
(2011) 04 CAL CK 0081
In the Calcutta High Court
Case No : Writ Petition No. 12269 (W) of 2002

Shyamal Kumar Mondal

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 29-04-2011

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2011) 3 CALLT 116

Hon'ble Judges : Harish Tandon, J

Bench : Single Bench

Advocate : Amalesh Roy, Mr. Rakeshwar Dey Sarkar, Mr. Souvik Mukherjee and Mr. Arijit Dey, for the Appellant; Swamp Paul for the State, for the Respondent

Final Decision : Allowed

Judgement

Harish Tandon, J.—This is a third-round of litigation between the parties where the writ petitioner is constantly knocking the door of the justice to be dispensed by the authorities to consider his candidature for appointment on compassionate ground.

2. Briefly stated the fact that the father of the writ petitioner, primary school teacher, applied on 20.9.1988 seeking permission for compulsory retirement and praying for appointment of the writ petitioner on compassionate ground. On the receipt of the said application the District School Board constituted an Enquiry Committee to enquire as to the genuinity and or veracity of the statements made by the said applicant, the father of the writ petitioner, and also to consider the financial condition of the family. Pursuant to the constitution of the said Enquiry Committee, a "report was submitted to the President of the District School Board, Burdwan and in terms of the said report the matter was referred to the Chief Medical Officer of Health to constitute a Medical Board and to give a report on the permanent incapacitation of the said applicant.

3. Medical Board submitted report on 27.9.1989. Relying upon such report the

father of the petitioner was declared medically incapacitated and was allowed to retire with effect from the date of the report of the said Medical Board i.e. 27.9.1989. The said order by which the father of the writ petitioner was allowed to retire was assailed by the writ petitioner in CO No. 75(w) of 1993 before this Court. The principle grievance raised by the writ petitioner in the said writ petition was that the authorities concerned have not dealt with the matter in proper perspective inasmuch as the application of the father of the writ petitioner was composite in nature i.e. seeking for a compulsory retirement on permanent incapacitation and the appointment of the writ petitioner on compassionate ground; and illegally and arbitrarily disposed of the said application by allowing the prayer of the compulsory retirement on permanent incapacitation without disposing of the other prayer by which the appointment of the writ petitioner was sought on compassionate ground. The other ground of attack made in the said writ application was that the authorities concerned have not considered the case in the light of a circular No. 176 Edn (p) dated 22.4.1988.

4. The said writ application was disposed of on 17.9.1998 by setting aside the said order passed by the Director, District School Board, Burdwan with further direction to consider the case of the writ petitioner within a period of 3 weeks from the date of communication of the order.

5. In terms of the said direction the Director of the School Education, West Bengal vide Memo No. 10 76(L) (pry) 93 dated 21.5.1999 again rejected the said application on the ground that the financial position of the teacher as ascertained by the Enquiry Committee constituted by the Council are not so gracious.

6. Thus the petitioner was constrained to take out the second writ application being WP No. 11018(w) of 1999 challenging the said order dated 21.5.1999 on the ground that the course of action adopted while dismissing the prayer of appointment on compassionate ground is in contradiction to the provisions contained in the said government order No. 176 Edn (p) dated 22.4.1988. The said writ application was ultimately allowed by quashing and setting aside the order impugned therein i.e. order dated 21.5.1999 passed by the Director of the School Education, West Bengal, with further direction to conduct an enquiry afresh either by himself or by some responsible officer with regard to the economic status of the erstwhile teacher.

7. Again the misfortune does not leave the writ petitioner. The concerned authority by order under memo No. 4446 LC dated 23.7.2002 rejected the prayer of appointment of the writ petitioner on compassionate ground. This gives rise to the filling of the third round of litigation by filing the instant writ application before this Court.

