

(2012) 08 CAL CK 0041
In the Calcutta High Court
Case No : F.M.A. No. 302 of 2012

The Howrah District Primary School Council and Another	APPELLANT
Vs	
Syed Minhaz Hassan and Others	RESPONDENT

Date of Decision : 14-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 141, 142, 16

Citation : (2012) 4 CALLT 485

Hon'ble Judges : Shukla Kabir (Sinha), J; Ashim Kumar Banerjee, J

Bench : Division Bench

Advocate : Ratul Biswas, for the Appellant; Aurobinda Chatterjee, Prabir Maji, S.M. Hassan For the Respondent no. 1 and Mr. Subhabrata Datta For the State, for the Respondent

Final Decision : Allowed

Judgement

Ashim Kumar Banerjee, J.—One, Sahabul Hossain was a primary teacher under the Howrah District Primary School Council. He died on July 28, 1977 leaving him surviving his widow Mst. Meherun Nisha at the age of 33 years, two daughters and one son. The eldest daughter was 9 years old. The present appellant was 4 years old and the youngest one was 14 days old. The family suffered a set back having acute financial stringency. The widow claimed that she had applied for compassionate appointment. The Council, however, denied having received the said application. However, taking the said application on its face value, we find that the widow in the said Bengali letter addressed to the Council's Chairman on September 11 in an unspecified year informed that she was illiterate. She had no means of livelihood. Hence, her only son who was 4 years old should be considered for appointment at the appropriate stage. We would also find another letter appearing at the page no.243 of the Paper Book dated February 2, 1978 wherein she reiterated what was stated in the earlier letter. Similar letter was sent on June 12, 1982 appearing at page 244 of the Paper Book. She claimed to have sent contemporaneous representations in 1987, 1990, 1996 and so on

renewing her prayer of compassionate appointment of her son. The facts as narrated by the respondent no.1 in his writ petitions would admittedly show that he was 4 years old at the time of date of death of his father and his mother was an illiterate lady. The respondent for the first time approached this Court by filing writ petition that was disposed of in 1997 asking the Chairman to consider his representation. Accordingly, the Chairman considered the representation and rejected the same. He again approached this Court when the Court asked the Director, School Education to consider the prayer. The Director, School Education passed an order dated June 3, 1999 rejected the prayer. The learned Single Judge vide order dated September 19, 2003 dismissed the third writ petition challenging the reasoned order. The respondent approached the Division Bench. The Hon"ble Division Bench in MAT 1043 of 2004 affirmed the decision of the learned Single Judge and dismissed the appeal. The respondent accepted the said order and did not proceed further that reached finality on the issue. The respondent approached the learned Single Judge again with his 4th writ petition raising identical prayer being W.P. No.4333(w) of 2008. We do not know whether the earlier facts were placed before His Lordship or not. Be that as it may, His Lordship directed the Director, School Education to consider the issue again. Accordingly, the Director, School Education considered the issue again and rejected the same vide order dated November 6, 2008. The Director, School Education referred to the Government order dated January 2, 1995 and contended that the application should have been made within two years from the date of death of the teacher. Since it was received late, it could not be considered. Even in special circumstances the time could be extended for 4 years and not beyond. The circumstances would, thus, not deserve any relief for the applicant. Being aggrieved, the respondent filed his 5th writ petition being W.P. No.4304(W) of 2009. The learned Single Judge allowed the writ petition and directed appointment to be given. Hence, this appeal by the Council. Mr. Ratul Biswas, learned counsel appearing for the appellant contended that the learned Judge could not have reopened the issue in the 4th writ petition or the 5th once the issue attained finality by the judgment and order passed by the Court of Appeal on September 11, 2006. Mr. Biswas further contended, at the time of death of the concerned teacher, the respondent no.1 was minor. He became major after 14 years and after becoming major, he was not entitled to make any prayer for compassionate appointment that would be grossly belated. In any event, the 4th and 5th writ petitions filed by the respondent no.1 were hit by res judicata and the learned Judge could not have passed order on the same. On the issue on contemporaneous representations, Mr. Biswas contended that the Council would doubt the genuineness of the same and put the respondent no.1 to the strict proof thereof by producing appropriate receipt. He relied on the Apex Court decision in the case of National Institute of Technology and Others Vs. Niraj Kumar Singh, . In the said case when the concerned employee died the applicant was one year old. After he attained majority, he made an application. The Apex Court held that compassionate appointment could not be given after long lapse of time.

