(2015) 07 CAL CK 0068

In the Calcutta High Court

Case No : Writ Petition No. 25164(W) of 2014

Shib Narayan Das — APPELLANT

Vs

The State of West Bengal and Others — RESPONDENT

Date of Decision : 30-07-2015

Acts Referred:

Citation : (2015) 07 CAL CK 0068

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Sakti Pada Jana, for the Appellant; Biswajit De, Jr. Govt. Advocate and Tapati Samanta, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Debangsu Basak, J—The writ petitioner has assailed the decision of the Chairperson, South 24-Parganas District Primary School Council noted in the Memo No. 1010/L dated August 21, 2013. The Chairperson has negated the prayer of the writ petitioner for compassionate appointment in the died-in-harness category by the impugned memo.

2. It is submitted on behalf of the writ petitioner that, the Chairperson of the concerned Council took into account matters extraneous to the consideration to arrive at a finding of lack of financial distress of the family of the deceased teacher and, therefore, the impugned order is erroneous. According to the writ petitioner, the quantum of pensionary benefits received by the family of the deceased teacher is not relevant for the purpose of considering the financial position of the family of a deceased teacher.

3. It is submitted on behalf of the writ petitioner that on a previous occasion the South 24-Parganas District Primary School Council had recommended the appointment of the writ petitioner on compassionate ground in the died-in-harness category. It is contended that, there is no new material before the Chairperson of the concerned Council to take a contrary view that the one taken

earlier.

4. In support of the contention that the writ petitioner is entitled to appointment on compassionate ground in the died-in-harness category reliance has been placed on Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, AIR 2000 SC 1596 : (2000) 90 CLT 450 : (2000) 86 FLR 197 : (2000) 7 JT 135 : (2000) 6 JT 281 : (2000) 2 LLJ 1 : (2000) 4 SCALE 670 : (2000) 6 SCC 493 : (2000) SCC(L&S) 767 : (2000) AIRSCW 1745 : (2000) 4 Supreme 602 , Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others, AIR 2000 SC 1596 : (2000) 90 CLT 450 : (2000) 86 FLR 197 : (2000) 7 JT 135 : (2000) 6 JT 281 : (2000) 2 LLJ 1 : (2000) 4 SCALE 670 : (2000) 6 SCC 493 : (2000) SCC(L&S) 767 : (2000) AIRSCW 1745 : (2000) 4 Supreme 602 , Tapan Kumar Barman Vs. State of West Bengal and Others, (2009) 1 CHN 23 , Swati Chatterjee Vs. State of West Bengal and others, (2010) 3 CALLT 141 : (2010) 125 FLR 800 , unreported judgment of the Division Bench dated November 24, 2010 rendered in W.P.S.T. 525 of 2010, 2013 Volume 3 Calcutta High Court Notes page 696 (Susmita Mazumder v. State), 2011 Volume 2 West Bengal Law Reporter page 579 (Sk. Anisur Rahaman v. The State of West Bengal & Ors.).

5. The writ petition is being opposed on behalf of the Council and the State.

6. So far as the Council is concerned, it is submitted that the Council has rejected the case of the writ petitioner on appreciation of the correct parameters relating to financial hardship of a family of the deceased teacher. The pension and the monetary benefits received by the family of the deceased teacher is a relevant consideration at arriving at the conclusion of financial distress of such family. The Rule relied upon by the writ petitioner relates to Senior Secondary teachers and is not applicable to a primary teacher. It is contended that the ratio laid down in Govind Prakash Verma (supra) is not correct. It has been held in All India Reporter Union of India (UOI) and Another Vs. Shashank Goswami and Another, AIR 2012 SC 2294 : (2012) 5 SCALE 740 : (2012) 11 SCC 307 : (2013) 1 SCC(L&S) 51 : (2012) 3 SLJ 218 : (2012) AIRSCW 3257 : (2012) 4 Supreme 94 that Govind Prakash Verma (supra) had been decided without considering earlier judgments which were binding on the Bench.

