
(2015) 07 CAL CK 0033
In the Calcutta High Court
Case No : WP 17243 (W) of 2011

Sephali Majhi

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 07 CAL CK 0033

Hon'ble Judges : Samapti Chatterjee, J

Bench : Single Bench

Advocate : Susmita Saha Dutta and Praloy Bhattacharjee, Learned Advocates, for the Appellant

Final Decision : Allowed

Judgement

Samapti Chatterjee, J—The petitioner filed the present writ petition for quashing of the order dated 28th May, 2011 passed by the District Magistrate whereby the petitioner's claim for appointment on compassionate ground under Land Losers' Scheme of the respondents was rejected by the authority.

2. In the year 1982, the Government of West Bengal acquired petitioner's landed property for the purpose of Construction of Mazia Thermal Power Station (D.V.C). On 9th June, 2003 the mother of the petitioner made representation to the respondents for employment of the petitioner on the ground being land loser. On 16th June, 2003 the Special Land Acquisition Officer sent a notice to the mother of the petitioner to appear on 28th June, 2003. As per the direction the petitioner went to the office of the authorities but the petitioner was not awarded with any service under the Land Losers' Scheme but other incumbents were offered with employment under Land Looser Quota. Feeling aggrieved the petitioner moved before this Hon'ble Court being W.P. No. 29923 (W) of 2009 for providing her with employment on compassionate ground under the Land Losers' Scheme. The said writ petition was disposed of by this Hon'ble Court on 21st January, 2001 by directing the District Magistrate, Bankura to dispose of the

petitioner's representation dated 9th June, 2003 before the Land Acquisition Officer, Bankura by passing a reasoned order in accordance with law which would be communicated to the parties within a period of 12 weeks.

Thereafter on 28th May, 2011 the District Magistrate passed his reasoned order by rejecting the petitioner's prayer for providing employment under the Land Looser Scheme on the grounds which are quoted below:-

"14. (I) The petitioner is married daughter and the said marriage was solemnized in the month of May-June 2004, therefore she is no longer belonged to her mother's family as a dependable daughter.

(II) As the petitioner did not file any application as an eligible nominee for empanelment/employment at M.T.P.S. duly filled prescribed form issued by the D.V.C. authority and the representation dated 09.06.2003 made by the Late Durgabala Majhi cannot be treated as an application of the present petitioner."

3. Ms. Susmita Saha Dutta, learned Advocate appearing for the petitioner vehemently urged that the employment under the Land Looser Scheme in Mejia Thermal Power Station (D.V.C) is a matter of right and step should be taken by the respondent authority to provide her with employment under the said Land Looser category after giving all kinds of opportunities to the petitioner. But in the present case the authority failed to give any opportunity to the petitioner as well as her mother (since deceased) which squarely hits Articles 14 and 16 of the Constitution of India.

4. Ms. Saha Dutta further contended that it is evident from the record that land lost by her mother was 0.88 acres which is more than 0.33 acres and she further contended that the loss of land is 100 per cent of the total land holding. So, the petitioner is very much entitled to be provided with employment under Land Looser Scheme as she fulfilled all criteria of the said Scheme.

5. Ms. Saha Dutta further vehemently urged that the impugned order dated 28th May, 2011 stated that age of the mother of the petitioner was about 55 years as a result thereof mother of the petitioner (since deceased) exceeded the age limit in the criteria.

6. Ms. Saha Dutta further contended that the District Magistrate was to consider the age of the petitioner and not the age of her mother (since deceased) as the mother already nominated the petitioner. Therefore, the impugned order issued by the Magistrate suffers from total non-application of mind.

7. Ms. Saha Dutta also contended that the stand taken by the District Magistrate that the nomination cannot be revoked/cancelled is not a correct proposition of law as the nominee can be changed for the interest of Justice and since the mother of the petitioner lost her entire agricultural land and there was a little hope in the future to get employment as her successor i.e. the petitioner under the Land Loosers' Scheme and for future survival the mother (since deceased) choose respondent No. 9 as nominee and thereafter cancelled the earlier

nomination and lastly nominated the petitioner as her nominee.

