
(2011) 04 CAL CK 0085
In the Calcutta High Court
Case No : AST No. 119 of 2011

Satyagopal Mishra

APPELLANT

Vs

State of West Bengal

RESPONDENT

Date of Decision : 20-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16
Recruitment and Leave Rules of Primary Teachers, 1991 — Rule 14, 14(1)
West Bengal Primary School Teachers Recruitment Rules, 2001 — Rule 14(1)

Citation : (2011) 3 CHN 334

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

Bench : Division Bench

Advocate : Ekramul Bari, Syed Mansur Ali, S. UI. Bari, Tanuja Basak and K.M Hossain, for the Appellant; Tulsi Das Maity for the respondent No.5, Kanailal Samanta and Nabanita Pal for the State-respondents, for the Respondent

Judgement

Amit Talukdar, J.—From Caesar to Caesar's wife. It is in such trajectory we are reminded of the decision of the Supreme Court in Kalabharati Advertising Vs. Hemant Vimalnath Narichania and Others, , where in similar situation it was held:

The cliché of appeal from Caesar to Caesar's wife can only be bettered by appeal from one's own order to oneself.

2. While holding so Dr. Chauhan, J. speaking for the Bench had relied on its earlier decision in Ram and Shyam Company Vs. State of Haryana and Others, where Desai, J. writing the judgment for the Bench had held:

To whom do you appeal in a State administration against the decision of the Chief Minister ? The ditch of appeal from Ceasar to Ceasar's wife can only be bettered by appeal from one's own order to oneself.

3. It is in one such curve we have been interfaced with an order rendered by the Hon'ble-Single Judge in W.P. No.23840 (W) of 2010 on 17.3.2011 which contains, two parts - one which the appellant does not agitate; the other he

murmurs could have been otherwise.

4. Background facts require to be set out so as to have a whole hog of the entire issue before us - dates back to the story of an Assistant Teacher of a Primary School who was born in the year on 11.05.46 and was very much in service when death claimed him on 11.10.2002. Pushed to the foray of financial distress, having suffered the distraught pain of losing the breadwinner of the family, the appellant reported to the respondent No.3 on 31.1.2003 carrying his woes.

Silence compounded by agony and animated suspension.

5. Barring the same nothing except time stood still. Nothing moved, nothing fructified except the passage of dull time till such time on 15.9.2007 the respondent No.5 (Chairman of the District Primary School Education Council) communicated to the respondent No.3 the decision of the respondent No.2 regretting that appointment on compassionate ground cannot be granted as he was not found to be in financial distress.

6. Before that we need to retrace a bit to an anterior position on 04.12.2008 when the same respondent No.5 had forwarded the proposal for appointment of the appellant in died-in-harness category of his late father who passed away while still in service.

7. Flummoxed in such a situation the appellant sought for the Midas touch of constitutional remedy before the Hon''ble Single Judge. His Lordship by His order, under appeal after appreciating the concern of the appellant in this regard rightly concluded that the finding rendered by the respondent No.2 "smacks of arbitrariness" as no supporting reasons was forwarded while relaying the decisions of the authorities for compassionate appointment of the appellant. His Lordship directed the respondent No.2 to render a decision afresh with cogent reasons taking into consideration the relevant Rules governing the appointment on compassionate ground under died-in-harness category.

8. It is here Shri Bari for the appellant has joined issue and submitted that when His Lordship had himself was of the opinion that the action initiated -by the respondent No.5 was drenched in arbitrariness and was not lucid, then why remitting the matter for fresh decision and why not a Mandamus?

We would be required to answer the "WHY" of Shri Bari.

But we have to appreciate the "HOW" of the respondent No.2.