7. Relying on Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, (2008) 117 FLR 565 : (2008) 4 JT 512 : (2008) 4 SCALE 637 : (2008) 11 SCC 384 : (2008) 2 SCC(L&S) 1077 : (2008) 3 SLJ 433 it is submitted that the right to get appointment on compassionate ground would depend upon the scheme operating in the field. Appointment on compassionate ground is not a source of recruitment.

8. Referring to an unreported Order dated July 15, 2013 passed in W.P. No. 17245(W) of 2013 (Samim Ahmed v. The State of West Bengal & Ors.) it is submitted on behalf of the Council that, the income of the family of the deceased derived out of pensionary benefits had been taken into consideration in that case the appointment on compassionate ground had been denied therein. Such denial

had been upheld in the Order dated July 15, 2013.

9. In reply it is contended on behalf of the writ petitioner that, the Order dated July 15, 2013 passed in Samim Ahmed (supra) has since been set aside by the Division Bench in M.A.T. 1033 of 2014 (Samim Ahmed v. The State of West Bengal & Ors.).

10. I have heard the rival contentions of the parties and have considered the materials made available on record.

11. The father of the writ petitioner was an Assistant Teacher of a primary school. The father of the writ petitioner had died-in-harness on October 24, 2004. The writ petitioner had made an application for appointment on compassionate ground in the died-in-harness category on September 9, 2005 to the Head Master of the primary school. The Head Master of the primary school had forwarded such application to the District Inspector of School by a letter dated September 13, 2005. The writ petitioner had received a Memo dated November 27, 2012 from the concerned Council stating that, the application for appointment of the writ petitioner on compassionate ground which was approved by the concerned Council had been rejected by the Commissioner of School Education. Being aggrieved by such rejection the writ petitioner had filed a writ petition being W.P. No. 1427(W) of 2013. Such writ petition was disposed of by a judgment and order dated February 8, 2013. The rejection of the Commissioner of School Education was set aside. The writ petition was allowed. The Chairperson of the concerned Council was directed to consider the application of the writ petitioner for appointment on compassionate ground afresh on the basis of the documents which were already on record and to pass a reasoned order in accordance with the Rule 14(1) of the West Bengal Primary School Teachers Recruitment Rules, 2001.

12. The Chairperson of the concerned Council by the impugned Memo dated August 21, 2013 has rejected the prayer of the writ petitioner. The Chairperson has taken into consideration the West Bengal Primary School Teachers Recruitment Rules, 2001. The Chairperson has stated in the impugned memo that on scrutiny the total family income of the deceased teacher at the material point of time is Rs. 6,086/-. According to the Chairperson since the family income of the deceased at the material point of time is Rs. 6,086/- and that a Group-D employee of the State runs his family with Rs. 4,364/-, the family income of Rs. 6,086/- is, therefore, adequate to provide two square meals and other essentials to the surviving family members of the deceased teacher. Consequently, the prayer of the writ petitioner for appointment on compassionate ground has been rejected.

13. Balbir Kaur & Anr. (supra) has held in paragraph 13 as follows:-

"13. ... ...But in our view this Family Benefit Scheme cannot in any way be equated with the benefit of compassionate appointments. The sudden jerk in the family by reason of the death of the bread earner can only be absorbed by some lump-sum amount being made available to the family-this is rather unfortunate but this is a reality. The feeling of security drops to zero on the death of the bread earner 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 bread earner, but that would undoubtedly bring some solace to the situation."

Govind Prakash Verma (supra) has held as follows:-

"6. In our view, it was wholly irrelevant for the departmental authorities and the learned Single Judge to take into consideration the amount which was being paid as family pension to the widow of the deceased (which amount, according to the appellant, has now been reduced to half) and other amounts paid on account of terminal benefits under the Rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee. Therefore, compassionate appointment cannot be refused on the ground that any member of the family received the amounts admissible under the Rules.

... ..."

