

IN THE HIGH COURT AT CALCUTTA
(Appellate Side)
CONSTITUTIONAL WRIT JURISDICTION

WPST 99 of 2020

Reserved on: 05.03.2021

Judgment on: 10.06.2021

Sri Sujit Dalui

...Petitioners

-versus-

Principal Secretary, Public Works Department, Government of West Bengal & Ors.

...State

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE ANIRUDDHA ROY

Present:- M/s. Lakshmi Kanta Pal and
Bandhu Brata Bhula, Advocates

...for the petitioners

Mr. Joytosh Mazumder, Government Pleader,
Mr. Biswabrata Basu Mallick and
Ms. Kakali Samajpaty, Advocates

...for the State

ORDER

Aniruddha Roy, J.:

1. This writ petition has been filed assailing the order dated March 7, 2019 (for short, the impugned order) passed by the West Bengal Administrative Tribunal, Kolkata (for short, the Tribunal) in OA 810 of 2017 (Sujit Dalui vs. The State of West Bengal & Ors.) (for short, the Original Application) whereunder the said Original Application filed by the writ petitioner was dismissed being devoid of any merit and the prayer for granting compassionate appointment to the writ petitioner was consequently rejected.
2. The father of the writ petitioner Dibakar Dalui, since deceased, was employed as Work Guard (Choukidar) since July 8, 1997 in Kalna

Highway, Sub-Division, P.W. Directorate of Public Works (Road) on work charged basis. vide memo dated May 5, 1997. Later, the pay scale of the father of the writ petitioner was refixed according to ROPA Rules, 1998 and ROPA Rules, 2009. He was given the benefit of Carrier Advancement Scheme of 2001 after completion of 8 years continuous satisfactory service. According to the option submitted by the father of the writ petitioner his pay scale was further enhanced from ₹4900-7800. He was given the benefit of P.B.-2. He had served the State employer during the period 1997 till 2015 with an unblemished service carrier for 18 years.

3. The father of the writ petitioner died on January 3, 2015 at an age of 54 years. After the demise of the father, the mother of the writ petitioner Smt. Kalpana Dalui had started receiving her widow pension of ₹5190/- per month.
4. After the demise of the father, the writ petitioner applied before the State employer to have a compassionate appointment as a Group-D Staff, on the plea that, the writ petitioner being sole earning member needed such an appointment after the demise of his father as the family had been undergoing through severe financial distress. The writ petitioner has two elder brothers who did not have sufficient educational qualification and they were working as cultivators at the relevant point of time. The elder brothers had no objection, in the event, compassionate appointment would be provided to the writ petitioner as prayed for.
5. After receiving the application from the writ petitioner the State employer had formed a three members committee to enquire into the family of the deceased. On May 17, 2017 such committee visited the house of the writ petitioner and visualized the financial and physical condition of the family and submitted its report. From such report it would be evident that the family was in need of financial assistance.

6. The writ petitioner further represented before the State employer seeking compassionate appointment, vide Memo dated June 29, 2017 such prayer of the writ petitioner was rejected.
7. Being aggrieved by such decision of rejection of compassionate appointment, the writ petitioner preferred the Original Application being OA No. 810 of 2017 before the Tribunal and the Tribunal by its impugned order rejected the said Original Application on the ground that the father of the writ petitioner was a work charged employee and not a government employee. There is no provision for compassionate appointment for the dependant of a work charged employee.
8. Mr. Lakshmi Kanta Paul, Learned Counsel appearing with Mr. Bandhu Brata Bhula, Advocate for the writ petitioner submitted that, during the service carrier the father of the writ petitioner had received the benefits under the ROPA Rules and the revision of payment thereunder from time to time. At all material time the father of the writ petitioner was acknowledged by the State Employer as a government employee. Thus, the status of the father of the writ petitioner at all material time was that of a government employee and not a work charged employee. The mother of the writ petitioner being widow has been receiving the widow pension after the demise of the father of the writ petitioner. He then submitted that, no landed property had been owned by any of the family members of the deceased employee neither he owned any. As after the demise of the employee the family is passing through a severe financial crisis and distress and it is impossible to sustain unless the compassionate appointment is granted to the writ petitioner. Mr. Paul further submitted that, the writ petitioner is otherwise eligible for a compassionate appointment as claimed by him.
9. Mr. Jyotosh Mazumder, Learned Government Pleader, appearing with Mr. Raja Saha, Advocate on behalf of the State employer submitted at the outset that, the father of the writ petitioner was never a

