
(2012) 03 CAL CK 0061
In the Calcutta High Court
Case No : Writ Petition 21093 (W) of 2011

Sumitra Das and Another

APPELLANT

Vs

The State of West Bengal and Others

RESPONDENT

Date of Decision : 05-03-2012

Acts Referred:

Recruitment Rules, 2001 — Rule 14

Citation : (2012) 03 CAL CK 0061

Hon'ble Judges : Patherya, J

Bench : Single Bench

Advocate : Surajit Nath Mitra, Ms. Ipsita Banerjee and Mr. Rudrajit Sarkar, for the Appellant; Joytosh Majumdar, Pinaki Dhole, Kamalesh Bhattacharya and Mr. Bidhan Biswas, for the Respondent

Judgement

Patherya, J.—By this writ petition, the petitioners seek to challenge the order passed by the respondent no. 2 dated 26th May, 2011. The case of the petitioners is that the teacher died on 2nd July, 2007 and his widow applied for compassionate appointment for her younger son, namely, the petitioner no. 2. As no step was taken by the respondent no. 4, W.P. No. 31403 (W) of 2008 was filed and an order was passed on 18th June, 2009 whereby the respondent no. 4 was directed to take a reasoned decision while disposing of the petitioners' application for compassionate appointment. On the basis of the said order passed the respondent no. 4 by communication dated 2nd September, 2010 requested the respondent no. 5 to send the proposal alongwith the necessary papers for appointment of the petitioner no. 2. As no steps was taken by the respondent no. 4 WP 21635 (W) of 2009 was filed in which an order was passed on 25th February, 2011 directing the respondent no. 2 to take a decision on the application filed and to submit a report.

2. During the pendency of this writ petition Memo dated 3rd March, 2011 was issued by the respondent no. 2 directing the respondent no. 4 to submit the documents specified in the said Memo of March 2011. At the time of hearing the

said Memo of March 2011 was placed before court on 25th March, 2011 and on the basis thereof an order was passed on the same date by which the respondent no. 2 was directed to consider grant of approval and take a decision on the basis of the respondent nos. 4's proposal within the time set out therein.

3. The respondent no. 2 considered the case of the petitioner and by order dated 26th May, 2011 rejected the petitioners' claim. By order dated 25th March, 2011 the respondent no. 2 had been directed to take a decision within a certain period of time and the matter was directed to appear in the list thereafter. As no step were taken, Suo Motu contempt Rule was issued against the respondent no. 2. The order dated 26th May, 2011 is bad as it has chosen to rely on the requirements set out in the Memo dated 3rd March, 2011.

4. From a reading of the communication dated 2nd September, 2010 the respondent No. 4 has proposed the name of the petitioner no. 2 for compassionate appointment as a majority of the family members had given their no objection. Petitioner no. 1 has five children. The eldest son is living independently and has not appeared before the authorities in spite of notice. Out of three daughters two daughters have given their no objection. The whereabouts of Kalyani Das one of the daughters is not known. Therefore, it is not possible for the petitioner to obtain her no objection. A document in this regard has also been issued by the Pradhan on 3rd October, 2010.

5. As regards the query regarding financial position the petitioner no. 2 has submitted a form to the authorities concerned, wherefore it will appear that the monthly income is Rs. 300/- out of land which belongs to the petitioner and Rs. 6700/- is her monthly income on account of pension.

6. From a reading of the order of respondent no. 2 it will be evident that computation of income from provident fund, gratuity and 40% of the family pension is not to be taken as income. Therefore, the reasoning set out in the order dated 26th May, 2011 cannot be sustained as it proceeds to consider the case of the petitioner on the amended Rule 14. Therefore the order dated 26th May, 2011 be set aside.