Tapan Kumar Barman (supra) has held as follows:-

"9. The Director has not set out any provision of law as to how on receipt of the aforesaid amount, the applicant is debarred from getting any appointment. The payment which had been received is an earned and assured amount which includes Provident Fund and Gratuity and Provident Fund and Gratuity is the amount earned by the deceased employee and as far as the family pension is concerned, this is also one kind of deferred payment and earned by the deceased. In our view, compassionate appointment is given with an idea to compensate the family for the loss of income because of sudden death of the employee who would have earned in future. The money which has been received was earned by the employee, which he might have received had he been alive.

10. Besides, the amount of Rs. 4,000/- being the family pension, is coterminous 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, AIR

2000 SC 1596 : (2000) 90 CLT 450 : (2000) 86 FLR 197 : (2000) 7 JT 135 : (2000) 6 JT 281 : (2000) 2 LLJ 1 : (2000) 4 SCALE 670 : (2000) 6 SCC 493 : (2000) SCC(L&S) 767 : (2000) AIRSCW 1745 : (2000) 4 Supreme 602 ."

Swati Chatterjee (supra) has held as follows:-

"8. The family pension being one kind of deferred payment and earned by deceased cannot be a valid ground for denying compassionate appointment to a member of the family of the deceased employee. Furthermore, the family pension would stop with the death of the widow of the deceased. The two daughters of Doctor are minor and unmarried and, therefore, the respondent authorities should have taken into consideration of the aforesaid factor while considering the prayer for compassionate appointment of the petitioner herein."

... ...

...

"13. There is also no dispute that the financial condition of the family of the deceased employee has not been improved on account of any subsequent development. Therefore, we hold that the need of financial assistance to the family of the deceased employee is very much in existence till date and the claim of the petitioner can also not be denied of the ground that she is now about 48 years since the compassionate appointment to an employee is a special appointment on humanitarian ground under special circumstances."

14. In W.P.S.T. 525 of 2010 the Division Bench had set aside a rejection of compassionate appointment. The Government of West Bengal had rejected the prayer for employment on compassionate ground on the plea for the family of the deceased employee had received death benefits and had also received family pension. The Division Bench had issued directions for consideration of the claim for compassionate appointment.

15. Susmita Mazumder (supra) by following Balbir Kaur & Anr. (supra) and Tapan Kumar Barman (supra) had directed grant of appointment on compassionate ground after holding that, receipt of pensionary benefits cannot be a valid ground for rejection of a prayer for compassionate appointment.

16. In Sk. Anisur Rahaman (supra) even though the scheme of died in harness category was not in existence, the social philosophy behind its enactment to provide employment to the family of the deceased to tide over the financial crisis due to death, had been invoked to direct consideration for appointment on compassionate ground.

17. Mumtaz Yunus Mulani (supra) has held that in a given case appointment on compassionate ground cannot be denied only because the dependant of the deceased had been receiving some amount by way of family pension. It goes on to hold that appointment on compassionate ground is not a source of recruitment. It only enables the family of the deceased to get over sudden

financial crisis. Their Lordships of the Supreme Court had doubted the validity of the ratio of Govind Prakash Verma (supra) by pointing out that earlier binding precedent by the Supreme Court had not been taken note of by Govind Prakash Verma (supra).

18. Samim Ahmed (supra) decided on July 15, 2013 has been set aside by the Division Bench on July 13, 2015 in M.A.T. No. 1033 of 2014 with C.A.N. 5986 of 2014. The Division Bench has directed that the authorities should consider the prayer for compassionate appointment without taking note of the disbursement of the terminal benefits and/or pension to the family members of the deceased.

19. In Shashank Goswami & Anr. (supra) their Lordships of the Supreme Court has held that appointments on compassionate ground have to be made in accordance with the Rules, Regulations or administrative instructions taking into consideration the conditions of the family of the deceased. Appointment on compassionate ground cannot be claimed as a matter of right.