government employee within the meaning of Article 309 of the Constitution of India and at all material time he served the State employer as a work charged employer, whose employment was also not permanent in nature. He submitted that, after the demise of the deceased employee all dues on account of his service tenure had duly been released and paid to his family. The widow of the deceased employee had also been receiving the requisite monthly pension.

10. Mr. Mazumder, then referred to a Office Memorandum baring no. 9008-F(P) dated September 16, 2011 issued by OSD & E.O. Special Secretary to the Government of West Bengal. Referring to Clause (i) of the said Office Memorandum he submitted that, provision was made for the casual/daily rated/contractual workers who had rendered 10 years of service continuously with atleast 240 days attendance each year, may remain engaged in the same status and capacity till they are attaining the age of 60 years but such provision cannot be construed or mean that this casual/daily rated/contractual workers would become a 'government employee' within the meaning and purview of Article 309 of the Constitution of India. Mr. Mazumder, then referred to the notification issued by the Labour Department, Government of West Bengal baring no. 251-Emp dated December 3, 2013 and submitted that, the said notification deals with the right and eligibility regarding the compassionate appointment. The said notification specifically provides for compassionate appointment to a dependant family member of a government employee and not otherwise. The work charged employee, as was the father of the writ petitioner, can never be termed and covered within the meaning and expression of government employee as defined under Article 309 of the Constitution of India and as such the dependant family member of a work charged employee cannot claim any compassionate appointment. Mr. Mazumder, in addition submitted that, since the mother of the writ petitioner had been receiving widow pension regularly and the family

of the deceased employee had received all the terminal benefits, the family of the deceased employee could not be termed as a family which is indigent and deserved immediate assistance for relief from financial destitution. Mr. Mazumder, the learned government pleader, in support of his contention referred to the judgments of the Hon'ble Supreme Court *in the matter of: State of Madhya Pradesh & Ors. – versus- Amit Shrivastava*, reported at (2020) 10 SCC 496 and *in the matter of: State of Manipur –versus- Thingujam Brojen Meetei*, reported at (1996) 9 SCC 29.

11. After hearing the counsels for the parties and after perusing the materials before us it is evident that the father of the writ petitioner was not in permanent employment of the State and was engaged work charged basis. Article 309 of the Constitution inter alia provides that subject to the provisions of the constitution, Acts of the appropriate legislature may regulate the recruitment, and conditions of service of persons appointed, to public service and posts in connection with the affairs of the State, such persons are termed to be in the recruitment of the service of a State. In the present case the recruitment of the father of the writ petitioner had not taken place following the said procedure as laid down under Article 309 of the Constitution of India.
12. The father of the writ petitioner at all material time had served the State employer as a work charged employee and not as regular government employee as his recruitment was not in terms of Article 309 of the Constitution of India. The relevant Rules including the said notification dated December 3, 2013 which gives rise to right of claiming compassionate appointment, the precondition is, the dependant family member of a government employee can only claim compassionate appointment. The writ petitioner being the son of a work charged employee is not entitled to claim such right of compassionate appointment and as such his representation and

prayer for the same was rightly rejected by the State employer in its said decision dated June 29, 2017.

13. The Hon'ble Supreme Court in the matter of: *State of Madhya Pradesh & Ors. (Supra)* was pleased to observed as under:

"17. In our view, the aforesaid plea misses the point of distinction between a work-charged employee, a permanent employee and a regular employee. The later father of the respondent was undoubtedly a work-charged employee and it is nobody's case that he has not been paid out of work-charged/contingency fund. He attained the status of a permanent employee on account of having completed 15 years of service, which entitled him to certain benefits including pension and krammonati. This will, however, not ipso facto give him the status of a regular employee.