7. Counsel for the respondent no. 4 submits that in the selection process of 2006, the petitioner no. 2 made an application. He appeared in the written test held in 2009 and was unsuccessful. In the meantime an application was filed by the petitioner no. 1 on 10th September, 2007 for grant of compassionate appointment to the petitioner no. 2 her younger son. By order dated 25th March, 2011 the respondent no. 2 has been directed to consider the grant of approval to the petitioner no. 2 and in doing so the respondent no. 2 is well within its rights to consider the candidature of the petitioner no. 2. Two documents have been suppressed by the petitioners in this writ petition, namely, letters dated 20th April, 2011 and 15th June, 2011 both of which have been issued after the Memo dated 3rd March, 2011. By the letter dated 20th April, 2011 the respondent no. 4 called upon the petitioner to forward the requirements as sought by Memo dated

3rd March, 2011. No. answer was forwarded to the said letter by the petitioners. Compassionate appointment is an exception to the General Rule and therefore, the conditions must be complied in strictness.

8. Reliance has been placed on decisions are reported in General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, 1 State Bank of India and Another Vs. Somvir Singh, State Bank of India and Others Vs. Jaspal Kaur, and State Bank of India and Another Vs. Raj Kumar, . Reliance has also been placed on Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, and Umesh Kumar Nagpal Vs. State of Haryana and Others, By letter dated 15th June, 2011 in spite of receipt of the said letters of 20th April, 2011 and 15th June, 2011 no information was given by the petitioners. Therefore, this application warrants no order. Respondent no. 2 has complied with Rule 14 of the 2001 Recruitment Rules wherein the expression "financial hardship" has been explained. The Un-amended Rule 14 and also the Amended Rule 14 have both stressed on extreme financial hardship to be a factor to be considered for grant of compassionate appointment. Financial hardship can be presumed if there is failure to provide square meals and other essentials to the surviving members of the deceased teacher's family. No no-objection has been given by the eldest son, namely, Monisankar Das nor by Kalyani Das and on the basis of income computed the order dated 26th May, 2011 is justified, more so as nothing to the contrary has been produced by the petitioners. Therefore, no order be passed on this application.

9. Counsel for the respondent no. 2 submits that financial hardship has been explained in the Amended Rule 14. The decision was taken on 26th May, 2011. Reasons are given in the said order is on the basis of Rule 14 of the 2001 Recruitment Rules as the petitioners failed to give a no objection certificate from the legal heirs and representatives of the deceased teacher, so also the income of each of the legal heirs and representatives. Therefore, the order calls for no interference.

10. In reply, counsel for the petitioners submits that the decisions relied on, namely, General Manager (D and PB) and Others Vs. Kunti Tiwary and Another, ; State Bank of India and Another Vs. Somvir Singh, ; and State Bank of India and Others Vs. Jaspal Kaur, are all cases of banks where certain guidelines had been set out for making application for compassionate appointment. Each of the said decision followed the decision reported in Life Insurance Corporation of India Vs. Mrs. Asha Ramachandra Ambekar and another, wherein the Life Insurance Corporation had formulated guidelines for compassionate appointment. Therefore, the said decisions are distinguishable on facts.

11. Having considered the submissions of the parties one Samir Chandra Das was an Assistant Primary Teacher who died on 2nd July, 2007. An application for compassionate appointment was filed by his widow within the time prescribed for grant of compassionate appointment to her younger son. She is the mother of five children and petitioner no. 2 is one of her five children. While considering the

application for compassionate appointment, no objection from the other legal heirs and representatives was sought so also their income.

12. Pursuant to an order passed on 18th June, 2009, the respondent no. 4 considered the case of the petitioner and gave notice to the eldest son Monishankar Das who, in spite of such notice did not appear before the authorities viz. the respondent No. 4, was of the opinion that the name of the petitioner may be proposed and directed the respondent no. 5 to send the proposal along with the necessary papers to it for consideration. While notice was given to the eldest son, the reason for not giving notice to the other legal heirs and representatives is not known, but as the eldest son did not appear the respondent no. 4 was of the opinion that all other necessary documents be forwarded to it for further consideration. As no steps was being taken W.P. 21635 (W) of 2009 was filed and the respondent no. 2 was directed to take a decision and file a report. On 3rd March, 2011 a Memo was issued by the respondent no. 2 to the respondent no. 4 with a request to submit two documents relating to no objection of all the family members and the individual income of all the family members. This was considered while passing the order dated 25th March, 2011 and after considering all documents before it the respondent no. 2 was once again directed to consider the petitioners case for grant of approval. While doing so, the respondent no. 2 has passed the order dated 26th May, 2011 which is under challenge in this writ petition.

