
(2012) 01 CAL CK 0019
In the Calcutta High Court
Case No : FMA No. 991 of 2011

Smt. Angurbala Maity and Another

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 17-01-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2012) 2 CALLT 16 : (2012) 2 CHN 429

Hon'ble Judges : Soumen Sen, J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Amal Baran Chatterjee, Mr. Dilip Chatterjee and Mr. Manojit Pal, for the Appellant; Sailajananda Bhattacharya, Mr. Amrita Lal Chatterjee, for the Respondent and Mr. Saibal Kumar Acharya, for the College Authority, for the Respondent

Final Decision : Allowed

Judgement

Soumen Sen, J.—The instant appeal is arising out of an order dated 17th March, 2011 passed by the learned Single Judge by which the learned Single Judge refused to interfere with the order passed by the Principal Secretary to the Government of West Bengal, Higher Education Department, rejecting the claim of the petitioners for compassionate appointment.

2. One Biswaranjan Maiti (since deceased) was working as a Superintendent-cum-Cashier in Sitananda College, Nandigram, Purba Medinipur. The said employee, 2 years 10 months 3 days of service of his superannuation died in harness on 28th October, 1995. He was retired on 31st August, 1998. Immediately thereafter on 8th November, 1995, the wife of the deceased, namely, the appellant No.1 applied for appointment of her son, namely, Shri Sampat Maiti on compassionate ground to any post of Group-D category.

3. Since the said application was not being considered and disposed of, a writ application was filed in this Court in which an order was passed on 10th May, 2000, directing the Principal Secretary, Higher Education Department to consider

and dispose of the said application in accordance with law upon giving opportunity of hearing to the petitioner and by passing a reasoned order.

4. Pursuant thereto on 22nd March, 2001, an order was passed by the Principal Secretary rejecting the said application, inter alia, on the ground that having regard to the retiral benefits received by the family of a deceased employee as also the family pension and having regard to the fact that the family of the deceased was comprised of, at that point of time, three members, namely, widow, a daughter and a son having a present income of Rs.5450/- there was no reason to consider such application for compassionate appointment. The Principal Secretary also took into consideration the residual period of service, the retiral benefits received and the pension and opined that such benefits were sufficient to live on with and accordingly rejected the said application.

5. The said order was rendered by way of a writ application being WP No. 6365 (W) of 2001. The said writ application was considered by one of us (Ashim Kumar Banerjee, J.) and by an order dated 2nd September, 2005, this Court quashed the said order dated 21st March, 2001 with a direction upon the said Secretary to consider the said issue afresh in the light of the observation made in the said order, the relevant portion of the said order is reproduced hereinbelow:

The Principal Secretary, Higher Education Department has rejected the claim by observing that the family was not able to produce the particulars of the expenditure for daughter's marriage. The family consists of three members; widow, one unmarried daughter and a son. The amount receivable by them by way of family pension and the interest income would not be sufficient to maintain the family.

6. Hence, I quash the reasoned order dated March 21, 2001 passed by the Principal Secretary, Higher Education Department appearing at pages 38-39 of the writ petition and direct the Secretary to consider the issue afresh in the light of the observation made by me herein."

7. Thereafter, the Principal Secretary considered the said application afresh and rejected the said application for compassionate appointment, inter alia, on the following grounds:

- i) The appellant was receiving family pension of Rs.2500/- per month
- ii) The income of the petitioner No.2 was Rs.60/- per day.
- iii) The family of the deceased employee possessed 46 Decimal of agricultural land.

8. The said order of rejection had been the subject matter of challenge in WP No.2339 (W) of 2006 in which the impugned judgment and order was passed on 17th March, 2011. The learned Single Judge did not find any infirmity in the order passed by the said Principal Secretary in refusing to allow the said application for appointment on compassionate ground.

9. Assailing the said judgment and order, the petitioner submitted that the appellants had a right to be considered for appointment on compassionate ground on the basis of a circular that was issued by the Education Department, Government of West Bengal on 31st October, 1995. The said circular, it was argued, carved out cases where the rule of exception would apply for recruitment through employment exchanges and one of such cases was the case of appointment on compassionate ground. The relevant portion of the said circular is reproduced hereinbelow:

In the following cases exception for recruitment through employment exchange(s) be made.

The cases of appointment on compassionate ground like dying in harness or having been declared physically incapacitated for rendering further service.

10. The learned Counsel also relied upon the Vidyasagar University First Statute, 1983 and submitted after referring to Statute 163 that the appellant "is to be offered a job consistent with his qualifications." In this regard reliance was placed on Statute 163 (a) first proviso which is reproduced hereinbelow:

Provided that the provisions relating to recruitment of non-teaching employees of affiliated colleges as laid down in the foregoing Statutes shall not apply in cases where, on compassionate ground, a wife, son, daughter, or dependent of any employee - both teaching and non-teaching-dying in harness is to be offered a job consistent with his/her qualifications. He/she shall have precedence over others in the matter of appointment or placement, as the case may be.