8. Mr. Amallesh Roy, learned Advocate appearing for the writ petitioner, at the very outset, submits that the action of the respondent authority is per se illegal, arbitrary and in derogation with the provision contained in the government order No. 176 Edn (p) dated 22.4.1988. He further submits that once an authority

refers the matter to the Chief Medical Officer of Health or the permanent Medical Board there is no occasion to go into aspect of financial stringency or status of a teacher as such reference is contemplated only upon satisfaction of the concerned authority about the financial status of a teacher. He succinctly argues that on a meaningful reading of the provisions contained in the said government order dated 22.4.1988, there is no manner of doubt that upon receiving an application seeking for a compulsory retirement on permanent incapacitation and an appointment of ward on compassionate ground, the reference to a Chief Medical Officer or permanent Medical Board can only be made upon satisfaction of the President of the District School Board on the basis of a report of an Enquiry Committee about the genuineness and otherwise of the case including the financial condition of the family. Thus he argues that the concerned authority cannot reject the prayer for compassionate appointment on the ground of financial condition of the family. He submitted that the authorities are bound by the government orders and there cannot be any departure therefrom. By referring the government order dated 22.4.1988 he submits that the concerned authority while granting their approval to the retirement of the applicant on the ground of permanently disabled or incapacitated, is also bound to approve the proposal for appointment of the ward of the applicant on compassionate ground. By contending the same he further submits that the word "may" does not necessarily always mean to be directory in nature but sometimes it may be read as "shall" and makes it obligatory or mandatory.

9. To buttress such submission he relies upon, the following judgments: S. Gopal Reddy Vs. State of Andhra Pradesh, , Mohan Singh and Others Vs. International Airport Authority of India and Others, , Bachahan Devi and Anr. v. Nagpur Nigam, Gorakhpur and Anr. reported in (2008) 12 SCC 372 and Chapter 11 of the Craies on Statute Law. He further argues that the enquiry officer, whose report was relied upon by the Director of the District School Board, Burdwan while rejecting the said prayer, does not speak of that the financial condition of the writ petitioner or the family of the teacher is sound and good but it goes contrary and establishes that the financial condition was not good. He further argues that methodology for consideration in case of a compassionate appointment on permanent incapacitation is different that what is adopted whole considering the compassionate appointment in the in harness category. According to him by death of an employee the family comes under financial distress suddenly or thrown into an immediate penury but in case of compassionate appointment on permanent incapacitation the family not only suffered the loss of capacity of a bread earner to run the family but have been further burdened with a recurring medical expenditure and relies upon a judgment of the apex court in case of V. Sivamurthy v. State of AP & Anr. reported in (2008) 13 SCC 730. Thus he submits that the impugned order is unsustainable and liable to be quashed and set aside.

10. Ms. Chameli Majumdar, learned Advocate appearing for the respondents authorities submits that on the basis of finding of the enquiry officer the

authorities have found the financial condition of the writ petitioner to be sound and the writ petitioner is able to shoulder the burden by meeting expenses of his family and the prayer for appointment on compassionate ground has been rightly rejected. She further argues that the father of the writ petitioner who was allowed compulsory retirement on permanent incapacitation received a retiral benefit which is a handful amount and is also receiving the pension and as such the condition of the family being thrown into penury or eminent financial crisis cannot be said to be in distress. She relies upon the following judgments: Punjab National Bank and Others Vs. Ashwini Kumar Taneja, State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, , Smt. Mumtaz Yunus Mulani v. State of Maharashtra and Ors. reported in AIR 2008 SCW 3642 and State Bank of India and Others Vs. Jaspal Kaur,

11. In reply Mr. Amalesh Roy, learned Advocate countered the submission of Ms. Majumdar and submits that the cases cited by Ms. Majumdar has no applicability as the rules which are applicable in the instant case are not in pari materia with the rules which governs the case decided in the aforesaid reports. He submits that while considering an application for appointment on compassionate ground the relevant rules are to be strictly adhered to and places a decision of the apex Court in case of State Bank of India and Another Vs. Somvir Singh, He took another point that where an application was composite in nature the authority cannot divide the same by granting one prayer and refusing the other. Reliance is placed upon a judgment of the apex court in case of Food Corporation of India and Another Vs. Ram Kesh Yadav and Another,

