

24.11.2020
Item No.3
srm

W.P.A. No. 20841 of 2018

(Via Video Conference)

Abhijit Roy

Vs.

The Kolkata Municipal Corporation & Ors.

Mr. Anjan Bhattacharya

...for the Petitioner.

Mr. Alok Ghosh,

Mr. Arijit Dey

...for the KMC.

Affidavit of service is taken on record.

Let Affidavit-in-opposition filed by the Kolkata Municipal Corporation and reply thereto filed by the petitioner be taken on record.

By this writ petition, a son of a deceased ex-employee of a primary school run by the Kolkata Municipal Corporation prays for consideration of the representations of the said deceased employee dated September 5, 2011 and June 18, 2012 for grant of compassionate appointment. The mother of the petitioner was an ex-assistant head teacher of a primary school, of the Kolkata Municipal Corporation who was made to retire from service on being permanently incapacitated. She applied before the concerned authority for appointment of her son, i.e. the petitioner, on the basis of the regulations of the Corporation. The

petitioner was not granted such compassionate appointment.

Hence the writ petition.

Mr. Bhattacharya, learned Advocate appearing for the petitioner, submits that the ground for rejection was higher family income and the eligibility criteria in the regulations with regard to the financial distress and immediate need for financial assistance was not fulfilled as alleged by the Corporation. Mr. Bhattacharya draws the attention of the Court to a report on the basis of which such representation has been made.

Mr. Ghosh, learned Advocate appearing on behalf of the Kolkata Municipal Corporation, draws the attention of the Court to several documents annexed to the affidavit-in-opposition. First of such document being an order of rejection of the case of the petitioner way back on October 19, 2012. The authorities have mentioned that the petitioner was not considered for compassionate appointment due to higher family income. The petitioner did not challenge the same before any court of law but made representations before several authorities including the Minister-in-Charge. The next rejection was by an order dated November 20, 2012 where again the petitioner's case was rejected as the family income of the petitioner was higher than 90% of the last gross salary of the ex-employee. Next, by an

order dated October 14, 2014 the case of the petitioner was reconsidered and rejected.

Mr. Bhattacharya submits that the report on the basis of which the rejections took place was not correct.

Heard the learned Counsel for the respective parties. Perused the documents.

The report of physical inspection dated August 23, 2014, in my opinion, is exhaustive. The total family pension of both the parents of the petitioner has been considered on the issue of need for immediate financial assistance. The standard of living, the condition of the house, amenities were all considered. It also appears that the mother of the petitioner had an attendant to look after her. Hence, on all such considerations the Corporation came to the conclusion that the family was not in need of immediate financial assistance and the petitioner did not fulfill the recruitment criteria as per the Special Regulations of the Corporation. These questions of facts cannot be decided by the Court sitting in judicial review. The petitioner has also not pointed out from the writ petition any challenge to these factual findings. The earlier rejections have also not been challenged before any court of law. In 2020 after 8 years from the time the petitioner had applied for compassionate appointment, this Court cannot re-visit the issues. The Corporation has been able to satisfy from the documents that the petitioner was not in need

of immediate financial assistance. Compassionate appointment is an exception to the regular rules of appointment in public service. It is a deviation from the provisions of Article 16 of the Constitution of India. Such appointment is given in cases to enable the family of the deceased or disabled employee to tide over immediate financial hardship. It is not a matter of right and almost 8 years have passed during which period applications of the petitioner was rejected three times. Moreover the Corporation has not violated its own scheme for compassionate appointment.

Thus, the petitioner has not been able to establish before this Court any error in the decision making process of the Corporation. The principle enunciated by the Hon'ble Apex Court repeatedly in this regard does not support compassionate appointment in favour of the petitioner. Hence, the writ petition is devoid of any merit.

This writ petition is dismissed.

The rejection of the writ petition will not debar the family of the petitioner from making appropriate applications before the Corporation for any retirement or terminal benefits due and payable in respect of the deceased employee, if permissible in law.

There will be however no order as to costs.

Urgent certified website copies of this order, if applied for, be delivered to the parties, upon compliance of all necessary formalities.

(Shampa Sarkar, J.)