11. It was argued that the Principal Secretary completely ignored such mandate and the guideline inasmuch as the delay of more than 10 years could not be attributed to the petitioners. The other consideration about the earning of Rs.60/- a day by the son doing some odd jobs could not be a factor for rejecting the application filed by the petitioners. It was also argued that Smt. Sankari Samanta was initially appointed in a similar die-in-harness case on contractual basis but thereafter she was appointed in a permanent substantive post.

12. On an enquiry made by us, the college produced a communication from the Government of West Bengal Education Directorate dated 23rd February, 2006 wherefrom it appears that Smt. Sankari Samanta was working in the post of Library Peon on contractual basis at a consolidated pay of Rs.2600/- per month on compassionate ground in the "die-in-harness case" from 1st April, 2004 to 31st March, 2005 as per G.O.No.96-Edn (CS) dated 19th February, 2004. Her service was subsequently extended on 31st March, 2006 as per G.O.No.639-Edn (CS) dated 14th September, 2005. Thereafter, the said contractual service was terminated with effect from 1st February, 2006 and she was appointed in a permanent substantive post with effect from 2nd February, 2006 in terms of G.O. No.77-Edn (CS) dated 2nd February, 2006. The said communication dated 23rd February, 2006 made by the Director of Public Instruction, West Bengal to the Principal of the College, was filed and taken on record.

13. The initial order passed by the Principal Secretary dated 22nd March, 2001 was set aside by one of us (Ashim Kumar Banerjee, J.) on the ground that the amount receivable by them, benefits of family pension and the interest income would not be sufficient to maintain the family. It is not in dispute that at that point of time it cannot be said that the family was not any financial need. In fact, after getting the arrears of pension, the widow gave marriage to the third daughter and got the house repaired. It is also not in dispute that some loans are also required to be repaid. The factum of family pension was also considered in the earlier order by the Principal Secretary on 22nd March, 2001 which, however, did not find favour with the learned Single Judge and it was held in that order dated 2nd September, 2005 that the amount receivable by them by way of family pension and the interest income would not be sufficient to maintain the family.

14. It appears that the Principal Secretary, however, seems to have completely misdirected his mind in deciding the said issue and based his decision on a reason, namely, the family pension that was being received, does not merit any extra pension, was not approved by the learned Single Judge as mentioned earlier.

15. The word "compassion" when used as a noun means sympathetic pity and concern for the sufferings or misfortunes of others. When the said word used as an adjective means "feeling or showing compassion". The concept of compassionate appointment is a part of social welfare legislation and as a part of such social obligation rules and/or schemes were framed and provisions are made for such compassionate appointment basically to meet the imponderable situation and the crisis faced by the family of the concerned employee by reason of incapacity or loss of earning capacity or loss of its sole breadwinner. When such applications are considered on the basis of the rules and the schemes that are operating in the field, the first principle that is being applied is to find out if the family of the deceased is eligible to apply under the rules and/or the schemes. Once, the eligibility is fulfilled in the absence of any other factors, the sympathetic element comes in and it is at this stage the authority applies its discretion to consider such application for compassionate appointment.

16. The Hon'ble Supreme Court in the Sonkar's case observed that such application has to be considered within a reasonable time and in deciding the same, the financial condition of the family of the deceased, at the time of his death, is required to be taken into consideration. In this case, as already observed, it was held that the amount receivable by the family was not sufficient to maintain the said family and it was on that basis, the earlier order of the Principal Secretary dated 22nd March, 2001 was set aside. The said order was accepted by the State respondents.

17. We are of the view that the ground one on the basis of which the said application was rejected, is not sustainable.

18. In so far as delay aspect is concerned, the applicant is nowhere responsible

for the same. In fact, the learned Counsel appearing on behalf of the petitioners have relied upon Sri Satyagopal Misra Vs. The State of West Bengal & Ors. reported in 2011(2) WBLR (Cal) 757 and Md. Mansur Ali & Anr. Vs. State of West Bengal & Ors. reported in 2011(2) WBLR (Cal) 166. In the decision reported in 2011(2) WBLR 166 (Cal) in Paragraph 37, Their Lordships have considered this aspect which is reproduced hereinbelow:

37. Delay-no, on the contrary, the appellants have pursued a continuing clause of action since 2003 to secure justice which eluded them like a teasing mirage.

19. In this case also the petitioner No.1 was continuously perusing her case. In so far as meager income of the son is concerned, in our view that by itself could not be a ground for rejecting the said application. The small insignificant decimals of agricultural land also is not by itself disentitle compassionate appointment. Moreover, it was not brought to the notice of the learned Single Judge that apparently in similar situation Smt. Sankari Samanta was initially given the contractual employment and, thereafter, permanent substantive post. This aspect of the matter was, however, not placed before the learned Single Judge by the respondent authorities. Apparently, the learned Single Judge was not properly apprised of such fact.