19. We are not required to labour much in the aforesaid issue and really speaking this issue is no more res integra in view of the judgment of this Court in Ram Naresh Rawat v. Ashwini Ray, which opined that a "permanent" classification does not amount to regularization. The case dealt with the aforesaid Standing Orders and it has been observed in paras 24, 26 and 27 as under: (SCC pp. 453-54).

"24. It is thus, somewhat puzzling as to whether the employee, on getting the designation of "permanent employee" can be treated as "regular" employee. This answer does not flow from the reading of the Standing Orders Act and Rules. In common parlance, normally, a person who is known as "permanent employee" would be treated as a regular employee but it does not appear to be exactly this kind of situation in the instant case when we find that merely after completion six months' service an employee gets right to be treated as "permanent employee". Moreover, this Court has, as would be noticed now, drawn a distinction between "permanent employee" and "regular employee".

26. From the aforesaid, it follows that though a "permanent employee" has right to receive pay in the graded pay scale, at the same time, he would be getting only minimum of the said pay scale with no increments. It is only the regularization in service which would entail grant of increments, etc. in the pay scale.

27. In view of the aforesaid, we do not find any substance in the contentions raised by the petitioners in these contempt petitions. We are conscious of the fact that in some cases, on earlier occasions, the State Government while fixing the pay scale, granted increments as well. However, if some persons are given the benefit wrongly, that cannot form the basis of claiming the same relief. It is the trite that right to equality under Article 14 is not in negative terms (see ICAR v. T.K. Suryanarayan)".

14. The Hon'ble Supreme Court *in the matter of: State of Manipur (Supra)*

was pleased to observe as under:

“9. As noticed earlier, in the Scheme, as initially framed by OM dated 2-5-1984, there was a provision in paragraph (3) for appointment of dependants of work-charged employees who died in harness. But by corrigendum dated 8-5-1984, the office memorandum dated 2-5-1984 was amended and paragraph (3) was substituted and in the amended provision it was provided that the Scheme shall be applicable to regular government employees in the vacancy available in the department in which the deceased employee worked. The matter was further clarified beyond doubt in the revised scheme issued by OM dated 31-8-1992 wherein it is expressly stated that the Scheme will not be applicable to ad hoc/officiating/work-charged/casual/muster roll appointees. We are unable to agree with the view of the High Court in N. Arun Kumar Singh v. State of Manipur that a change comes about in the character of a work-charged employee after confirmation and the Scheme is applicable to him. In our view, the only change that is brought about as a result of confirmation of a work-charged employee is that, by virtue of the Terminal Benefits Rules, a confirmed work-charged employee is entitled to certain benefits including pension and gratuity under Rule 6 of the Terminal Benefits Rules which benefits he would otherwise have not been entitled to. But a work-charged employee after confirmation does not cease to be a work-charged employee and he continues to be a work-charged employee. The bar regarding applicability of the Scheme to work-charged employee would, therefore, continue to be applicable and the dependants of such a confirmed work-charged employee cannot claim the benefit of an appointment on the basis of the Scheme”.

15. In as much as, from the pleadings made in the writ petition and the submissions made on behalf of the writ petitioner before the Tribunal as recorded in the impugned order, it is further evident that, the father of the writ petitioner was a work charged employee. He at best can be said to have acquired the status of the permanent employee in view of the provisions laid down in the said Memorandum No. 9008 dated September 16, 2011, which entitled him to certain benefits including pension. This, however, will not, *ifso facto* give any right to him the status of a government employee. In as much as, the relevant rules vide the said notification of the Labour Department dated December 3, 2013 further make it clear that the dependant family member of a government employee can claim compassionate appointment. In the instant case, the father of the writ petitioner being a work charged

employee cannot be termed a government employee within the meaning of the said notification and as such the writ petitioner even if a dependant family member of the deceased employee cannot claim compassionate appointment.

16. In view of our fore going discussions and reasons stated, we are of the considered view that the impugned order does not suffer from any infirmity and as such the same is not interfered with.

17. The writ petition W.P.S.T. 99 of 2020 stands dismissed.

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

(Rajesh Bindal)
Chief Justice (Acting)

(Aniruddha Roy)
Judge

Kolkata
10.06.2021

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P.A. (RM)