
(1992) 09 CAL CK 0009
In the Calcutta High Court
Case No : Civil Order No. 3054 (W) of 1991

Sanjoy Kumar Panda

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 18-09-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 97 CWN 314

Hon'ble Judges : Kalyanmoy Ganguli, J

Bench : Single Bench

Advocate : Chitta Ranjan Panda, for the Appellant; Yasin Ali, for the Respondent

Final Decision : Allowed

Judgement

Kalyanmoy Ganguli, J.—In this application under Article 226 of the Constitution of India, the petitioner, inter alia, prays for a writ in the nature of Mandamus commanding the respondents to give appointment to the petitioner on the death of his father dying in harness in terms of Government Order No. 5120(60) LW dated October 17, 1977 read with Government Order No. 196(60) EMP dated June 19, 1978 on compassionate ground. The petitioner's father late Ananda Charan Panda at the material time, was working as a peon in the Junior Land Reforms Office at Tamruk in the district of Midnapore and the said Ananda Charan Panda died intestate in 1977. The petitioner at the time of his father's death was a school student and passed the School Final Examination in the year 1983. The petitioner lives with his mother and one unmarried sister. The other two brothers of the petitioner are married and live separately.

2. The Government Order No. 5120(60) LW dated October 17, 1977 read with Government Order No. 196(60) EMP dated June 19, 1978 provided inter alia, that if a Government servant died in harness a dependent member of the family would be given employment on compassionate ground subject to fulfillment of certain conditions.

3. The petitioner made an application before the respondent No. 4 on October 4, 1982 praying for appointment in the said Junior Land Reforms Office in terms of the aforesaid Government orders on compassionate grounds.

4. The respondent No. 4 directed the petitioner to appear before the Sub-Divisional Medical Officer for medical examination and for obtaining a certificate of fitness. The said certificates were obtained as also details regarding the petitioner's age and educational qualifications were submitted to the appropriate authority. It is an admitted position that the respondent No. 5 recommended the petitioner's case to the Collectorate of Midnapore for being given the appointment on such compassionate ground. A copy of the said recommendation dated October 10, 1985 has been annexed to the writ petition marked with the letter "B".

5. The petitioner's application for appointment on compassionate ground was first rejected on the ground that such application was made in the year 1982, that is five year after the death of his father and as such the application was malafide.

6. Thereafter the petitioner on or about November 5, 1986 made a representation to the Deputy Secretary, Board of Revenue, Government of West Bengal. The respondent No. 2 directed the respondent No. 4 to make enquiries on the point mentioned therein. A copy of the letter of the respondent No. 2 to the respondent No. 4 has been annexed to the writ petition marked with the letter "E". The respondent No. 2 directed the respondent No. 4 to supply the information namely, whether the applicant was a minor when his father died; the composition of the family of the deceased and the income of the family from all sources.

7. The report was furnished by the Sub-divisional Land Reforms Office to the Sub-Divisional Officer, Tamluk by a reply dated December 9, 1987, a copy of which has been annexed to the writ petition marked with the letter "F". It appears from the said information, inter alia, that the other brothers of the petitioner were living separately and the petitioner was living with his mother and the unmarried sister with a total income of Rs. 310/- only from all sources.

8. Thereafter, the petitioner not receiving any communication from the authority concerned moved an application under article 226 of the Constitution of India before the High Court and a learned single Judge directed the respondents to consider the representation of the petitioner for appointment on compassionate ground. An affidavit in opposition has been filed on behalf of the respondent No. 4 by the Deputy Magistrate and the Deputy Collectorate attached to the office of the respondent No. 4 in the instant application. The said affidavit in opposition draws the attention of this Court to two points namely, that the petitioner having been a minor at the time of his father's death and the petitioner applied for a job after five years of the death of the petitioner's father is not eligible to get the appointment in terms of the circulars mentioned hereinbefore and that the

petitioner's other brother was given a job in the year 1978 and as such an appointment to a second member of a family of a deceased employee is not contemplated in the circulars concerned.

9. The first point of the respondent has no merit inasmuch as there is no limitation prescribed in the said circulars for making the application for appointment on compassionate ground specially in view of the information supplied which is annexure "F" that the petitioner was living with his mother and unmarried sister separately from his other members of his family and the family was having a total income of Rs. 310/- only from all sources. This information is supplied by a competent Government Officer after making necessary enquiry. So the first point raised by the respondent is not acceptable to this court.

10. The second point taken by the petitioner to the effect that an appointment has actually been given to another brother of the petitioner on such compassionate ground is also belied by the statements made in the supplementary affidavit filled by the petitioner pursuant to the leave granted by this court.

11. It appears from the said supplementary affidavit that the elder brother of the petitioner was already engaged as a casual worker in 1975 and such appointment was given before the death of the father of the petitioner on January 1, 1977. It further transpires from the said supplementary affidavit that in terms of Government Order No. 1700-EMP/30.26.78 dated August 3, 1979 all such casual workers who have been engaged in a perennial type of work for a continuous period of more than three years would be absorbed in regular vacancies, so the question of making permanent of the elder brother or his being absorbed against a permanent vacancy for having rendered more than three years of service does not come within the scope of the Government circulars mentioned hereinabove. In this connection we should remember that the said brother who was already employed before the death of the father of the petitioner was merely made permanent in terms of another Government circular and not in terms of Government circulars mentioned hereinabove and not on compassionate ground as is contemplated in the circulars under reference. Secondly the said elder brother, it appears from the records, is living separately from the family of the petitioner consisting of his mother and unmarried sister.

12. Considering the entirety of the circumstances, this court is of the opinion that in terms of circulars of the Government mentioned herein before and in view of the fact that the petitioner was directed to appear before the medical board and to supply certain documents regarding his qualification and eligibility, it is wrongful for the respondents to refuse the appointment to the petitioner as the ground now taken in the affidavit in opposition were all along available to the respondent authorities and his appointment was never refused on the grounds now taken in the affidavit in opposition.

13. For the reasons stated hereinbefore this application succeeds and is allowed.

The respondents are directed to give appointment to the petitioner in terms of the circulars mentioned hereinbefore on compassionate ground against any existing vacancy that may be available in any of the offices or if there is no existing vacancy to give appointment to the petitioner as soon as a vacancy will arise in any of the offices of the Land and Land Revenue or Land Reforms Department. The age bar will not apply to the petitioner in view of the fact that the petitioner was made to suffer from 1982 to 1989 because of the laches of the appropriate authority.

There will be no order as to costs.