20. The learned Counsel appearing on behalf of the respondent authorities, relied upon the judgment reported in Smt. Mumtaz Yunus Mulani Vs. State of Maharashtra and Others, on the facts of that case, the Hon'ble Supreme Court upheld the order of the High Court in refusing to grant any relief to the appellant. It was held that compassionate appointment could not be denied merely because family pension was being paid though amount of family pension was one of the relevant considerations. The purpose of compassionate appointment is to enable the family to get over a sudden financial crisis. In that case the husband of the appellant died in 1996 and the wife made an application for compassionate appointment but in 1997 another person was appointed to fill up the vacancy. The institution, in which the husband was working, was a charitable body run on Government aid and no other post was available to accommodate the appellant wife. The said institution had a scheme for compassionate appointment. It was noticed that the scheme which was operative at the relevant point of time, was that the appointment on compassionate ground would not be given if the monthly income exceeds Rs.500. In that case, as a matter of fact, the appellant was receiving much higher amount as monthly income.

21. The learned Counsel for the respondent also relied upon a fairly recent decision of the Hon'ble Supreme Court reported in Bhawani Prasad Sonkar Vs. Union of India (UOI) and Others, . The Hon'ble Supreme Court while considering a claim for employment on compassionate ground laid down the following factors which are to be borne in mind in considering such cases:

(i) Compassionate employment cannot be made in the absence of rules or regulations issued by the Government or a public authority. The request is to be

considered strictly in accordance with the governing scheme, and no discretion as such is left with any authority to make compassionate appointment dehors the scheme.

(ii) An application for compassionate employment must be preferred without undue delay and has to be considered within a reasonable period of time.

(iii) An appointment on compassionate ground is to meet the sudden crisis occurring in the family on account of the death or medical invalidation of the breadwinner while in service. Therefore, compassionate employment cannot be granted as a matter of course by way of largesse irrespective of the financial condition of the deceased/incapacitated employee's family at the time of his death or incapacity, as the case may be.

(iv) Compassionate employment is permissible only to one of the dependants of the deceased/incapacitated employee viz. parents, spouse, son or daughter and not to all relatives, and such appointments should be only to the lowest category that is Class III and IV posts."

22. The said decision was considered by a Division Bench of our High Court presided over by one of us (Ashim Kumar Banerjee, J.) in a fairly recent decision in the matter of W.P.S.T. No.259 of 2011 (Amulya Mahata Vs. The State of West Bengal &Ors.) delivered on 11th November, 2011, where the Hon'ble Division Bench after taking into consideration the development of law on this aspect held as follows:

All the decisions lead to the moot question on two points:

(i) The family suffered acute hardship that they could not anticipate and was not prepared for the same. It was an unforeseen situation

(ii) To come to a definite conclusion as to whether the application could successfully pass through the above test, one would need to consider the financial condition of the family as on the day when a contemporaneous application for compassionate appointment is made and considered.

23. The authority was not entitled to refuse to entertain such application either on the ground that the family received financial support by way of post death benefit or that there was any other alternative Family Benefit Scheme Available. The authority was obliged to consider such application by taking into account the entire factual matrix which would obviously include the financial support the family got either by way of post death benefit or by way of any other family benefit scheme. Even after taking into consideration the same if the family still needs support, there should be a departure from the rule so contained in Article 14 and 16 and compassionate appointment should follow."

24. The Principal Secretary did not consider the said application properly and wrongly decided that she could not be accommodated on compassionate appointment in terms of 163(a) of the Vidyasagar University, First Statute 1983.

If a person similarly situated is

25. accommodated with compassionate appointment, we are at a loss to understand why the same benefit should not be extended to the petitioners. In view of the fact that the Principal Secretary did not consider the representation in terms of the earlier order dated 2nd September, 2005 and also did not take into consideration the case of Smt. Sankari Samanta, we set aside the order of the Principle Secretary dated 12th December, 2005 and direct the Principle Secretary to consider the matter afresh. The Principle Secretary may call for any information and document from the appellant and college authorities as may be necessary, to decide the representation and would also take into consideration the case of Smt. Sankari Samanta and if it is found on scrutiny that the petitioner is similarly situated with Smt. Sankari Samanta when she made the application, the Principal Secretary would consider the matter and pass an appropriate order after giving opportunity of hearing to the petitioners and the college authorities within a period of six weeks from the date of communication of this order.

26. In view of the aforesaid, the appeal succeeds, the order of the learned Trial Judge dated 17th March, 2011 is set aside.

27. Urgent Xerox certified copy of this judgment, if applied for, be given to the parties on usual undertaking.

Soumen Sen, J.

28. I agree: