

WPA 15954 of 2021

Md. Sahonowaz Ali
Vs
State of West Bengal & Ors.

(Via Video Conference)

Mr. Shibaji Kumar Das
Ms. Rupsa Sreemani
.....for the Petitioner

Mr. Bhaskar Prasad Vaisya
Mr. Ranjan Saha
.....for the State

The father of the petitioner was employed as Assistant Teacher in Chhaighari Girl's High Madrasah (H.S), District – Murshidabad. He died-in-harness on 5th May 2018.

The petitioner being the son of the deceased teacher made an application for being appointed on compassionate ground. The prayer of the petitioner has been rejected by the District Inspector of Schools (S.E), Murshidabad by a communicating Memo dated 9th August, 2021.

The ground for rejection is that the family of the petitioner is not found in financial hardship. The District Inspector of Schools proceeded to test the financial strength of the family of the petitioner on the basis of the Government Order No. 697-ES/S/IS-18/08 dated 9th

July, 2009 read with G.O. No. 1641-MD dated 11th November, 2010 and was of the opinion that the petitioner is ineligible for any compassionate appointment under the scheme framed for the purpose.

The petitioner is aggrieved by the aforesaid impugned communication.

Admittedly, there is a scheme for providing compassionate appointment to an eligible member of a teacher in a Madrasah dying in harness. The application of the petitioner was forwarded by the Madrasah to the District Inspector of Schools (S.E.), which stood rejected.

The petitioner relies upon several judgments in his favour for grant of compassionate appointment. It has been categorically submitted that the family pension which has been received by the widow of the employee ought not to be taken into consideration for the purpose of deciding the financial strength of the family. It has been submitted that the family pension will stop immediately on the death of the widow.

The petitioner relies upon the following judgments of the Hon'ble Supreme Court and this Hon'ble Court in support of his case. ***Balbir Kaur vs. Steel Authority of India Limited***, reported in **2000(6) SCC 493**, ***Govind Prakash Verma vs. Life Insurance Corporation of India & Ors.***, reported in **2005(10) SCC 289**, ***Tapan Kumar Barman Vs. State of West Bengal & Ors.***, reported in **2009(1) Cal. H.C.N. 23** and ***Swati***

Chatterjee vs. State of West Bengal & Ors., reported in **2010 (1) Cal. HCN 665**.

The learned advocate representing the respondents has filed Affidavit-in-Opposition and categorically relied upon the Government Orders dated 9th July, 2009 and 11th November, 2010, as mentioned in the impugned order of rejection.

It has been submitted that the policy of compassionate appointment in public service is not a right but a benefit held out by the State to rescue from penury the family of an employee who dies-in-harness. It has further been submitted that the petitioner failed to satisfy the yardstick of penury as mentioned in the aforesaid Government Orders and accordingly, the petitioner is not entitled to be considered for being appointed on compassionate ground. Compassionate appointment is an exception to the general rule and the same has to be applied strictly in accordance with the scheme of the Government.

I have heard the rival contentions of the parties.

The service condition of the employee provides for appointing an eligible member of the family in the unlikely event of sudden death of the employee while in service.

The respondent authority proceeded to determine the financial strength of the family of the petitioner on the basis of the Government Orders issued from time to

time. It appears from the impugned order that apart from the family pension received by the widow, no other income has been taken into consideration for assessing the financial condition of the family of the petitioner.

It further appears that it is only upon consideration of the family pension received by the widow of the employee that the respondent authority was of the opinion that the petitioner failed to satisfy the yardstick as mentioned in the Government Orders.

The issue in question has been decided by the Hon'ble Supreme Court way back in the matter of Balbir Kaur (supra). The Court took into consideration the family pension scheme and held that the purpose for which the family pension scheme has been introduced was completely different. Fact remains that statutory obligation cannot be left high and dry on the whims of the employer.

The Hon'ble Supreme Court in Govind Prakash Verma (supra) categorically held that it is wholly irrelevant for the authority to take into consideration the amount which was being paid as family pension to the widow of the deceased and the amount paid on account of terminal benefits under the rules. The scheme of compassionate appointment is over and above whatever is admissible to the legal representatives of the deceased employee as benefits of service which one gets on the death of the employee.

The Court clearly held that compassionate appointment could not be refused on the ground that any member of the family received the amounts admissible under the rules.

The Hon'ble Division Bench of this Court in Tapan Kumar Barman (supra) relied upon the decision passed by the Hon'ble Supreme Court in the matter Balbir Kaur (supra) and held that compassionate appointment is given with an idea to compensate the family for the loss of income because of sudden death of the employee who would have earned in future. Family pension is one kind of deferred payment. Payment of terminal benefits on account of death cannot be equated with the scheme of compassionate appointment.

Hon'ble Division Bench of this Court in the matter of Swati Chatterjee (supra) again held that the family pension being one kind of deferred payment and earned by deceased cannot be a valid ground for denying compassionate appointment to a member of the family of the deceased employee.

The aforesaid judgments unequivocally lay down that the amount of family pension which has been received by the widow of the deceased employee cannot be taken into consideration for the purpose of deciding the financial strength of the family for the purpose of consideration of the prayer for compassionate appointment. Family pension is coterminous with the life

of the surviving spouse and will immediately stop on expiry of the person.

Family pension is paid to the widow in accordance with the service condition of the employee. Receipt of family pension cannot be a valid ground for rejecting the prayer of the petitioner for being appointed on compassionate ground. The same cannot stand in the way of considering the case of the petitioner independently for grant of appointment on compassionate ground. Prayer for compassionate appointment is to be considered without taking into consideration the amount received by the widow as family pension.

It is settled law that compassionate appointment cannot be claimed as a matter of right and the same is an exception to the general rule. Compassionate appointment is to be given strictly in accordance with the scheme and not otherwise. It is only if the petitioner is able to satisfy that, but for the amount received as family pension, the financial condition of the family is such that they cannot afford to have two square meals a day, then only the prayer of the applicant petitioner for compassionate appointment may be considered by the authority. At the same time while considering the financial strength of the family the authority cannot take into consideration the amount received by the widow as family pension.

In view of the above, the impugned order rejecting the prayer of the petitioner for being considered for appointment on compassionate ground is set aside.

The matter is remanded back to the District Inspector of Schools (S.E), Murshidabad to be considered afresh, strictly in accordance with the observations made above. Consideration shall be made at the earliest, but positively within a period of eight weeks from the date of communication of this order. The said respondent shall pass a reasoned order and communicate the same to the petitioner immediately thereafter.

WPA 15954 of 2021 is disposed of.

Affidavit-in-Opposition and Affidavit-in-Reply thereto filed in Court are taken on record.

All parties to act on a server copy of this order downloaded from the official website of this Court.

Urgent certified photocopy of this order, if applied for, will be made available to the parties subject to compliance of all requisite formalities.

(Amrita Sinha, J)