12. Having considered the submission made as above, the employee made an application seeking for his retirement on the ground of being permanently incapacitated or disabled and an appointment of the writ petitioner on compassionate ground. The said application was filed on 20.9.1988. Prior to the submission of the said application, by government order No. 176 Edn (p) dated 22.4.1988, the benefit of employment on compassionate ground was extended to the ward of a primary school teacher who is permanently disabled or incapacitated while continuing in service. It would be profitable to quote the relevant portion of the said circular:

In supersession of the GO No. 1176-Edn. (p) dated 23.8.79 and also all other previous Government Orders on the subject mentioned above, the undersigned is directed by order of the Governor to say that the Governor is pleased to order that the benefit of employment on compassionate ground be extended to a ward of a primary school teacher who is permanently disabled or incapacitated for continuing in service subject to the following terms and conditions:

- (i) the ward shall possess the requisite qualifications for such appointment;
- (ii) the benefit shall be restricted to those primary school teachers who have not attained the age of sixty years; and
- (iii) the benefit shall not be claimed as a matter of right.

The term "Ward" shall mean a son/unmarried daughter/the widow/the husband of a primary school teacher.

The Governor is further pleased to decide that with a view to ensuring prompt disposal of the case of employment on compassionate ground as aforesaid and also with a view to preventing misuse of the privilege granted in para 1, the following procedures should be follows:

(a) the teacher so disabled or incapacitated should apply in the enclosed proforma to the President of the District School Board concerned in the case of rural areas and to the District Inspector of Schools (P.E.) concerned in the case of urban areas with a certificate from a registered medical practitioner indicating there in the nature of ailment that has made the teacher permanently disabled or incapacitated for continuing in service

(b) on receipt of any such application the President of the District School Board or the District Inspector of Schools (PE), as the case may be, shall refer the case for a report to an enquiry committee comprising the members indicated below:

Enquiry Committee for Rural areas

- (i) a member of the District School Board
- (ii) a member of the Panchayat Samity concerned; and
- (iii) a representative of the District Inspector of Schools (PE)

Enquiry Committee for Urban areas

- (i) a member of the urban advisory committee concerned;
- (ii) a commissioner/councilor of the Municipality/ Corporation concerned; and
- (iii) a representative of the District Inspector of Schools (PE)

(c) The enquiry committee will enquire into the genuineness or otherwise of the case and also the financial condition of the family of the applicant and submit a report thereon to the President of the District School Board or the District Inspector of School (PE), as the case may be, preferably within a period of three months. If the report of the enquiry committee testifies to the genuineness of the case, the President of the District School Board or the District Inspector of Schools Primary Education, as the case may be, shall send the case to the Chief Medical Officer of Health of the concerned district for a report in terms of the Directorate of Health Services, West Bengal's Order No. HPA/G-505-79/103 P dated 27.2.80, in case of Calcutta and Howrah Corporation areas, however, the District Inspector of Schools (PE) concerned should send the case to the permanent Medical Board at the Calcutta Medical College for a report in terms of the aforesaid Memo of the Directors of Health Services, W.B.

(d) On receipt of the report from the Chief Medical Officer of Health or the permanent Medical Board, as the case may be, the application along with the

report will be forwarded by the President, District School Board concerned or the District Inspector of schools, Primary Education, as the case may be with their views to the Director of School Education, West Bengal, for according approval to the retirement of the applicant on the ground of being permanently disabled or incapacitated for continuing in service. In case a decision is taken to allow the applicant to retire on the aforesaid ground the Director of School Education, West Bengal, on the basis of the reports referred to above may also approve the proposal for appointment of a ward of the applicant on compassionate ground and in that case the appointment order will be issued by the appointing authority concerned on receipt of such approval from the DSE.