13. Admittedly, the teacher died in 2007 and the application was also made in 2007. It is true that in the process of 2006 i.e., prior to his father's demise, the petitioner no. 2 had applied and was unsuccessful, but till then the petitioner no. 2 did not know the fate of his application which is mother had filed on 10th September, 2007 on the ground of compassionate appointment.

14. The only reason for rejecting the prayer of the petitioners is two fold. Firstly, that the no objection certificate has not been received from two of the legal heirs and representatives, namely, Monishankar Das the eldest son and Kalyani Das one of the daughters of the petitioner No. 1. In respect of the other legal heirs and representatives there can be no grievance as the no objection certificate has been issued by them. Monishankar was put on notice by the respondent no. 4 and in spite of receipt of such notice was not present at the time of hearing on 24th July, 2009. Therefore, there can be no doubt that Monishankar was not interested in seeking employment and this has also been recorded in the order dated 25th March, 2011 by Harish Tandon, J. As regards Kalyani Das in the supplementary affidavit filed this day by the petitioner no. 1 it has been stated the whereabouts of Kalyani Das is not known. Therefore, this ought to have been considered by the respondent no. 2 while considering the petitioners' application for compassionate appointment, but admittedly this has not been done.

15. Financial hardship is the next issue, which has been considered by the respondent no. 2 in the light of the Amended Rule 14 of 2001 Rules.

16. Admittedly, the teacher died in July 2007 and the application for compassionate appointment was also made in the same year. Therefore, the Rules existing on the date of application ought to have been considered. Instead the Amended Rule 14 has been considered which in fact came into existence in 2008 and was not in existence on the date when the application was filed.

17. Financial hardship under the Un-amended Rule 14 though not explained would mean failure to provide two square meals and this aspect ought to have been considered by the respondent no. 2. Provident fund and gratuity could not have been considered while computing the monthly income of the family of the deceased teacher. This is another aspect, which has not been considered by the respondent no. 2. It is true that the letter sent by the respondent no. 4 to the petitioners remained unanswered, but that cannot be a reason for an adverse finding in the light of other positive facts existing. In fact, the Rules under which the requirements of Memo dated 3.3.2011 has been sought is also not known.

18. Therefore, the finding of the respondent no. 2 that the proposal is not as per the Rules is not justified. The only Rule on which reliance has been placed by the respondent no. 2 is Rule 14 and that too the Amended Rule which can have no application to the case of the petitioners. Therefore, the premise on which the respondent no. 2 proceeded to consider the petitioners' case was incorrect.

19. Accordingly, the order dated 26th May, 2011 cannot be sustained in the eye of law and is accordingly, set aside.

20. This, however, will not prevent the respondent no. 2 from considering the recommendation of the respondent no. 4 submitted to him within four weeks from the date of receipt of this order. On the basis of the Rules prevalent on the date of application and an opportunity of hearing be given to the parties and a reasoned order be passed. The order to be passed be communicated to the parties within a week thereof.

21. With the aforesaid direction, this application is disposed of.

22. The cases relied on by the counsel for the respondent no. 4 are not applicable to the facts of this case, as in each of cases cited nationalised banks were a party and guidelines had been framed by the banks for grant of compassionate appointment which is not so in the instant case.

23. Supplementary affidavit filed be kept on record. Urgent photostat certified copy of this order, if applied for, be given to the learned Advocate for the parties upon compliance of all requisite formalities.