8. It is also vehemently urged by Ms. Saha Dutta that reason to change of nominee was that the conduct and behaviour of the respondent No. 9 was very much unbecoming and respondent No. 9 never took care of her mother and the petitioner, on the other hand, being the married daughter was temporarily living in the mother's house to look after her and took proper care of the mother till her death. As a result mother being satisfied with the behaviours, duties and the care discharged by the petitioner towards her ultimately changed/revoked the name of the respondent No. 9 as her nominee and thus bringing the name of the petitioner as her nominee with the aspiration and hope that the petitioner would be provided with employment by DVC under Land Looser Scheme. In support of his contention that married daughter being the nominee of the deceased land looser is also entitled to be provided with employment under Land Loosers" Scheme she relied on a Division Bench decision reported in Santi Ruidas Vs. Coal India Ltd., (2010) 2 CALLT 703 where the Division Bench after following series of the Hon"ble Supreme Court decisions held that employment cannot be denied to a married daughter, the same is quoted below:-

"Para-13-Having considered the relevant clauses of the National Coal Wage Agreement-V in the light of Articles 14 and 16 of the Constitution of India as well as the above provisions of the Protection of Human Rights Act, 1993 and CEDAW and the aforesaid decisions of the Apex Court and this Court, we have no hesitation in holding that the writ petitioner who had completed 15 years of age but not 18 years of age on the death of her mother who was an employee of the appellant-authority, was entitled to have her name kept on the live Register for employment upon completion of 18 years of age.

Para-14-In light of the above discussion, we allow this appeal. The order of the learned Single Judge is set aside and the respondents are directed to consider the appellant's case for compassionate appointment without treating the appellant as disqualified on the ground that she was a female dependent and, therefore, having not completed 18 yeas of age on the date of death of her father, the appellant was not eligible for compassionate appointment upon completion of 18 years of age. The appellant's case shall be considered within two months from today."

Chitra Mali (Mondal) Vs. State of West Bengal, (2011) 4 CHN 84 where the Hon"ble Court held that the married daughter is entitled to claim appointment on compassionate ground in place of her late father.

9. Par contra, Mr. Subir Pal, learned Advocate appearing for the respondent (DVC) strongly contended that the petitioner has no case. As a married daughter she is not entitled to get second time nominee and she is not entitled to enjoy employment on Land Loosers" Scheme.

10. Mr. Pal further contended that the impugned order does not suffer from any illegality, infirmity and therefore should not be interfered with by this Court.

11. Mr. Pal also relied on some portion of the recruitment policy where eligibility criteria was provided as follows:-

"a) Only those families who have lost more than 75% of their land holdings by way of acquisition for constructions of Mejia Thermal Power Station will be eligible for consideration of empanelment. Out of these only 520 families strictly on the basis of maximum extent and percentage of loss of land will be prioritized and one panel consisting of 520 persons having one each member from the 520 families will be prepared by D.M. B ankura.

b) Not more than one member of the family will be considered for employment. The family will consist of the head of the family/owner of the land, or husband/ wife of the owner, as the case may be son/sons, and daughter/daughters of the owner of the land.

c) The awardees belonging to the family in whose favour compensation has been paid can nominate one member of his family in case he does not fulfill the other requirements of recruitment. His nomination should be through a declaration in the form of a regular affidavit and the nominee in whose favour the nomination is made should also met the other eligibility criteria for recruitment before he can be considered for appointment. No one other than a member of the family as defined above can be nominated for this purpose.

d) The candidate should have educational qualification upto class VIII passed in any recognised School.

e) The candidate should not be below 18 years of age and above 25 years of age at the time of offer of appointment. The maximum age limit can be relaxed 5 years in respect of SC, ST and by 3 years for OBC Candidates. Notwithstanding this, the age limit prescribed by the Government of India from time to time will be applicable by to DVC."