13. Thus there is no manner of doubt that the application of the father of the writ petitioner is to be considered and disposed of in the light of the said government order dated 22.4.1988 which was prevalent and was occupying the field. On a bare reading of the said circular dated 22.4.1988 it emerges that a teacher can apply in the enclosed proforma to the President of the District School Board of the concerned area annexing a certificate from a registered medical practitioner indicating the nature of the ailment and permanent disablement and incapacitation together with the prayer for appointment of his ward on compassionate ground. On receipt, the President of the District School Board shall refer the matter to Enquiry Committee which comprises (i) a member of the District School Board, (ii) a member of concerned Panchayat Samity and (iii) a representative of the District Inspector of Schools (P.E). The said Enquiry Committee shall enquire into the genuineness or otherwise of the case and also the financial condition of the family of the applicant and shall submit a report to the President of the District School Board within a stipulated period. The President of the District School Board having found from the report of the Enquiry Committee as to the genuineness of the case shall refer the case to the Chief Medical Officer of Health for a report and on the basis of the said report given by the Chief Medical Officer of Health the President of the District School Board shall forward the paper to the Director of the School Education for according approval to the retirement of the applicant on the ground of permanent disablement or incapacitation, in such case may also approve the proposal for appointment of a ward of the applicant on compassionate ground.

14. There is no dispute that the teacher, the father of the writ petitioner, have been found permanently disabled or incapacitated to continue in service. Precisely that is the reason the prayer for compulsory retirement on medical ground was allowed. What was turned down was the prayer which was simultaneously made by the teacher for the appointment of the writ petitioner on compassionate ground. On the first occasion the application of the father of the writ petitioner was disposed of by granting the first prayer that is retirement on permanent disablement or incapacitation but no decision was arrived so far as the appointment of the writ petitioner on compassionate ground is concerned. The order was assailed before this Court and was set a side with a direction to consider the said application afresh so far as the prayer for appointment on

compassionate ground is concerned.

15. In the second adjudication process which was undertaken in terms of an order passed by this Court in the first writ application, the authority concerned rejected the prayer for appointment on compassionate ground as the family of the applicant is not under any eminent financial crisis.

16. Thus the second order was further challenged by the writ petitioner before this Court and this Court set aside the said order on the ground that once the President of District School Board having found the report of the Medical Officer as well as the report of the Chief Medical Officer to be genuine and refers the matter to the Director, School Education the said Director did not assign any reason for reaching a contrary conclusion and directed the Director of School Education to conduct an enquiry afresh either by himself or by some responsible officer with regard to the financial condition of the family. The said application has the same misfortune for the third time as the same was rejected by the Director of the School Education holding that the financial status and the economic condition of late Pravakar Mondal was very solvent and the same has been found on enquiry conducted by the Deputy Director of School Education and the report submitted in this regard. Though no copy of the report was ever given to the writ petitioner but this Court while admitting the writ application thought that the copy of the enquiry report is necessary and directed the respondent authority to produce the said enquiry report. Pursuant to the said direction, copy of the enquiry report has been produced and filed in Court. This court has looked into the said enquiry report relied upon by the Director of the School Education in the impugned decision.

17. From the enquiry report it is noticed that the enquiry officer found that the applicant, the father of the writ petitioner was holding some properties which on the death is partitioned amongst the co-owners and the writ petitioner is holding .341 decimal which includes a cultivable land and the pond. The house of the writ petitioner was found to be made by mud and there is no furniture/decoration/equipment found therein so as to come to a conclusion that the said petitioner is a wealthy person. It is further noticed in the said enquiry report that the writ petitioner is indebted heavily due to the treatment of his father and wife and the present condition of the writ petitioner is not so good as per the statement of the villagers recorded by the enquiry officer. Though this Court noticed further that in the said report at one place or other, the enquiry officer has recorded the statement of the villagers that the writ petitioner sometime sales lanka and halud as a hawker.