9. Shri Bari for the appellant has argued the appeal and we must say with great competence. He has placed before us the entire position in a very lucid fashion. Shri Bari referred to Rule 14 of the Recruitment and Leave Rules of Primary Teachers, 1991. According to Shri Bari, it is the Council who is to take a decision and the Director of the School Education is simply required to approve the same. When, according to Shri Bari, the respondent No.5 had come to a decision and being satisfied on the basis of credential of the appellant and the proposal for his

appointment it was not incumbent on the respondent No.2 (Director of School Education) to curtly say no and that too without any reason and supporting grounds. Shri Bari has seriously questioned such a decision.

10. Reiterating his points Shri Bari placed before us the entire order under appeal including the two Memos issued by the respondent No. 5 earlier - one forwarding the proposal for the appointment; other communicating the decision of the respondent No.2 regretting the prospect of the appellant for being appointed in the died-in-harness category. According to Shri Bari when the Council himself after prima facie satisfaction forwarded the proposal of the appointment on compassionate grounds, how the Director of School Education (respondent No.2) could refuse to act on it. And when the Trial Court had itself found it was arbitrary then why a remand?

11. Referring the matter further back to the foray of the Director of School Education Shri Bari submitted would be of no avail as the latter had taken a decision refusing to accept the proposal for compassionate appointment in favour of the appellant. Now once he had taken such a decision Shri Bari continued in the event by virtue of order of the learned Trial Court the same decision is again required to be revisited by him, it would be simple replica of the past. Shri Bari feared that he will not have any luck.

12. Shri Bari had a lurking suspicion that along with the proposal of compassionate appointment the respondent No.5 had sent the PPO (Pension Payment Order) perhaps the said played in the mind of the respondent No.2 to spurn the proposal for compassionate appointment on the ground since the family has received the terminal benefit there was no scope for compassionate appointment for the appellant.

13. Shri Bari submitted receipt of retrial benefit cannot be a ruling factor for the purpose of considering the proposal of compassionate appointment. Shri Bari in support of his contention submitted that the order passed by the learned Single Judge referring the matter before the respondent No.2 would not serve any purpose. He placed before us a Division Bench decision of this Court in Nabadwip Chandra Das & Ors. vs. West Bengal Board of Secondary Education & Ors., 1998 (1) CLJ 141, which followed the earlier decision of the Supreme Court in K.I. Shephard and Others Vs. Union of India (UOI) and Others, on the proposal that it would simply be a post-decisional hearing in the event in terms of the order passed by the learned Single Judge the entire matter is pushed back to the office of the respondent No.2 who will simply replicate his earlier views.

14. Winding up his submission Shri Bari further submitted that the appellant lost his father way back on 11.10.2002 although he applied before the authority immediately thereafter (31.1.03) yet for all this period his fate was kept hanging and the same was sealed by the order dated 15.9.2010 that too without any reason and in an arbitrary fashion. Praying for setting aside the second part of the order passed by the Hon''ble Single Judge remitting back for fresh decision

before the respondent No.2 Shri Bari has submitted that appeal should be allowed and the Writ of Mandamus be issued directing compassionate appointment in favour of the appellant.

Per contra:

15. Shri Maity for the respondent No. 5 has referred to the Rule 14(1) of the said Rules. According to Shri Maity there are some well recognized principles which guide the field of compassionate appointment. He was of the opinion unless the said criteria is fulfilled no such appointment can be given on compassionate ground. Shri Maity distinguished both the Division Bench decision of Nabadwip Chandra Das & Ors. vs. West Bengal Board of Secondary Education & Ors. (supra) and the Supreme Court decision K. I. Shephard & Ors. vs. Union of India (supra). He was of the view that very rightly the Hon"ble Single Judge after it had found the order passed by the respondent No. 5 was not governed by any reason, referred the matter before the Director of School Education (respondent No.2) for which no interference was felt necessary. Whereas, Shri Maity contended that both the decisions of the Divisions Bench of our Court and the Supreme Court are quite on a different aspect having no bearing with the issue in hand.