2. Opposing the appeal, Mr. Arabinda Chatterjee, learned counsel appearing for the respondent no.1 contended that even if the order of the Division Bench attained finality, the subsequent writ petitions would not be hit by the principles of res judicata in view of change of law. He referred to the Apex Court decision in the case of Syed Khadim Hussain Vs. State of Bihar and Others reported in (2006) 9 SCC 195 in this regard. From the said decision we would find that the widow of the deceased employee applied for appointment within the prescribed period. The same was rejected without assigning any reason. The subsequent application made by her son at the age of 13 years was rejected after 6 years without giving any reason. By that time, he attained majority. The Apex Court directed appointment to be given to him. The Apex Court, however, did not consider the earlier decision on the issue. According to Mr. Chatterjee, this decision of the Apex Court prompted the respondent to file writ petitions. He, however, contended that the Primary School Council could not have rejected the application of the widow as she was admittedly a major lady at the time of death of the concerned employee. She was class eight passed and as such, she could be appointed as school mother as per Rule 3(D) under the old rules prevalent at the time of the death of the concerned employee. He contended, the Director erroneously applied 1995 circular and/or new Rule 3(D) that would not apply in case of the concerned teacher who died in the year 1977. He also contended, under the old Rule 3(D) no time limit was prescribed. Hence, the respondent was lawfully entitled to make his claim after attaining majority. He referred to page 312 of the Paper Book wherein it would appear that his appointment was approved by the Director, School Education. We, however, find that such order was passed on the threat of contempt.

3. We have considered the rival contentions. We fail to understand how the respondent could approach the learned Single Judge 4th or 5th time after the Division Bench had dismissed his appeal on the identical issue. The decision relied upon by Mr. Chatterjee was an off bit decision. On a close examination, we would find that the same did not consult the earlier precedents on the issue. We thus conclude, the said decision was result of exercise of power that the Apex Court had in terms of Article 141 and 142 of the Constitution of India, that we do not have. We would have been happy if we could extend relief to the respondent. However, extension of such relief would be contrary to the well-settled principle of law and would directly hit the provisions of Article 14 and 16 of the Constitution of India. Compassionate appointments are given to tide over an emergent need of the family who faced a stringent economic disaster on the untimely death of the sole bread winner. The widow was 33 years old. She would maintain three children. The eldest one was 9 years old having the youngest only 14 days old. The respondent no.1 being the middle one was 4 years old and he attained majority after 14 years. Even if we accept the contention of Mr. Chatterjee that old Rule 3(D) did not give any time limit any claim made after 14 years would be grossly belated and the decision of the Apex Court in the case of National Institute of Technology and Ors. (supra) would prompt us to deny such

relief. Mr. Chatterjee's contention that the lady was class eight passed, was a statement made from the Bar without having any support from the pleadings. Moreover the letter on which Mr. Chatterjee emphasised would show that she herself claimed that she was "ILLITERATE".

4. The appeal is allowed. The order of the learned Single Judge is set aside. W.P. No. 4304(W) of 2009 is dismissed.

5. The facts in this case would certainly deserve exemplary costs to be imposed upon the respondent no.1. However, we refrain from doing so considering his plight. We caution him not to proceed any further unnecessarily before this Court with frivolous litigations. He would, however, be at liberty to approach the Apex Court as against the foregoing judgment and order if he feels so aggrieved.

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

Shukla Kabir (Sinha), J.

I agree.