20. In the present case, appointment on compassionate ground in respect of a primary teacher is governed by the West Bengal Primary School Teachers Recruitment Rules, 2001. Rule 14 of the Rules of 2001 deals with compassionate appointment and is as follows:-

"14. Appointment on compassionate ground.-The Council may appoint primary teachers, with the approval of the Director of School Education, West Bengal or his authorized officer, on compassionate ground in the following cases where, in the opinion of the Council, the cases deserve compassionate consideration:-

(1) When a teacher dies in harness before the date of his superannuation i.e. at the age of 60 years, leaving a family which, in the opinion of the Council, is in extreme financial hardship that is it fails to provide two square meals and other essentials to the surviving members of the deceased teacher''s family, the following members of the deceased teacher''s family, viz., the

(a) widowed wife, or

(b) widower, or

(c) son, or

(d) unmarried daughter, or

(e) divorcee dependent daughter - divorced before the date of death of the teacher.

possessing required educational qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach, may make within two years from the date of such death, a prayer in writing to the Council for appointment as primary teacher on compassionate ground, provided that only one member of a deceased primary teacher''s family may be appointed on compassionate ground.

(2) When a primary teacher applies for being declared permanently incapacitated on medical ground, to the Council for appearing before the Medical Board set up according to the procedure laid down in the Government Order, before attaining 58 years of age and discontinues to attend the school for such incapacitation, he may be allowed by the Council to retire on and from the date of submission of such application, provided that the Council is satisfied with such incapacitation and other conditions through Enquiry Committee, and

Provided further that, after receiving the report from the Council, the Medical Board set-up for this purpose declares him permanently incapacitated to continue in further service for a reasonable time and if his family is in extreme financial hardship after such retirement, the

(a) wife, or

(b) husband, or

(c) son, or

(d) unmarried daughter, or

(e) the divorcee dependent daughter - divorced at least one year before submission of application for declaration of permanent incapacitation, of the incapacitated pre-maturely retired primary teacher, possessing requisite qualifications as laid down in clause (a) and (c) of sub-rule (1) of rule 6 and unemployed, and not below 18 years of age and not above 45 years of age and found eligible to teach may be appointed as primary teacher on compassionate ground on submission of prayer in writing within three months from the date of issue of certificate by the competent Medical Board. Only one member of the family of the declared permanently incapacitated teacher may be appointed.

Government orders issued from time to time for appointment on compassionate ground shall also duly be considered in making such appointment.

But if the Medical Board does not declare the teacher to be permanently incapacitated to continue in further service the Council will allow him to rejoin duty:

Provided he does not attain superannuation. In such a case the period of absence will be regularized as per existing leave rules."

21. Rule 14 allows compassionate appointment on the ground of death as well as retirement due to permanent incapacity. The present case relates to died in harness category. It is governed by Rule 14(1) of the Rules of 2001. Sub-rule (1) of Rule 14 of the Rules of 2001 requires satisfaction of various criteria for a compassionate appointment in the died in harness category to be considered by the Council.

22. Extreme financial hardship has not been defined in the Rules of 2001. Rule 14 throws some light as to what the Government means by extreme financial

hardship of a family of a deceased teacher. Rule 14 provides that in the event the family of the deceased teacher fails to provide two square meals and other essentials to the surviving members of the deceased teacher''s family then such family would be considered to be in extreme financial hardship. The Rules of 2001 does not specify the incomes to be considered while arriving at a decision of financial hardship of the family of a deceased teacher. The family of a deceased teacher may have income from various sources including the terminal and pension benefits.

23. An attempt has been made by referring to Schedule V Paragraph 1 of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-teaching Staff) Rules, 2009 to submit that for computation of income of a family of a deceased teacher, an income of an amount earned from Provident Fund and Gratuity should not be taken into consideration. It is submitted on behalf of the respondents that, since the Selection Rules of 2009 relates to secondary schools, the same should not be applied in respect of teachers of primary schools.

24. The Selection Rules, 2009 relates to teachers engaged in secondary schools. The West Bengal Primary School Teacher Recruitment Rules, 2001 deals with teachers engaged in primary schools. The Selection Rules of 2009 and the Recruitment Rules, 2001, therefore, operate in different fields.

