

09.11.2021
Ct. no.04
rpan / 04

WPST 63 of 2017

**The State of West Bengal & Others
- Versus -
Sk. Monirul Islam & Another**

Mr. Tapan Kumar Mukherjee, Ld. AGP,
Mr. Swapan Kumar Pal,
Mr. Pinaki Dhole
... for the State/petitioners.
Mr. Biswaroop Bhattacharya,
Mr. Dipayan Kundu
... for the respondents.

The present writ petition has been preferred by the State and its functionaries challenging an order dated 9th December, 2016 passed by the learned West Bengal Administrative Tribunal in OA-763 of 2016.

The original application, being OA-763 of 2016 was preferred by Sk. Monirul Islam (in short, Monirul) praying for issuance of necessary direction upon the State respondents to consider his prayer for grant of compassionate appointment stating *inter alia* that his father, namely, Nejamul Hoque (in short, Nejamul) died in harness on 8th October, 2006 and as the family was suffering from extreme financial distress, a representation was submitted by his mother, namely, Aleha Bibi (in short, Aleha) for grant of compassionate appointment to Monirul. Considering the same,

Monirul was called for Physical Fitness Test on 8th May, 2010 and thereafter, his claim was recommended and forwarded by the concerned Enquiry Committee to the Home Department *vide* File No.437/2009. However, no further steps were taken thereafter and as such Monirul was constrained to prefer the original application.

The learned tribunal initially called for the concerned file and upon perusal of the same it was found that by a memo dated 26th November, 2014 the Director General and Inspector General of Police, West Bengal forwarded Monirul's claim to the Assistant Secretary to the Government of West Bengal, Home (Police) Department observing *inter alia* that :

“The Enquiry Committee as well as Superintendent of Police, Dakshin Dinajpur have requested to consider the matter of employment under exempted category in respect of the candidate as the family is in need of immediate financial assistance.”

Noting such fact, the learned tribunal by the order impugned in the present writ petition directed the Additional Chief Secretary and Principal Secretary, Home (Police) Department, Government of West Bengal to take a decision in respect of the prayer for compassionate appointment of Monirul.

In the present writ petition by an order dated 15th September, 2021, this Court directed the petitioners/State to produce the file which was placed before the learned tribunal in course of hearing of the original application. Pursuant to such direction, the file has been produced before us.

Mr. Mukherjee, learned Additional Government Pleader appearing for the State/petitioners submits after the original application was disposed of on 9th December, 2016, they received an information from the Reserve Officer, Murshidabad that Monirul's elder brother, namely, Sk. Jasimuddin, son of late Nejamul Hoque was appointed to the post of constable on 21st November, 2008 and was attached to the Murshidabad district with effect from 12th November, 2012. In support of such contention, Mr. Mukherjee has drawn our attention to the memo dated 4th March, 2017 issued by the Reserve Officer, Murshidabad, as annexed at page 56 to the present writ petition.

Mr. Mukherjee submits that in the initial representation dated 24th August, 2009 submitted by Aleha for grant of compassionate appointment to Monirul, it was intentionally suppressed that Jasimuddin had already been appointed to the

post of constable on 21st November, 2008. As such fact was not within the knowledge of the petitioners herein, the prayer for grant of compassionate appointment to Monirul was processed and he was called for Physical Measurement Test (PMT) and Physical Efficiency Test (PET) on 16th November, 2009. In the subsequent representation submitted by Monirul through his learned advocate on 11th March, 2016 it was also not disclosed that Jasimuddin had already obtained employment. In view of such suppression of material fact, Monirul is not entitled to claim any equity and question of further consideration of Monirul's claim by the Additional Chief Secretary and Principal Secretary Home (Police) Department, Government of West Bengal, as directed by the learned tribunal, does not occasion.

Mr. Mukherjee contends that Aleha submitted the first representation on 24th August, 2009, i.e., approximately three years after the death of Nejamul. On the date of death of Nejamul, Monirul was a minor since he was born on 10th April, 1991. Aleha waited for about three years and submitted the first representation for compassionate appointment though in terms of the relevant rules such representation is required

to be submitted within six months from the date of death of the employee. In support of such contention, he has drawn our attention to paragraph 4 of the circular dated 2nd April, 2008.

Per contra, Mr. Bhattacharya, learned advocate appearing for Monirul submits that the Enquiry Committee duly considered the financial status of the deceased employee's family and arrived at a finding that the family was suffering from extreme financial stringency and as Monirul fulfilled the other requirements, his claim was rightly recommended. In the memo dated 26th November, 2014 issued on behalf of the DG & IG of Police it has also been observed that '*there are about 4215 vacancies of Constable post in WB Police*'. The order impugned does not suffer from any infirmity inasmuch as by the said order Monirul's claim has been relegated to the Additional Chief Secretary and Principal Secretary, Home (Police) Department, Government of West Bengal for consideration and as such, no interference is called for in the present writ petition.

Mr. Bhattacharya, however, could not dispute the fact that Monirul's elder brother, namely, Sk. Jasimuddin was appointed to the post of constable on 21st November, 2008.

We have heard the learned advocates appearing for the respective parties and perused the documents in the file, as produced.

The admitted facts are that Nejamul died in harness on 8th October, 2006. On the said date, Monirul was a minor, as he was born on 10th April, 1991. The first representation for compassionate appointment of Monirul was submitted on 24th August, 2009 by Aleha suppressing the fact that her elder son, namely, Jasimuddin had obtained employment on 21st November, 2008. This fact had all along been suppressed by Monirul. Even in the letter issued by the learned advocate on behalf of Monirul on 11th March, 2016, it was not stated that Jasimuddin has obtained employment.

The major object of granting compassionate appointment is to enable the family members to tide over a sudden financial crisis. Such employment is granted upon ascertaining the financial status of the family. In the instant case, the Enquiry Committee proceeded on the basis of the documents submitted on behalf of Monirul and recommended his claim being oblivious of the fact that his elder brother had already obtained employment. Such fact is material since it has an impact over the financial status of the family.

It is well settled that an incumbent cannot claim any equity suppressing material facts. Aleha submitted the first representation on 24th August, 2009 deliberately suppressing the fact that Jasimuddin was appointed prior thereto on 21st November, 2008. Had such fact been brought to the notice of the learned tribunal, the order would have been otherwise. In view thereof, question of relegation of the matter for further consideration to the Additional Chief Secretary and Principal Secretary, Home (Police) Department, Government of West Bengal does not arise and would be an idle formality.

Monirul was also a minor on the date of the death of his father and circulars operating in the field on the date of such death do not provide for grant of compassionate appointment to a minor.

In the said conspectus, we are of the opinion that Monirul is not entitled to compassionate appointment. The original application, being OA No 763 of 2016 is, accordingly, dismissed and the order dated 9th December, 2016 is set aside.

The writ petition, being WPST 63 of 2017 is disposed of.

There shall, however, be no order as to costs.

The original file, as produced, is returned to the learned advocate appearing for the State/petitioners.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, upon compliance of all requisite formalities.

(Sugato Majumdar, J.) (Tapabrata Chakraborty, J.)