18. From the said inquiry report what can logically be deduced therefrom is that the financial condition of the writ petitioner is not so good and presently the writ petitioner is in debt. Although there is a landed property which he got by partition amongst the heirs of the deceased but there is no finding as to the income from the said landed property. It is also found that the said landed property comprises of cultivated land as well as the pond. Similar point came up

for consideration before the apex Court in case of Govind Prakash Verma v. Life Insurance Corporation of India and Ors. reported in (2005) 10 SCC 289 where it has been observed that the compassionate appointment cannot be refused on the ground that a person is engaged in cultivation as the same cannot be considered to be a gainful employment. Apart from the same as I have already indicated that there is no finding in the enquiry report wherefrom it can be logically deduced that there is a substantial income from the landed property. If the indebtedness of the writ petitioner has been found by the enquiry officer which in my considered opinion should be considered about the financial condition of the writ petitioner. There is no dispute that the object and purpose for enacting the rule of providing an appointment on compassionate ground is. to bring out a family which would be thrown in a financial hardship on cessation of the income of the bread earner. The object underlying the provision for grant of compassionate appointment is to enable the family to tide over the eminent crisis resulted due to the stoppage of a earning by a bread winner which results in putting the family in penury.

19. There is no doubt that the situation is different in a case where the family has come under a sudden financial crisis due to death of a bread earner and a family who has left in penury by the incapacitation or disablement of a bread winner. In case of former the family is put to a sudden financial crisis but in case of latter not only it is of eminent financial crisis but the family is further burdened with an additional expenditure of medical expenses on the bread winner. (See Sivamurthy v. State of AP and Ors. (2008) 13 SCC 730).

20. Though a stray argument has been advanced by Ms. Majumdar, learned Advocate for the respondents that while considering the financial status the factors like family pension, gratuity, employer's/employee's contribution to provident fund, income of the family from other sources, size of the family and liability are to be considered. The judgment cited by her in case of Punjab National Bank and Others Vs. Ashwini Kumar Taneja, State of Jammu & Kashmir and Others Vs. Sajad Ahmed Mir, Smt. Murntaz Yunus Mulani v. State of "Maharashtra and Ors. reported in AIR 2008 SCW 3642 and State Bank of India and Others Vs. Jaspal Kaur, the apex Court was dealing with a case where the rule governing the compassionate appointment mandates the observation of such criteria. In other words in all the aforesaid cited reports there is specific rule directing the authority to observe those conditions while determining the financial condition of the family. There is no specific rule of like nature applicable in the present case. The government order dated 22.4.1988 does not postulate any such condition to be adhered to or considered while determining the financial condition/status of the family. Similar point was urged before the Division Bench in case of Rabin Rout v. State of West Bengal 6 Am. reported in 2009 (4) CHN 748 and the Division Bench in placing the reliance upon a judgment of the supreme Court in case of Union of India (UOI) Vs. Shri Avtar Singh, held that mere receiving the terminal benefit cannot lead to an inference that the family is not in distress. Similar view is expressed by the Division bench in case of Sujay

Kumar Pandit reported in 2010 (4) CHN 310 in following words:

Therefore, considering the aforesaid factors, the Hon"ble Supreme Court refused to grant any relief to the widow of the deceased employee even though it has been specifically observed in the said decision that the appointment on compassionate ground cannot be denied on the ground that the dependant of the deceased had been receiving some amount by way of family pension.

21. In yet another case of Tapan Kumar Barman Vs. State of West Bengal and Others, decided by the Division Bench of this Court. It is categorically held:

Besides, the amount of Rs. 4000/- 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 decision rendered in the case of Balbir Kaur and Another Vs. Steel Authority of India Ltd. and Others,

22. Another Division Bench in case of Nazrul Islam and Anr. v. State of West Bengal and Anr. reported in 2009 (1) CHN 339 held that the claim on compassionate appointment cannot be refused on the ground that the family of the deceased employee was getting a pension in the following words:

In the aforesaid decision, the Hon"ble Supreme Court refused to consider the claim of the compassionate appointment on the ground that a family of the deceased employee was not only getting pension but had other monthly income which taken altogether exceeded the last pay drawn by the deceased. The Hon"ble Supreme Court in the aforesaid decision specifically held that the dependant of the deceased employee was not eligible for compassionate employment on the financial parameter.

