

(2015) 07 CAL CK 0121

In the Calcutta High Court

Case No : M.A.T. 1033 of 2014 and CAN 5986 of 2014

Samim Ahmed

APPELLANT

Vs

State of W.B. and Others

RESPONDENT

Date of Decision : 13-07-2015

Acts Referred:

Citation : (2015) 4 ESC 2161

Hon'ble Judges : P.K. Chattopadhyay and Ishan Chandra Das, JJ.

Bench : Division Bench

Advocate : Ekramul Bari and Tanuja Basak, for the Appellant; Kamallesh Bhattacharya, Sadhan Haider and K.M. Hossain, for the Respondent

Final Decision : Disposed Off

Judgement

Re: Application/or Stay (CAN 5986/2014).

1. This application has been filed in connection with the appeal preferred from the judgment and order dated 15th July, 2013 whereby a learned Judge of this Court dismissed the writ petition filed by the appellant herein on merits upon rejecting the claim for compassionate appointment. From the records it appears that the mother of the appellant died in harness on 5th January, 2004 leaving behind her aged husband, one daughter and two sons including the appellant herein. There is no dispute that the mother of the appellant was sole earning member of the family and the entire family was completely dependent on the income of the deceased teacher, namely, the mother of the appellant herein. Immediately after the death of the teacher concerned, namely, the mother of the appellant herein, a representation was submitted on 3rd March, 2004 by 2 the appellant to the Chairman, District Primary School Council, North 24 Parganas claiming employment on compassionate ground.

2. The said application was thereafter processed by the concerned authority and after a lapse of almost three years, i.e. on 1st August, 2007 the Chairman, District Primary School Council, North 24 Parganas asked the appellant/petitioner

to submit family particulars and the same was duly supplied by the said appellant. The appellant/ petitioner herein submitted one income certificate issued by the local panchayat pradhan wherein it has been mentioned that the total income of the family of the appellant/petitioner from all sources was Rs. 1,08,000/- per annum. The Sub-Inspector of Schools, Swarupnagar Circle, North 24 Parganas by the written communication dated 26th August, 2010 informed the appellant/petitioner about the rejection of his prayer for appointment on compassionate ground by the Director of School Education concerned. Challenging the said decision a writ petition was filed earlier before this Court by the appellant/petitioner herein and a learned Judge of this Court ultimately quashed the earlier decision of the Director of School Education and remand the matter to the said Director of School Education, Government of West Bengal for taking a de novo decision in accordance with Rules and guidelines governing the appointment on compassionate ground under died in harness category within a prescribed time limit. Ultimately, the Director of School Education, Government of West Bengal decided the matter afresh and communicated the same to the appellant/petitioner by the memo dated 16th November, 2011 rejecting the claim of the appellant/petitioner for appointment on compassionate ground, inter alia, on two grounds, firstly, the income of the family is higher than the salary of Group-D employee, which is not permissible as per-Rule 14 of the West Bengal Primary Teachers Recruitment Rules, 2001 and secondly, the financial hardship of the family was not accepted on the basis of the income certificate issued by the Sabhapati of panchayat samity.

3. Another writ petition was filed by the appellant/petitioner herein challenging the aforesaid decision of the Director of School Education in W.P. 3998 (W) of 2012 and the said writ petition was ultimately disposed of by a learned Judge of this Court on 22nd March, 2012 whereby the said learned Judge directed the Director of School Education, Government of West Bengal to take a decision on the application for compassionate appointment submitted by the appellant/petitioner herein on the basis of Rule 14 as it existed in the year 2004 and for such purpose an enquiry was also directed to be conducted in accordance with law.

4. The Commissioner of School Education, Government of West Bengal by the reasoned order dated 2nd November, 2012 again rejected the prayer of the appellant/petitioner for compassionate appointment upon holding that the family of the appellant/petitioner cannot be said to be financially distressed upon 4 considering the financial condition of the said family. The relevant extracts from the aforesaid order passed by the Commissioner of School Education, Government of West Bengal, Government of West Bengal are set out hereunder :

"From the records, it appears that the petitioner's father received Rs. 224579/- as death gratuity and had been drawing gross enhanced family pension Rs. 3961/- per month. The annual income of the father of the petitioner from other sources was Rs. 108000/- per annum. The income of the petitioner was Rs.

600/- per month. So the total income of that family was Rs. (3961+ 9000+ 600)/- = 13561/-.

The family is consisting of two members" viz. father of the petitioner and the petitioner. The elder brother of the petitioner is living separately.

In consideration of the above mentioned financial position of the family at the material point of time, even if the income from the family pension is ignored, I am of the opinion that the family consisting of two members cannot be considered as financially so distressed that it could not arrange two square meals and other essentials for the members of the family. Therefore, the prayer of the petitioner for compassionate appointment is rejected."

