
(2013) 04 CAL CK 0029
In the Calcutta High Court
Case No : Writ Petition No. 3001 (W) of 2012

Susmita Mazumdar

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 3 CALLT 81 : (2013) 3 CHN 696 : (2013) 4 WBLR 648

Hon'ble Judges : Debasish Kar Gupta, J

Bench : Single Bench

Advocate : Ekramul Bari, Mr. Syed Mansur Ali and Ms. Tanuja Basak, for the Appellant;

Final Decision : Allowed

Judgement

Debasish Kar Gupta, J.—None appears on behalf of the State respondents when the matter is called on. Let the affidavit of service be kept on record. This writ application is filed by the petitioner assailing an order passed under memo No. 378/1(4)LC dated January 11, 2012 by the respondent No. 2. BY the impugned order, the respondent No. 2 rejected the claim of the petitioner for appointment on compassionate ground. The husband of the petitioner was an assistant teacher of Balki High School (H.S.), District North 24 Parganas. According to the petitioner, he breathed his last on January 7, 2008. An application of the petitioner was forwarded to the respondent No. 3 for appointment on compassionate ground on March 20, 2008. Since no step was taken by the respondent No. 4 in respect of the above application, the petitioner filed an application under Article 226 of the Constitution of India in the matter of Susmita Mazumder v. State & Ors. (In re: W.P. 22008(W) of 2010 and the same was disposed of on November 29, 2010 with a direction upon the respondent No. 2 to take a decision in the above matter in accordance with law. In compliance of the above order, the impugned order was passed. The operative part of the above order is quoted below:-

Petitioner's family pension for the month of January, 2008 has been calculated on the basis of Rs. 5163 being the basic pension in the following manner.

It is clearly evident that the petitioner's initial pension for a full month was Rs. 6760/- only whereas the initial gross emoluments of a lower division clerk in January 2008 was Rs. 7085 only and thus the petitioner's initial family pension was 95.4% of the initial gross salary of a lower division clerk of the State Government for the same month. Therefore, taking into account only one of the items mentioned in Memo No. 113-Vidyalaya Siksha (Ma dated 30-01-2006, i.e. the order operating in the filed on the reckonable date it can be safely and reasonably concluded that the family of the petitioner cannot be treated as a family in extreme economic hardship and was not unable to provide two square meals and other essentials to the two members of the family. More so in view of the size of the family, i.e. consisting of two members only. If the other components mentioned in Memo No. 113-SE(S) dated 30-1-2006 be taken into consideration the economic condition of the family will appear stronger. Thus the family of the deceased staff, late Tapas Mazumder, cannot be considered deserving assistance in the form of compassionate appointment.

Thus, the prayer of the petitioner for enlistment of compassionate appointment is rejected.

This matter is thus disposed of.

All concerned be informed accordingly.

Sd/D. Mukherjee Director of School Education West Bengal Dated Kolkata the 11.01.2012

2. After perusing the impugned order, I find that the respondent No. 2 took into consideration the income of the dependents of the deceased erstwhile assistant teacher towards family pension of the petitioner.

3. It is the settled principles of law that the family pension or the benefits paid to the dependents of a deceased employee cannot be a valid ground for rejection of the claim for appointment on compassionate ground. Reference may be made to the decision of Tapan Kumar Barman v. State of West Bengal & Ors. reported in (2009) 1 CHN and the relevant portion of the above decision is quoted below:

10. Besides, the amount of Rs. 4,000/- being the family pension, is conterminous 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 is 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 same of compassionate appointment and this concept had 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,

4. The above settled principles of law has also been forwarded in the matter of Nazrul Islam v. State of West Bengal & Ors. reported in (2009) 1 CHN and the relevant portion of the above decision is quoted below:

22. In the present case, on examination of the available records, we find that the total income of the appellants' family is less than Rs. 10,000/- per annum which is below the poverty level. The Chairman, Malda District Primary Council also did not refer to any other source of income of the appellants apart from the admissible pensionary benefits. The payment of admissible pensionary benefits by itself cannot mitigate the economic hardship of the family of the appellants herein. Furthermore, the appellants cannot earn any substantial amount from the aforesaid 1.04 acres of land. The Chairman, Malda District Primary School Council also did not hold that the appellants herein had any income out of the said 1.04 acres of land.

5. In view of the above, the impugned order cannot be sustained in law and the same is quashed and set aside.

6. I direct the respondent No. 3 to give him appointment to the petitioner on compassionate ground within a period of two months from the date of communication of this order provided she is otherwise eligible in accordance with law.

7. This writ petition stands disposed of. There will be, however, no order as to costs.

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