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23-04-2021

Ct. 17

MAT 472 of 2021
With
CAN 1 of 2021

Harekrishna Mondal
Versus
State of West Bengal & Ors.

(Through Video Conference)

Mr. Sunit Kumar Ray, Adv.
...for the appellant

The writ petitioner is aggrieved by an order dated 1st March, 2021 in W.P.A. No. 1616 of 2021 filed by the writ petitioner challenging an order passed by the District Inspector of Schools on 8th December, 2020 whereby the said authority disposed of the application filed by the writ petitioner for appointment on compassionate ground.

The learned Single Judge, on consideration of the reasoned order passed by the District Inspector of Schools (SE), North 24 Parganas, did not find any reason to take a different view. The learned Single also for reasons recorded did not place any reliance on the communication of the Block Development Officer stating that the petitioner is unemployed and presently living with his mother as also another letter of a Member of Legislative Assembly which apparently indicates that that the petitioner is jobless. It needs to be mentioned that the father of the petitioner died almost at the fag end of his employment i.e. at the age of 59 years, just about one year or even less than that the period was left for his superannuation. At the relevant time, the petitioner was 37 years old and able-bodied person. It is unfortunate that while two of his brothers are working, he was

continuing to remain and enjoy the status of unemployed youth and relied upon the letter of the Block Development Officer and an MLA to support his claim for compassionate appointment. In none of the letters relied upon by the writ petitioner, it is stated that the family is impoverished or the widow mother is not being looked after by her two sons who are presently in employment.

The District Inspector of Schools (SE), North 24 Parganas is to decide the matter within the framework of the Rules. He Cannot travel beyond the Rules. The D.I. has relied upon Schedule V of the West Bengal School Service Commission (Selection of Persons for Appointment to the Post of Non-Teaching Staff) Rules, 2009 published vide Notification No. 697-ES/S dated 09th July, 2009 of School Education Department, Secondary Branch, Govt. of West Bengal to decide whether the writ petitioner is eligible for compassionate ground. The said Schedule defines the expression “financial hardship” in the explanation provided to the said Schedule, which reads as follows:

“The expression ‘financial hardship’, in relation to income of a deceased teacher or a non-teaching staff consisting of up to five members in his family, shall mean an amount of income less than the initial gross salary of a Group ‘D’ staff of the State Government at the material point of time. For computation of income of such family, an income of an amount earned by each family member from any other sources than Provident Fund, Gratuity and 40% of the family pension of the first seven years or upon the attainment of sixty seven years of age of the deceased teacher had he been alive, whichever is earlier, at the material point of time, shall be taken into account.”

The finding of the D.I. on the basis of the said explanation are as follows:

“In order to be ascertained about the ‘financial hardship’

faced by the family of the deceased computation of income of the family of the deceased is necessary in terms of Notification 697-ES/S dated 09th July, 2009 of School Education Department, Secondary Branch, Govt. of West Bengal as stated. But no information regarding income of Ramkrishna Mondal & Radheshyam Mondal was furnished by the petitioner. In Memo No. 54/1(1)/XL/RM dated 15.01.2019 issued from the office of the District Magistrate, North 24 Parganas it is noted that Ramkrishna Mondal, son of the deceased, is a School Teacher but it is not clearly mentioned there whether he is a teacher of a secondary school or of a primary school. Even if he is working as a teacher of a primary school his minimum Basis Pay will be Rs.8160/-. Considering such the monthly income of the family of the deceased is computed (as per RoPA-2009) as below;

A) Monthly income of Kalpana Mondal-

60% of family pension	- Rs.3552/-
Dearness Relief	- Rs. 3552/-
M.A.	- Rs.300/-

Total = Rs.7404/-

B) Monthly income of Ramkrishna Mondal-

Basic Pay	- Rs.8160/-
D.A.	- Rs.8160/-
H.R.A.	- Rs.1224/-
M.A.	- Rs.300/-

Total = Rs.17844/-

C) Monthly income of Radheshyam Mondal-

Rs.5500/-

Hence monthly income of the family of the deceased at the material point of time was total of A, B & C = Rs.30748/-.

Initial gross salary of a Group 'D' staff of the State Government at the material point of time is Rs.14490/- as shown below:

<i>Basis Pay</i>	- Rs.6600/-
<i>D.A.</i>	- Rs.6600/-
<i>H.R.A.</i>	- Rs.990/-
<i>M.A.</i>	- Rs.300/-
<i>Total</i>	= Rs.14490/-

From the above computation it is clear that monthly income of the family of the deceased at the material point of time is greater than that of initial gross salary of a Group 'D' staff of the State Government at that time.

Hence in terms of explanation of the term 'financial hardship' given in the aforesaid memo and the reason explained above the family of the deceased cannot be said to be in financial hardship at the material point of time i.e. the death of Soumitra Mondal on 28.04.2018. So the petitioner is not entitled to get appointment on compassionate ground in the 'Died-in-Harness' category."

We do not find any infirmity in the reason furnished by the D.I. in deciding the application of the writ petitioner. The learned Single Judge has also correctly observed that the compassionate appointment is an exception to Articles 14 and 16 of the Constitution of India. This appointment can only be availed off provided the Rules allowed such appointment and it has to be strictly in terms of the Rules.

With the above observations, we dismiss the appeal and the stay petition.

(Saugata Bhattacharyya, J.)

(Soumen Sen, J.)