5. Challenging the aforesaid order of rejection passed by the Commissioner of School Education again a writ petition was filed before this Court being W.P. 17245(W) of 2013 which was finally decided by the impugned judgment and order under appeal passed by the learned Single Judge on 15th July, 2013. The learned Single Judge approved the impugned decision of the Commissioner of School Education placing reliance on the following decisions of the Hon''ble Supreme Court:

"(1) Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, and

(2) Union of India (UOI) and Another Vs. Shashank Goswami and Another, ."

6. We fail to understand how the aforesaid decisions would be relevant in the facts of the present case. In the case of Mumtaz Yunus Mulani v. State of Maharashtra and others (Supra) the Hon''ble Supreme Court refused to grant any relief upon considering the special facts which have been summarised in the aforesaid decision as hereunder :

"16. In this case, the respondent is a charitable institution. It is run on Government aid. It cannot afford to appoint persons in a post which has not been sanctioned. It has not been denied or disputed that one Arun Uttareshwar has already been appointed in place of the deceased husband of the appellant. It does not matter as to whether the said appointment has been approved by the State or not inasmuch as it has not been done, on the basis of the policy decision contained in its Resolution dated 21.12.2002 the same cannot be considered to be of much significance, particularly, in view of the fact that the appellant's husband died as far back as on 6-9-1996 and the vacancy had been filled up in the year 1997.

17. Furthermore, about twelve years have passed. The appellant's son is aged about 20 years and daughter is aged about 16 years. Therefore, they have become major. The appellant herself would be aged about 38 years now. She cannot be given any appointment at this age."

7. In the case of Union of India and another v. Shashank Goswami and another (Supra) the Hon''ble Supreme Court approved the refusal of the claim for 6

compassionate appointment for receiving retiral/terminal benefits exceeding Rs. 3 lakhs which made the claimant ineligible for any compassionate employment under the scheme. The relevant paragraph of the aforesaid decision is set out hereunder :

"5. In view of the fact that, in the instant case the retiral/terminal benefits has been received by the family exceeding Rs. 3 lakhs, respondent No. 1 is not eligible to be considered for the Group "C" post."

8. Therefore, the aforesaid decisions of the Hon"ble Supreme Court are clearly distinguishable in the facts of the present case.

9. Mr. Bari, learned counsel representing the appellant/petitioner relies on a decision of the Hon"ble Supreme Court in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, .

10. In the case of Balbir Kaur and another (Supra), the Hon"ble Supreme Court has specifically held :

"8.....The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on a certain technicality."

"13.... The sudden jerk in the family be reason of the death of the breadearner can only be absorbed by some lump-sum amount being made available to the family - this is rather unfortunate but this a reality. The feeling of security drops to zero on the death of the breadearner and insecurity thereafter reigns and it is at that juncture if some lump-sum amount is made available with a compassionate appointment, the grief-stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the breadearner, but 7 that would undoubtedly bring some solace to the situation."

11. Undisputedly, the aforesaid decision of the Hon"ble Supreme Court is still valid and operative since the same has not been overruled by any subsequent decision of the Hon"ble Supreme Court.

12. In view of the aforesaid decision of the Hon"ble Supreme Court in the case of Balbir Kaur and another (Supra), we are of the opinion that the claim of the appellant/petitioner for compassionate appointment should not be rejected only on the ground of disbursement of terminal benefits and pension to the family members of the deceased employee. The learned Single Judge, in our opinion, has committed an error by not following the decision of the Hon"ble Supreme Court in the case of Balbir Kaur and another (Supra).

13. For the aforementioned reasons, we set aside the impugned judgment and order under appeal passed by the learned Single Judge on 15th July, 2013 in W.P. 17245 (W) of 2013 and direct the respondent authorities to take appropriate

decision with regard to the claim of the appellant/petitioner for compassionate appointment without taking note of the disbursement of the terminal benefits and/or pension to the family members of the deceased employee.

14. Since a considerable time has passed, we direct the respondent authorities specially the respondent No. 2 to pass appropriate order upon considering the claim of the appellant/petitioner for appointment on compassionate ground without any further delay and 8 positively within a period of three weeks from the date of communication of this order and communicate the same to the Chairman, District Primary School Council, North 24 Parganas, the respondent No. 4 herein immediately thereafter. The said respondent No. 4 will thereafter issue the formal appointment letter to the petitioner within two weeks from the date of receiving the order of approval from the respondent No. 2 herein. With the aforesaid observations and directions, we dispose of both the application as well as the appeal upon treating the said appeal as on day's list.

In the facts of the present case, there will be no order as to costs.