16. Controverting the submission of Shri Bari that Council is the final authority to take a decision on such cases, Shri Maity submitted that a plain reading of Rule 14(1) of the West Bengal Primary School Teachers Recruitment Rules, 2001 (hereinafter referred to as the said Rules) would show that the Director of School Education is the authority who calls for the final shot and unless there is the satisfaction of the latter very rightly the proposal was refused for which he saw no wrong. Shri Maity has placed before us a Gazette Notification of 30.1.2008 containing the amendment of Rule 14 of the said Rules. Relying on the basis of the same Shri Maity submitted that being bound by the same, the Council has to take the decision.

17. Shri Kanai Lal Samanta with Ms. Nabanita Paul for the State adopts the submission of Shri Maity to a large extent. According to Shri Samanta, who placed before us the materials as available, there was no whisper that the family was in actual hardship. Shri Samanta submitted that compassionate appointment, however, unfortunate the situation may be, it cannot be claimed as a matter of right. In the event the appellant is unable to prove the question of financial hardship he cannot have any claim for such appointment. Shri Samanta pointed out once the family had received the pension and gratuity it was sufficient for them to the over the crisis. Furthermore Shri Samanta was of the view that Shri Bari was not correct in his submission that the Council once having forwarded the proposal could turn back and come with a different view as it was the decision of respondent No.2 that was simply communicated by the respondent No. 5.

18. Both Shri Maity and Shri Samanta seriously disputed the fear of Shri Bari

that he will stand to prejudice in the event the issue is referred back to the respondent No.2 as directed by the Hon"ble Single Judge.

19. In reply to the submissions of his adversaries Shri Bari posed a question that firstly the Council itself having sent the proposal on the basis of prima facie satisfaction for compassionate appointment it could not take a contrary view in the absence of any supervening reason. Secondly, where there was no communication made to the appellant that he was not in financial distress how could such a decision be taken which was bereft of any reason or supporting views.

20. Keeping in view the decisions of Kalabharati Advertising vs. Hemant Vimalnath Marichania & Ors. (supra) and Ram & Shyam Company vs. State of Haryana (supra) we feel the exercise, as suggested by the Hon"ble Single Judge, would result in a situation where the decision making process would be shifted from the Emperor to Empress (read Caesar to Caesar's wife). The respondent No.2 had said "no"; even if he does not say "yes" and the "no" of is with justifiable reason and cogent explanation the recipient of the said answer would suffer from the feeling why not the said exercise be done by a different Forum ?

21. In the event the appellant is consigned within the ambit of the decisional making process of the respondent No.2 once again, as felt by His Lordship we are afraid, as held by us in the prologue that it would be Caesar to Caesar's wife. What independent decision can be taken by him is a matter of great concern since it is he who had scuttled the proposal of the Council. Without being unfair to him it cannot be lost sight of the fact that a decision once rendered by the self-same authority if requires to be revisited, even on merit may lurklingly give rise to a suspicion in the mind of the appellant that had the Forum being different perhaps he could have had a different luck. In a way it forecloses the principles of natural justice for a person who has pursued justice like a teasing mirage for all these years.

22. As such, at the out set we would be of the humble view that that part of the decision of the Hon"ble Single Judge cannot hold water and the apprehension of Shri Bari also cannot be brushed aside.

Now, to the basics once again.

23. Apathy and indifference ruled the scepter of this unfortunate appellant who having the misfortune of losing his father was saddled with the burden of his family since they had no income. Barely within three months from the date of death of his father the appellant approached the respondent No.3 for compassionate appointment outlining the entire facts in support of his distress and details of his qualification to work as an Assistant Teacher. From 31.1.2003 valuable years of a man's life spent in wilderness due to sheer callousness of a public functionary. After seven years a terse, unreasoned order regretting his prayer was passed.