23. In stricto sensu, the rule governing the appointment on compassionate ground cannot be upheld on the touchstone of the Article 14 and 16 of the Constitution but the same has been considered rational and reasonable and permissible on the basis of an eminent financial crisis suffered by the family of a deceased employee for such reason it was thought necessary to frame the rules and regulations or issue administrative order which can stand the test of Article 14 and 16. It is not an another source of appointment but is an exception to the normal rule of appointment solely on the criteria that on the death of an employee while in service the family cannot be left without any livelihood [see State of Haryana and Others Vs. Rani Devi and Another, .

24. Interpretation of a particular provision should be primarily made taking into

consideration the contextual or literal meaning of the words used therein. There is no doubt that in certain cases though the legislature uses the word "may" sometimes would mean imperative or mandatory as in case of the word "shall". Equally is true that the word "shall" does not necessarily imply word of imperative or mandatory but "shall" in certain eventualities be read as directory as normally done in case of the word "may". While holding a particular provision as mandatory or directory it is well-known rule of interpretation of statute that the text and context of the entire Act must be looked into and also the object which it seeks to achieve.(see S. Gopal Reddy Vs. State of Andhra Pradesh, , Mohan Singh and Others Vs. International Airport Authority of India and Others,

25. There is no quarrel with the aforesaid proposition of law if the rule as enshrined in the government order dated 22.4.1988 is read contextually it does not lead to any inference that the Director of School Education is bound to give appointment on compassionate ground. From clause 3(d) of the said government order dated 22.4.1988 it appears that on receipt of the report from the Chief Medical Officer, the President of District School Board forwarded the same along with the application together with the views on the basis of the aforesaid report to the Director of School Education for according approval. The Director of School Education while taking a decision to allow the applicant to retire on the ground of being permanently disabled may approve the appointment on compassionate ground. Thus on the reading of the said provision even the President of District School Board on the basis of the report of an enquiry officer as well as the Chief Medical Officer of Health may come to a conclusion that satisfies the judicial conscience of the said authority but the same cannot be binding upon the Director of School Education as he has been empowered to grant approval for retirement and in the event he approves the prayer for retirement there is further decision left to him to allow the appointment on compassionate ground or not. Thus from a plain and unambiguous word used in the said and the purpose and object of the same has been enacted there is no duty casted imperatively upon the Director of the School Education to approve the appointment the moment he approves the retirement.

26. As I have already indicated from the enquiry report relied upon by the Director of School Education it cannot be said that the financial condition of the writ petitioner is sound and good so as to disentitle him for being appointed on compassionate ground. Thus I find that the order impugned is not sustainable and is liable to be quashed. It is really unfortunate state of affairs that the writ petitioner has been litigating since 1988 and his prayer for appointment on compassionate ground has been rejected in all the three occasions. It is not found that the writ petitioner has approached the court belatedly so as to deny any relief but has approached the court promptly and the process in deciding the cause has consumed a considerable period of time.

27. Under the normal circumstances I could have refer the said application to be considered by the concerned authority afresh in the light of the observation

made hereinabove but I feel that sending the matter back to the authority concerned would further delay the appointment to be given to the petitioner. I have already considered the report and all the materials placed before me which leaves no manner of doubt in my mind that the petitioner is entitled to be appointed on compassionate ground. Thus I direct the concerned District Primary School Council to recommend the name of the petitioner to the director of the School Education within fortnight from the date of communication of this order and the director of the School Education shall grant approval to the said appointment after relaxing the age bar, if there be any, within three weeks from the date of the receipt of the recommendation.

28. The writ application is, thus, allowed. However, in a special facts and circumstances, there shall no order as to costs.

Photostat copy of this order, if applied for, be given to the parties on urgent basis.