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WPA 17196 of 2019

Tapas Das
Vs
State of West Bengal & Others

(Via Video Conference)

Ms. Sabita Khutia (Bhunya).
... For Petitioner
Mr. Biswabrata Basu Mallick,
Mr. Sanjib Das.
... For State

The petitioner claims that his father died-in-harness on 29th May, 2007 when he was working as 'Panchayat Karmee' of No. 5 Ranaghat Gram Panchayat, North 24 Parganas. Immediately thereafter, the petitioner applied to the competent authority for being given appointment on compassionate ground. It is his case that an enquiry was held by a three member committee which recommended his name for being given appointment on compassionate ground. His name was forwarded to the Joint Director, Panchayat and Rural Development, West Bengal. The said officer forwarded the recommendation to the Joint Secretary to the Government of West Bengal, Department of Panchayat and Rural Development. The petitioner contends that thereafter no step was taken by the respondents for giving him appointment. Accordingly, he approached this Court by filing W.P. 14112 (W) of 2017. By an order dated 18th May, 2017, the said writ petition was disposed of. The operative portion of the said order reads as follows :-

“ Considering the submissions as advanced by the learned advocates for the respective parties and after perusing the records I direct the respondent no. 3, the Joint Secretary, Panchayat and Rural

Development, Government of West Bengal, to take a decision in accordance with law on the basis of the recommended proposal already forwarded by the Joint Director of the said department on 2nd November, 2010 for giving appointment to the petitioner on compassionate ground after following the seniority within a period of ten weeks from the date of communication of this order after giving an opportunity of hearing to the petitioner or his authorised representative and thereafter communicate the decision to the petitioner within one week.”

Pursuant to the said order, a reasoned order dated 31st January, 2018 was passed by the Special Secretary to the Government of West Bengal, P & RD Department. It is this order that is under challenge in the present writ petition.

I have heard learned counsel for the parties. Learned counsel for the petitioner relied on a judgement of the Hon’ble Supreme Court in the case of **Smt. Sushma Gosain & Ors. Vs. Union of India & Ors.** Delivered on 25th August, 1989, reported in **AIR 1989 SC 1976**. Relying on the said judgement, learned counsel submitted that in all claims for appointment on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment, supernumerary post should be created to accommodate the applicant.

Learned counsel for the State submitted that the department has prepared a provisional panel of eligible candidates in the died-in-harness category. The name of the petitioner has been enlisted in the provisional panel at serial no. 14 for the district of North 24 Parganas. This is also recorded in the order impugned in this writ petition. Learned counsel submitted that the petitioner cannot be granted compassionate appointment out of turn. Whenever his turn comes, he shall be considered for appointment in a suitable post. In this connection, learned counsel relied on a Division Bench decision of this Court delivered in M.A.T. 1159 of 2017 (State of West Bengal & Ors. Vs. Goutam Dalal) and also on the decision of a learned single Judge delivered in a bunch of writ petitions (W.P. 4187 (W) of 2018 and other writ petitions) on 6th September, 2019, in support of his contention that when a provisional panel has been prepared and the petitioner's name has been included in such panel, the petitioner cannot claim out of turn appointment.

I have considered the rival contentions of the parties. The order of this Court dated 18th May, 2017 directed the respondents to consider the petitioner's case for appointment on compassionate ground "after following the seniority". Pursuant to the said order, the concerned respondent has passed a reasoned order. It is stated in the order that a provisional panel has been prepared concerning candidates who seek appointment on compassionate ground and the petitioner's name appears in the panel. The petitioner shall be considered for appointment when his turn comes. The decision of the Division Bench of this Court referred to above and also the decision of the learned single Judge following the Division Bench decision make it clear that in cases of compassionate appointment, where a provisional

panel has been prepared following the applicable rules, nobody whose name appears in the panel can seek immediate appointment out of turn. The order impugned in this writ petition is in no way arbitrary or unreasonable or contrary to any law of the land.

In so far as the decision of the Hon'ble Supreme Court relied upon by the learned counsel for the petitioner is concerned, the order was passed in the special facts of the case. There cannot be any quarrel with the proposition that the claims for appointment on compassionate ground should be decided as early as possible. However, in that case, the Hon'ble Supreme Court recorded that the petitioner was entitled to appointment in terms of a Government memorandum dated 25th November, 1978 issued by the Ministry of Home Affairs. In spite thereof, the petitioner was not being granted appointment. Under those circumstances, the Hon'ble Supreme Court passed the order. In my respectful opinion, the said order does not have any application in the facts of the present case.

I am not inclined to interfere with the order under challenge. There is no legal or procedural infirmity in the said order nor is there any violation of the principles of natural justice. The petitioner's case shall be considered in accordance with the provisional panel prepared by the respondent authorities.

Since no affidavit-in-opposition has been called for, the allegations contained in the writ petition are deemed not to be admitted.

WPA 17196 of 2019 is disposed of.

There will be no order as to costs.

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

(Arijit Banerjee, J.)

