480/- for which the monthly installment amount to be paid was Rs. 4,000/-. Furthermore, it was said that a sum of Rs. 3,65,000/- was paid towards the hospital expenses of the ailing professor.

3. An earlier writ was filed in this Court by the petitioner (W.P. No. 25284 (W) of 2010) where this Court had passed an order on 12th January, 2011 upon the respondents, in that writ to consider the case of compassionate appointment of the petitioner.

4. The Director of Public Instruction, West Bengal passed an order on 9th March, 2011. The result was that the claim of the writ petitioner was rejected.

5. I am afraid that the Director did not take this case of compassionate appointment, as seriously as it ought to have been taken. The Supreme Court and our High Court have repeatedly reminded us that payment of terminal benefit on account of death does not determine making or non-making of compassionate appointment. K.J. Sengupta, J. for a Division Bench of this Court pronounced the following in Tapan Kumar Barman Vs. State of West Bengal and Others, in para. 10 of the judgment:

"Besides, the amount of Rs. 4,000/- being the family pension, is conterminous 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,

6. The Director it seems was too much influenced by the monthly pension which was being received by the widow. He ought to have taken into account that the two minor sons of the deceased professor would soon grow up. They needed proper education. Education is very expensive, nowadays and it is difficult to meet such expenses from the pension earned monthly.

7. Next he also ought to have considered the financial implications of the loan taken by the professor and the medical expenses paid by the family during the professor's illness. He had also to take into account the judgments of the Supreme Court and the High Court including the above judgment of the Division Bench of our Court presided over by K.J. Sengupta, J.

8. Of course, to make this determination the petitioner is required to produce the required documents for which an opportunity of hearing should be given to her.

9. I would like to emphasize that untimely death of a person leaving behind a widow and two minor sons raises a strong presumption of the immediate need for financial assistance by the family, which the Director should bear in mind while making the instant adjudication.

10. In those circumstances, the decision of the Director of Public Instruction, West Bengal dated 9th March, 2011 is set aside with a direction upon him to pass a fresh reasoned order within a period of three months from the date of communication of this order after giving an opportunity of hearing to the writ petitioner and in accordance with the observations made above.

11. This writ application is, accordingly, disposed of. Urgent certified photocopies of this order, if applied for, will be made available to the parties subject to compliance with all requisite formalities.