12. Mr. Pal also relied on an unreported decision of this Hon"ble Court passed by Learned Single Bench of this Hon"ble Court in WP No. 12945 (W) of 2009 (Sir Narayan Maji vs DVC & Others).

13. Considering the submissions made by the learned Advocates of the respective parties and after perusing the records I find that the stand taken by the District Magistrate that nominee cannot be changed/revoked is not a correct proposition of law, the existing law provides that at the will and desire of the person, nominee can be changed by him/her for his/her interest/benefit. In the present case the mother after changing/revoking the name of the earlier nominee has inserted/brought the name of the petitioner as nominee on the ground that the petitioner used to look after her mother who lost her entire agricultural land. Furthermore, the name of the nominee was revoked by the mother of the petitioner with a faint hope that in future her daughter i.e. the petitioner would be provided with employment as a successor under the Land Loosers" Scheme.

14. I cannot also ignore the fact that the reason for changing the nominee is that the conduct and behaviour of the respondent No. 9 was very much unbecoming and she never took care of her mother. As a result thereof the mother revoked and changed respondent No. 9 as her nominee and in place of respondent No. 9 the petitioner was brought by her mother as her nominee and she looked after her mother till her death living temporarily in her mother's house. Column (b) of the Recruitment Policy clearly indicates that family consists of head of the family owner of the land or husband/wife of the owner, as the case may be son/sons and daughter/daughters of the owner of the land. No where under Column (b) of the said policy excluded married daughters.

15. I have considered the decision held in *Chitra Mali (Mondal) vs State of West Bengal* (Supra) and another decision in *(Santi Ruidas vs Coal India Ltd.)* (Supra) where it is held that the married daughter is also entitled to claim appointment on compassionate ground in place of her late father.

16. Now, I have to consider with the unreported Judgment (*Sri Narayan Maji vs DVC & Others*). It is clear from the said unreported Judgment that fact of the said writ petition and the fact involved in the present writ petition are not same because in the said writ petition one of the family member of the Land Looser was provided with appointment in spite of that the said writ petitioner namely Sri Narayan Maji filed the said writ petition by claiming that he should be provided with employment on the basis of the Land Looser Scheme in spite of the fact that his father was already provided with appointment on the ground that in every families though one of the family members of the Land Losers was provided with appointment even then the corporation offered further appointment to another family member of the Land Looser. But in the case in hand it is the petitioner only who first time after the death of her mother applied for appointment on compassionate ground under the Land Losers' Scheme but she was arbitrarily, illegally irrationally deprived of her legitimate claim of being provided with employment under Land Losers' Scheme. Therefore, the ratio of the unreported decision of a Single Bench relied on by Mr. Pal has no manner of application in the present case.

17. Therefore, considering the facts and circumstances of the case and also considering the decisions relied on by Ms. Saha Dutta and after perusing the definition of family narrated in Sub Para (b) of the Recruitment Policy I have no hesitation to hold that the order dated 20th May, 2011 passed by the District Magistrate, Bankura and Collector Bankura cannot be sustained in the eye of law. Accordingly, the impugned order dated 20th May, 2011 passed by the District Magistrate and Collector Bankura, is hereby set aside and quashed.

18. Therefore, I hold that the petitioner, daughter of late Kinkar Majhi is entitled to get appointment under Land Losers' category being a married daughter and a nominee appointed by her mother. I therefore, direct the respondent No. 2 to take step to provide appointment to the petitioner under the Land Losers' category within a period of 8 (eight) weeks from the date of communication of

this order.

19. This writ petition is allowed without any order as to costs.

20. Urgent photostat certified copy of this Judgment, if applied for be supplied to the parties after fulfilling all the formalities.