24. Compassionate appointment which is popularly known as Bread Winner's Scheme has always been a favorite punching ground for the respondent. Galaxy of decisions operates in the field but ultimately it is how one views the panorama is important. Decision in this field is required to be taken not on the basis of the personal notion of the Court but according to the law of the land. It is not the perspective of the particular Court but what is the wholesome fall out of the death of the bread winner which catapults the family to a sudden economic crisis and to protect the family of the employee who had served the employer so well during his life time, the scheme of compassionate appointment has been envisaged which is de hors the normal rules of appointment.

25. The appellant is guided by a set of rules which consolidates his prayer for compassionate appointment (See Rule 14 of the said Rules) In our opinion, the respondent No. 2 performed a very perfunctorily approach in regretting the proposal for compassionate appointment. In fact, the respondent No.4 who conveyed the said decision on 15.9.2010 to the respondent No.3 neither set out the details in respect of the order passed by the respondent No.2 nor showed any reason. Simply put it on writing "that as per order by the DSE the proposal of Sri Satyagopal Mishra, S/o - Late Pankaj Kr. Mishra as a Asstt. Teacher on compassionate ground can not be approved as....."

26. In our opinion, this is a serious miscarriage of justice where the appellant had been sacrificed at the altar of a rule which he has not been made to know. The father of the appellant was fifty six years and five months at the time of his death. He fell well in the category stipulated in Rule 14 of the said Rules, even as amended. While this Court neither should a scrooge be nor should altruist while absorbing the situation arising out of a prayer an for appointment in the compassionate category. It has to take a just decision keeping in mind that such appointments, leave out those already in the queue and would result in inducting a person who wins without a level playing field having an edge over the others who may be equally, if not more competent.

27. Recently the Supreme Court in V. Sivamurth vs. State of Andhra Pradesh & Ors., 2008 (13) SCC 730 , in paragraph 18 summed up the situation in the following manner:

18. The principles relating to compassionate appointments may be summarized thus:

(a) Compassionate appointment based only on descent is impermissible.. Appointments in public service should be made strictly on the basis of open invitation of applications and comparative merit, having regard to Articles 14 and 16 of the Constitution of India. Though no other mode of appointment is permissible, appointments on compassionate grounds are a well-recognised exception to the said general rule, carved out in the interest of justice to meet certain contingencies.

(b) Two well-recognised contingencies which are carved out as exceptions to the

general rule are;

(i) appointment on compassionate grounds to meet the sudden crisis occurring in a family on account of the death of the breadwinner while in service.

(ii) ***

? ***

(d) ***

28. Once we have had a grasp of the entire situation, we find here the appellant lost his father who was still in service. He had duly made a representation for absorption on the category of compassionate appointment. His representation was kept pending for well over seven years when it was turned down in the fashion that we have seen - without any cogent reason or supporting materials.

Rules provide the compassionate appointment (See: Rule; 14 of the said Rules),...

29. Question of receipt of terminal benefit (see: PPO order in the proposal sent on 04.12.2008 by the respondent No.5) cannot be a governing factor to conclude that the family of the deceased is no longer in distress [See: the Division Bench decision in Tapan Kumar Barman Vs. State of West Bengal and Others, and the decisions of the Supreme Court in Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, and Govind Prakash Verma vs. LIC of India & Ors., 2005 (10) SCC 289 .

30. Nowhere there has been any subjective satisfaction that the family of the appellant had tided over the crisis due to sudden jerk in the economic axis which it was used to on account of the remuneration of the deceased breadwinner whom having been snatched away from their midst exposed them to dire distress and pecuniary disadvantage as made out in the representation filed before the respondent No. 3 by the appellant on 31.1.2003.

31. Without any rhyme or reason as if by way of caprice and fiction a figment of its imagination respondent No.2 concluded that the family of the appellant was not financially distressed. It would be the "HOW of the decision of respondent No.2 which is required to be answered so as to have a control over the "WHY" of the communication by respondent No.5.

32. The Supreme Court in Syed Khadim Hossain vs. State of Bihar, 2006 (9) SCC 195 had deprecated such situation that without assigning any proper reason such prayer cannot be rejected.