25. The Selection Rules of 2009, however, provides that while calculating family income of a deceased teacher the income derived from provident fund and gratuity would not be taken into consideration. Apparently, the Selection Rules of 2009 takes note of the fact that terminal benefits of a deceased teacher are benefits which the deceased teacher has earned during his employment and, therefore, paid on demise.

26. The terminal benefits are earnings which the employee has earned in course of his employment and which are paid on the happening of an incident. These are earnings which are paid on deferred basis on the happening of specified incidents. Such benefits, therefore, cannot be taken into consideration for calculating the family income of the deceased employee as it is an earning of the deceased during the course of his employment and paid on his death.

27. Since the Recruitment Rules, 2001 is silent on the aspect of matters to be taken into consideration for calculating family income of a deceased teacher in terms of Rule 14, the concept that terminal or death benefits accruing to a family of a deceased teacher on the death of the teacher should not be taken into consideration for calculating total family income as the terminal or death benefits are earnings of the deceased teacher which is paid on deferred basis on the happening of an incident can safely be invoked to arrive at a calculation of total family income of the deceased teacher. Terminal or death benefits and pension receivable has been directed not to be taken into consideration for compassionate appointment in Tapan Kumar Barman (supra), Swati Chatterjee

(supra), W.P.S.T. 525 of 2010 (supra), Mumtaz Yunus Mulani (supra) and the Division Bench in M.A.T. No. 1033 of 2014 with C.A.N. 5986 of 2014 (Samim Ahmed v. State of West Bengal & Ors.).

28. In considering whether or not a family of a deceased teacher is in extreme financial hardship in terms of Rule 14 of the Recruitment Rules, 2001 for an appointment on compassionate ground in the died in harness category, the concerned authorities are required to calculate the financial condition of the family of the deceased teacher on the date of death by taking into consideration all resources available to such family capable of generating income and the income generated there from while calculating the family income for such purpose the authorities will not take into consideration the terminal or death benefits and the pension received or receivable by the family.

29. The Recruitment Rules, 2001 is also silent on the date or dates on which the financial distress is to be calculated. If varying dates are taken for calculation, varying results may occur as to the financial condition of the family of the deceased teacher prevailing on the dates concerned. In my view, since the appointment on compassionate ground is sought on the death of a teacher, the date of the death should be reckoned as the relevant date for the purpose of calculating the financial condition of the family. In such circumstances, on the date of death of the teacher all resources of the family of the deceased teacher (family as defined in Rule 14 of the Recruitment Rules, 2001) generating income for such family leaving aside the terminal or death benefits including pension receivable by such family on the date of death of the teacher should be taken into consideration for the purpose of calculating financial hardship in terms of Rule 14 of the Recruitment Rules, 2001.

30. It may be contended that, between the period of the date of death and the date of the application for compassionate appointment and even during period of consideration of the application for appointments, incidents may occur which may have material bearing on the financial condition of the family concerned. If such a situation does arise in a fact scenario then it would be open to the concerned Council to take such fact into consideration after affording a reasonable opportunity of hearing to the applicant, to deny the prayer for appointment.

31. The impugned Memo dated August 21, 2013 has taken into consideration the pension received by the family teacher in calculating the financial condition. The impugned memo, therefore, cannot be sustained in light of the discussions above. The impugned memo is set aside. The Chairperson of the concerned Council will consider the application of the writ petitioner for compassionate appointment in light of the directions contained herein, preferably within 4 weeks from the date of communication of this order. The Chairperson shall communicate the decision forthwith to the writ petitioner as well as to the Commissioner. The Commissioner upon receipt of such communication from the Chairperson and if such communication is one of recommendation for appointment shall forthwith and preferably within 2 weeks of receipt of

communication take steps in accordance with law.

32. W.P. No. 25164(W) of 2014 is disposed of. No order as to costs.

33. Urgent photostat certified copy of this order, if applied for, be given to the parties as early as possible.

